



05-26-1999

Department of Commerce  
Trademark Office  
JEMARK

05-03-1999

U.S. Patent & TMO/TM Mail Rcpt Dt. #54



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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

New

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

#### Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger  Change of Name

Other

Effective Date  
Month Day Year

#### Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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Mail documents to be recorded with required  
Commissioner of Patents and Trademarks

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**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1"/>	<input type="text" value="827"/>	<input type="text" value="980"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

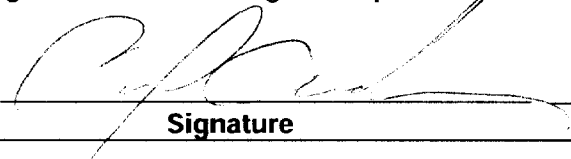
Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)  
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**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. Charges to deposit account are authorized, as indicated herein.

Carl E. Anderson  
Name of Person Signing

  
Signature

4/29/99  
Date Signed

ASSIGNMENT OF TRADEMARKS AND  
INTELLECTUAL PROPERTY RIGHTS AGREEMENT

This ASSIGNMENT OF TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS AGREEMENT ("Agreement") is made effective this 27<sup>th</sup> day of ~~April~~ <sup>May - Rev 5/27/98</sup>, 1998, by and between WOLF INTERNATIONAL, INC. ("WOLF"), an Ohio corporation and BIO-AESTHETICS CORPORATION, an Ohio corporation ("BAC") and GUTHY-RENKER CORPORATION, a Delaware corporation ("GRC").

**RECITALS**

A. WHEREAS by virtue of documents on file in Cleveland, Ohio and in the United States Patent and Trademark Office, GRC is the owner of state registration(s) and the United States Trademark Registration(s) for the mark "Perfect Smile" listed on Exhibit A attached hereto (the "Trademarks") and BAC is the owner of a patent for a process to whiten teeth entitled "Perfect Smile" which process is more particularly described in U.S. Patent 5,165,424, a copy of which is Exhibit B attached hereto (the "Process"); and

B. WHEREAS, BAC desires to assign to WOLF all of its rights, title and interests in and to the Trademarks and certain "Intellectual Property" (as defined hereinbelow) which is owned by or licensed by BAC and which is and has been licensed by BAC to GRC, in connection with the manufacture and distribution of certain consumer products utilizing the Process; and

C. WHEREAS, WOLF desires to purchase all of BAC's rights, title and interests in and to the Trademarks and "Intellectual Property" (as defined hereinbelow) which is owned by or

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licensed by BAC and which is and has been licensed by BAC to GRC, in connection with the manufacture and distribution of certain consumer products utilizing the Process.

NOW THEREFORE, in consideration of the above recitals, mutual promises, representations, warranties, and covenants herein contained, the Parties agree as follows:

#### **ARTICLE 1 - DEFINITION OF INTELLECTUAL PROPERTY**

1.1 For purposes of this Agreement, the term "Intellectual Property" shall mean any trademarks, and all registrations and applications for registrations (including all files in connection with such registrations and applications, whether in the possession of BAC or GRC, its agents or representatives) which BAC owns for the foregoing, consumer products utilizing the Process, sales records owned by BAC, trade secret rights, service marks, rights to designs including design patent and design registrations, rights to inventions including patents, and copyrights, including any BAC confidential or proprietary information embodied in the foregoing, and other intellectual property rights in all countries of the world.

#### **ARTICLE 2 - BASIC TRANSACTION**

2.0 (a) Purchase and Sale of Intellectual Property - On and subject to the terms and conditions of this Agreement, WOLF agrees to purchase from BAC and BAC agrees to sell, transfer, convey, assign and deliver to WOLF, free of all liens and encumbrances all of its rights, title and interest in and to the Trademarks, and the Intellectual Property described herein along with the goodwill of the certain consumer products business associated therewith at the closing for the consideration specified below in this Article.

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(b) Purchase Price - WOLF agrees to pay BAC and BAC agrees to pay to GRC at closing Ten Thousand Dollars (\$10,000) (the Purchase Price) by delivery of a check payable to GRC on behalf of BAC.

(c) Termination of GRC Marketing and Distribution Agreement - GRC hereby acknowledges receipt of notification from BAC of the termination of the Marketing and Distribution Agreement dated as of January 1, 1993 between Perfect Smile, Inc. ("PSI") and BAC, and as amended by First Amendment dated August 31, 1993 by and between BAC, PSI and GRC, and as amended by Second Amendment dated July 25, 1995 by and between GRC and BAC (the "License Agreement"). Pursuant to Paragraph 16.3(v) of the License Agreement, BAC hereby exercises its right to purchase all rights held by PSI and GRC in and to the name "Perfect Smile", including the trademarks and Intellectual Property as defined therein upon the payment of Ten Thousand Dollars (\$10,000) and the execution hereof. By execution hereof, GRC hereby acknowledges receipt of the Ten Thousand Dollar (\$10,000) payment, the termination of the License Agreement and the assignment of all rights held by GRC in and to the name "Perfect Smile", including the trademarks

and the Intellectual Property. *GRC further acknowledges it has no claims against BAC or WOLF arising out of or relating to the Licensing Agreement.* GRC further acknowledges that any and all intellectual property rights which were licensed by BAC to GRC under the License Agreement shall otherwise revert back to BAC by virtue of the termination of the License Agreement. *Other than as expressly set forth in Paragraph 2 (d) below and 5.1 below, upon full execution of this Agreement.*

(d) Obligations of GRC Upon Termination of License Agreement - BAC and GRC hereby acknowledge and agree that there shall be a "sell off period" in accordance with Paragraph 16.3(i)-(iv) of the License Agreement. The sell off period for all current customers, with the exception of Walgreen's, Wal-Mart and Target shall not exceed six months from February 16, 1998.

*GRC shall have no continuing obligations or liabilities under the ~~First Amendment~~ License Agreement.*

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the effective date of termination of the License Agreement. In the case of Walgreen's, Wal-Mart and Target the sell off period shall expire on July 1, 1998. During the sell off period, GRC shall be obligated to do the following: (i) GRC and its agents and sub-agents shall cooperate in effecting a transition during the sell off period by providing sales, inventory and related information, disclosing customer contacts and buyers, and assist BAC and/or WOLF to maintain existing accounts; (ii) GRC shall retain the non-exclusive right to accept and process orders for products that were placed prior to the effective date of termination, together with the right to select and fill for six months following termination, any reorders received following such effective date from prior customers; (iii) GRC shall use its best efforts to cease all advertising, marketing and distribution of the product; in no event will advertising continue more than sixty days following the effective date of termination; (iv) gross receipts received by GRC following the effective date of termination will be distributed in the same manner set forth in Section 6 of the License Agreement; (v) provide BAC and/or WOLF with access and use on a non-exclusive basis of its infomercial, retail and other customer list(s); and (vi) GRC shall fill all existing and pending orders for the product placed through GRC and honor all requests for returns <sup>consistent with GRC's existing policies and practices. - Row 5/27/98</sup> "Returns" for purposes of this Agreement shall mean, with respect to the product, all refunds, returns, credit card charge backs, uncollectible checks, declines and cancels.



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**ARTICLE 3 - REPRESENTATIONS AND WARRANTIES**

3.1 **Representations and Warranties of BAC.** BAC represents and warrants to WOLF as follows:

(a) **No Legal Obstacle to Agreement.** The execution, delivery and performance of this Agreement, the consummation of any transactions herein referred to or contemplated, and the

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fulfillment of the terms hereof do not, and will not, conflict with or, with or without notice or passage of time, result in a breach or violation of, or constitute a default under any applicable law or regulation or any judgment, order or decree binding upon BAC or related to the Trademarks and Intellectual Property or BAC's right thereunder, or conflict with, or result in a breach or violation of, or constitute a default in the performance, observance or fulfillment of any obligation, covenant or condition contained in, or constitute, or, but for any requirement of notice or lapse of time or both, would constitute, an event of default by BAC under any applicable contractual obligation to which BAC is bound.

(b) **Consents and Approvals.** No consents or approvals of parties with whom BAC has contractual relationships, or has had such contractual relationships, are required or will be required, in order to permit the consummation of the transaction contemplated by this Agreement.

(c) **Organization.** BAC is a corporation duly organized, validly existing and in good standing under the applicable laws of the State of Ohio.

(d) **Authorization of Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly and validly authorized by BAC and all corporate action by BAC necessary for the authorization and consummation of the transactions contemplated hereby has been taken.

(e) **Valid and Binding Agreement.** This Agreement has been validly executed and delivered by and constitutes a valid and binding obligation of BAC enforceable in accordance with its terms.

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(f) **Intellectual Property.**

(1) BAC and GRC are the sole and exclusive owner(s) of the entire right, title and interest in and to the Trademarks and Intellectual Property and BAC and GRC have not sold, assigned, licensed or otherwise transferred, in whole or in part, any interests or rights in such Trademarks and Intellectual Property.

(2) To the best of BAC's and GRC's knowledge, there are no pending or threatened actions, proceedings, or other adverse claims affecting, or with respect to, the Trademarks, the Intellectual Property or BAC's and GRC's rights thereunder and no person or entity is infringing the Trademarks or the Intellectual Property.

(3) There are no outstanding agreements, assignments, sub-licenses or encumbrances relative to the Trademarks or the Intellectual Property inconsistent with the provisions of this Agreement.

3.2 **Representations and Warranties of WOLF and GRC.** WOLF and GRC hereby warrant and represent to BAC that:

(a) **No Legal Obstacle to Agreement.** The execution, delivery and performance of this Agreement, the consummation of any transactions herein referred to or contemplated, and the fulfillment of the terms hereof do not, and will not, conflict with or, with or without notice or passage of time, result in a breach or violation of, or constitute a default under any applicable law or regulation or any judgment, order or decree binding upon WOLF or GRC, or conflict with, or result in a breach or violation of, or constitute a default in the performance, observance or fulfillment of any obligation, covenant or condition contained in, or constitute, or, but for any requirement of

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notice or lapse of time or both, would constitute, an event of default by WOLF or GRC under any applicable contractual obligation to which WOLF or GRC is bound.

(b) **Consents and Approvals.** No consents or approvals of parties with whom WOLF or GRC have contractual relationships, or have had such contractual relationships, are required or will be required, in order to permit the consummation of the transaction contemplated by this Agreement.

(c) **Organization.** WOLF is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio. GRC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(d) **Authorization of Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly and validly authorized by WOLF and GRC and all corporate action by WOLF and GRC necessary for the authorization and consummation of the transactions contemplated hereby has been taken.

(e) **Valid and Binding Agreement.** This Agreement has been validly executed and delivered by and constitutes a valid and binding obligation of WOLF and GRC enforceable in accordance with its terms.

#### **ARTICLE 4 - COVENANTS OF BAC AND GRC**

4.1 BAC and GRC agree that they will not perform any act that would extinguish or impair, nor will it fail to take all action reasonably necessary to preserve and maintain the Trademarks and Intellectual Property rights assigned to WOLF under this Agreement. BAC and GRC shall, upon the request of WOLF, undertake any reasonably necessary and lawful measures,

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and execute all documents or instruments necessary to effect this Agreement and to assist WOLF in recording the assignments of the trademark registrations in the various trademark offices.

**ARTICLE 5 - INDEMNITY**

5.1 **Indemnification by GRC.** GRC agrees to indemnify BAC and WOLF from and against any loss or damage incurred by BAC and WOLF which directly arises out of or results from (a) GRC's breach of any of its representations, warranties or covenants contained in this Agreement, or from (b) GRC's ownership and use of the Trademarks and Intellectual Property (including any product liability or infringement claims) prior to the closing, provided however, that BAC and/or WOLF makes a written claim for indemnification pursuant to Paragraph 5.4 herein within the survival period contained in Paragraph 6.10.

5.2 **Indemnification by BAC.** BAC agrees to indemnify WOLF and GRC from and against any loss or damage incurred by WOLF and GRC which directly arises out of or results from (a) BAC's breach of any of its representations, warranties or covenants contained in this Agreement, ~~or from~~ (b) BAC's ownership or use of the Trademarks and Intellectual Property (including any product liability or infringement claims) prior to the closing, provided however, that WOLF and/or GRC makes a written claim for indemnification pursuant to Paragraph 5.4 herein within the survival period contained in Paragraph 6.10.

5.3 **Indemnification by WOLF.** WOLF agrees to indemnify BAC and GRC from and against any loss or damage incurred by BAC and GRC which directly arises out of or results from (a) WOLF's breach of any of its representations, warranties or covenants contained in this Agreement; ~~or from~~ (b) WOLF's ownership or use of the Trademarks and Intellectual Property

or from (b) BAC's use of the GRC's information, ~~related~~ retail and customer lists, BV

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*or former) Wolff use of the GRC's in commercial, retail and customer lists*

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(including any product liability or infringement claims) after the Closing, provided however, that BAC and/or GRC makes a written claim for indemnification pursuant to Paragraph 5.4 herein within the survival period contained in Paragraph 6.10.

**5.4 Procedure for Indemnification.** The party seeking indemnification hereunder is hereinafter referred to as the "Indemnified Party," and the party against whom indemnification is sought is hereinafter referred to as the "Indemnifying Party."

Upon the Indemnified Party being notified in writing of any claim being made by a third party which, if sustained, would be subject to indemnification pursuant to this Article 5, the Indemnified Party shall notify the Indemnifying Party in writing of the claim and the facts relating to it within fifteen (15) days of the receipt of such written notice of such claim; provided; however, that the failure of the Indemnified Party to so notify the Indemnifying Party within such fifteen (15) day period shall not relieve the Indemnifying Party of any indemnification obligation hereunder unless the Indemnifying Party shall have been materially prejudiced thereby. The Indemnifying Party shall have the right to assume the defense of the claim through mutually acceptable counsel at the Indemnifying Party's own expense. The Indemnified Party shall have the right, at its own expense, to employ counsel to represent it in addition to counsel employed by the Indemnifying Party. Such counsel employed by the Indemnified Party shall act in an advisory capacity only with respect to the defense provided by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Party fully informed at all times of the status of the claim. The Indemnified Party shall cooperate to make available to the Indemnifying Party all pertinent information under the control of the Indemnified Party as to the claim and shall make appropriate personnel reasonably available

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for any discovery or trial, any out-of-pocket expenses incurred by the Indemnified Party as result thereof to be paid by the Indemnifying Party . If the Indemnifying Party fails or refuses to undertake the defense within thirty (30) days after receiving notice that a claim has been made, the Indemnified Party shall have the right to assume the defense of such claim in such a manner it deems appropriate; provided, however, that, regardless of which party assumes the defense of the litigation, the Indemnified Party shall not settle or compromise any claim without the consent of the Indemnifying Party, and the Indemnifying Party shall not settle or compromise any claim without obtaining an unconditional release of the Indemnified Party.

#### ARTICLE 6 - MISCELLANEOUS

6.1 **Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed duly given if sent by certified mail return receipt requested, by a nationally recognized overnight courier, by facsimile with confirmation of transmission or by personal delivery addressed to the intended recipient as set forth below:

If to BAC:

Bio-Aesthetics Corporation  
Bank One Center, Suite 1300  
600 Superior Avenue, East  
Cleveland, Ohio 44114  
Attention: Dr. Robert Wolf  
Fax (216) 522-1918

If to GRC:

Guthy-Renker Corporation  
3340 Ocean Park Blvd., Suite 3055  
Santa Monica, California 90405  
Attention: Ben Van de Bunt  
Fax: (310) 581-3232

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If to WOLF:

Wolf International, Inc.  
Bank One Center, Suite 1300  
600 Superior Avenue, East  
Cleveland, Ohio 44114  
Attention: Dr. Robert Wolf  
Fax (216) 522-1918

With a copy to:

Walter & Haverfield P.L.L.  
1300 Terminal Tower  
Cleveland, Ohio 44113  
Attention: Ralph E. Cascarilla, Esq.  
Fax: (216) 575-0911

6.2 **No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

6.3 **Severability.** Any term or provision of this Agreement that is invalid and unenforceable shall not affect the validity or enforceability of the remaining terms and provisions.

6.4 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Ohio without regard to its conflicts of law principles.

6.5 **Integration.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and no variation, modification, or waiver of any of its terms or conditions will be valid unless made in a writing which specifically mentions this Agreement and is signed by BAC, GRC and WOLF.

6.6 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will have the force and effect of an original.

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6.7 **Headings**. The section headings contained in this Agreement are for reference purposes only and will not in any way affect its meaning or interpretation.

6.8 **Binding Effect**. Except as otherwise provided in this Agreement, this Agreement will inure to the benefit of and be binding upon the heirs, personal representatives, successors and permitted assigns of the parties.

6.9 **Incorporation**. The preamble and the Recitals of this Agreement and its Exhibits are incorporated herein by reference and made a part hereof.

6.10 **Survival of Representations and Warranties**. All of the representations and warranties of BAC, GRC and WOLF contained in this Agreement shall be deemed to have been relied on by the Party to whom they are directed, and shall continue in full force and effect for a period of two (2) years from the Closing, with the exception of the representations and warranties contained in Paragraphs 5.1(b) and 5.2(b) which shall continue in full force and effect forever thereafter (subject to any applicable statutes of limitations).

6.11 **Construction**. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and in the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring a Party by virtue of the authorship of any of the provisions of this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date set forth above.

Signed In The Presence Of:

BIO-AESTHETICS CORPORATION

*Cliff Brown*  
\_\_\_\_\_

By: *Robert O. Wolf*  
Its: *President*

"ASSIGNOR"

WOLF INTERNATIONAL, INC.

*Cliff Brown*  
\_\_\_\_\_

By: *Robert O. Wolf*  
Its: *President & CEO*

"ASSIGNEE" and "LICENSOR"

GUTHY-RENKER CORPORATION

*Cliff Brown*  
\_\_\_\_\_

By: *B Van de Bunt*  
Its: *EVP*

"LICENSEE"

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