

mb
10-28-99

11-03-1999



To the Honorable Commissioner of Patents

101190894

and original documents or copy thereof.

1. Name of conveying party(ies):

Vital Form, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: September 17, 1999

2. Name and address of receiving party(ies):

Name: Brunswick Corporation

Internal Address: _____

Street Address: One North Field Court

City: Lake Forest State: IL ZIP: 60045

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

THE HAMMER REG. NO. 1,760,017

Additional numbers attached? Yes No

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

Name: Joan L. Long

Internal Address: Mayer, Brown & Platt

Street Address: P.O. Box 2828

City: Chicago State: IL ZIP: 60690-2828

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:

13-0019

(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.

Joan L. Long
Name of Person Signing

Signature

October 28, 1999
Date

Total number of pages comprising cover sheet: 6

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

11/02/1999 DNGUYEN 00000212 1760017

01 FC:481

40.00 DP

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington D.C. 20503.

cb

Delaware

TRADEMARK ASSIGNMENT AGREEMENT

This Trademark Assignment Agreement ("Agreement") is by and between BRUNSWICK CORPORATION, an ~~Illinois~~ corporation with offices at _____, Illinois _____ ("Assignee") and VITAL FORM, INC., a Michigan corporation with offices at 2095 Euler, Brighton, Michigan 48116 ("Assignor"). This Agreement is effective on the date last signed by the parties ("Effective Date").

WHEREAS, Assignee is the owner of the trademark "HAMMER STRENGTH" that is used in association with health and fitness products and services.

WHEREAS, Assignor is the owner of the trademark and U.S. registration for the mark THE HAMMER (the "Trademark"), U.S. Registration No. 1,760,017.

WHEREAS, Assignor and Assignee were involved in litigation regarding Assignor's use of the Trademark. Such litigation took place in the U.S. District Court for the Eastern District of Michigan, Southern Division under case number 90-CV-71384 DT. That litigation was resolved pursuant to the terms of an agreed "Order and Dismissal" dated April 12, 1991 (the "Agreed Order").

WHEREAS, Assignee has alleged that Assignor is in violation of the Agreed Order, and Assignor denies such allegations. Assignee and Assignor now wish to resolve any and all disputes between them regarding the Agreed Order and Assignor's use of the Trademark.

WHEREAS, in order to so resolve any and all such disputes, Assignor wishes to sell to Assignee and Assignee wishes to purchase from Assignor the Trademark and all goodwill associated with the Trademark upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the sufficiency and receipt which is hereby acknowledged, the parties agree as follows:

1. Subject to the terms and conditions of this Agreement, Assignor hereby sells, transfers, assigns, conveys and delivers to Assignee all rights, title and interests in, to and under the Trademark, together with the goodwill associated with Assignor's use of the Trademark including, without limitation, all proceeds thereof and the right to sue for past, present and future infringements, the same to be held and enjoyed by Assignee for its own use and on behalf of its successors, legal representatives and assigns as fully and entirely as the same would have been held and enjoyed by the Assignor had not this sale and assignment been made

2. Assignor hereby requests the Commissioner of Patents and Trademark to record the Assignee as Assignee of the U.S. Trademark Registration No. 1,760,017 for the mark THE HAMMER for the sole use and enjoyment of Assignee, its successors, legal representatives and assigns.

Assignor _____

Assignee cb

3. Assignor warrants that it is the owner of the Trademark and registration thereof and has the authority to transfer all rights, title and interests, whether statutory or at common law, in the Trademark to Assignee.

4. Assignor agrees to cease all advertising and promotion which incorporates or references the Trademark, or any confusingly similar mark, in connection with the goods and/or services for which the Trademark is currently used and registered. Assignee hereby grants Assignor a period of ninety (90) days from the Effective Date to phase-out and deplete any existing inventory of products and advertising materials bearing the Trademark ("Phase-out Period").

5. Upon the Effective Date Assignee shall pay the amount of three hundred thousand dollars (\$300,000) to Assignor by certified check.

6. Except as expressly provided in Section 7 below, Assignor agrees that upon the completion of the Phase-out Period, to cease using the Trademark, or any substantially similar mark, in connection with the goods for which the Trademark is currently used and registered. Assignor further agrees that it will take no action that violates Assignee's rights in the Trademark.

7. Assignor references and distributes three (3) articles in its advertising, marketing and promotional materials for products sold under the Trademark (the "Articles"). Copies of the Articles are attached hereto as Exhibit A. The Articles contain favorable reports for Assignor's products and use the Trademark to identify Assignor's products. As such, Assignor may continue to use the Trademark in references to these Articles, provided that (a) Assignor uses the Trademark only in association with the same products that it currently sells under the Trademark; (b) Assignor does not use the Trademark in reference to any other articles; and (c) Assignor conspicuously includes the following language in all such advertising, marketing and promotional materials and on any Articles provided to customers:

"The [New Product Name] was formerly known as "THE HAMMER." "THE HAMMER" is now the registered trademark of Brunswick Corporation. Brunswick Corporation has no affiliation, sponsorship or relation to the [New Product Name] or to Vital Form, Inc."

8. Assignee has been advised that Assignor is considering using the word "CANNONBALL" as a trademark for its health and fitness products and/or services. Barring any actual confusion between the Trademark and Assignor's use of the mark "CANNONBALL," Assignee acknowledges and agrees that the mark "CANNONBALL" is not likely to cause confusion with the Trademark, and Assignee shall make no contrary allegation or assertion.

Assignor _____

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Assignee CB

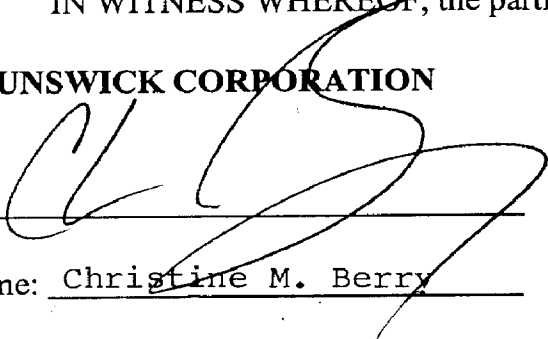
9. Each party hereby releases and forever discharges the other from any and all claims, demands, suits, debts, liabilities, judgments, obligations, claims, fees, expenses and/or causes of action, of any kind or nature, arising out of, or in any way related to, Assignor's use of the Trademark and/or the Agreed Order. However, this release shall not be effective as to any acts or omissions of either party which occur after the Effective Date and constitute a breach of the Agreed Order and/or this Agreement.

10 In the event that either party believes that the other is in breach of the Agreed Order and/or this Agreement, it shall give the other party written notice of the alleged breach and thirty (30) days in which to cure such breach. However, nothing in this Section will prevent either party from seeking injunctive or other equitable relief without such notice or opportunity to cure if it deems such relief reasonably necessary.

11. The Agreed Order shall remain in full force and effect, to the extent applicable, but shall be modified by any conflicting terms of this Agreement. Otherwise, this Agreement constitutes the entire agreement between the parties concerning the Trademark, supersedes all prior written and oral statements, representations, promises and/or agreements concerning the Trademark, and may not be modified except by a writing signed by both parties. This Agreement will be governed by Michigan law and any dispute arising therefrom will be heard in a court of competent jurisdiction in the state of Michigan, and the parties hereby consent to the exclusive jurisdiction of a Michigan court.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BRUNSWICK CORPORATION

By:  _____

Name: Christine M. Berry

Title: Assistant Secretary

Date: October 1, 1999

WACWA\VITAL\TAA_5.WPD

VITAL FORM, INC.

By:  _____

Name: Michael Calderone

Title: President

Date: 9/17/99