

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



102519686

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Diamond Products Company 3120 Williams Road Brandon, FL 33510

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

7-21-03

2. Name and address of receiving party(ies)

Name: Cumberland Swan Holdings, Inc.

Internal Address:

Street Address: One Swan Drive

City: Smyrna State: TN Zip: 37167

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Designations must be a separate document from assignment Additional name(s) & address(es) attached?

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 11/01/2002

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

A. Trademark Application No.(s)

\* See attached Exhibit A

B. Trademark Registration No.(s)

\* See attached Exhibit A

Additional number(s) attached Yes No

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

Name: Robert L. Brewer

Internal Address: Bass, Berry & Sims PLC

AmSouth Center

Street Address: 315 Deaderick Street

Suite 2700

City: Nashville State: TN Zip: 37238-3001

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:

DO NOT USE THIS SPACE

9. Signature.

Robert L. Brewer Name of Person Signing

Signature

July 18, 2003 Date

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

11

08/07/2003 070011 00000125 7452000

01 FC:0521 02 FC:0502

40.00 330.00

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



# ASSET PURCHASE AGREEMENT

by and between

Cumberland Swan Holdings, Inc.  
and  
Diamond Products Company

Dated August 23, 2002

2289222.12  
August 21, 2002

**TRADEMARK**  
**REEL: 002796 FRAME: 0876**

# ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is dated August 23, 2002, by and between Cumberland Swan Holdings, Inc., a Tennessee corporation ("**Buyer**"), and Diamond Products Company, a Florida corporation ("**Seller**").

## RECITALS

The parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I. DEFINITIONS AND USAGE

### 1.1 Definitions.

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

*"Bill of Materials"* – the component specifications for the manufacture of any of the Products.

*"Byhalia Assets"* - as defined in Section 2.1(b).

*"Byhalia Facility"* - as defined in Section 2.1(b).

*"Business"* – the design, manufacture, packaging, storage and sale of Products which constitute the Seller's private label business.

*"Code"* - the Internal Revenue Code of 1986, as amended.

*"Environment"* – soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

*"ERISA"* – the Employee Retirement Income Security Act of 1974, as amended.

*"Excess and Obsolete Finished Goods Inventories"* – (a) all finished goods Inventories of each Product in excess of the amount of such Product sold by Seller in the ordinary course during the twenty-six (26) week period immediately preceding the Date of Closing; (b) all discontinued finished goods Inventories; (c) all finished goods Inventories with expiration dates of sixty-five (65) weeks or less measured from the date of Closing; (d) all finished goods Inventories of each Product with respect to which Seller shall have made no sales in the ordinary course of business during the thirteen (13) week period immediately prior to the date of Closing; (e) all finished goods Inventories, not otherwise covered in clauses (a) through (d) above, that are out of specification or unsaleable in the ordinary course of business.

2289222.12  
August 21, 2002

**TRADEMARK**  
**REEL: 002796 FRAME: 0877**

ARTICLE II.  
SALE AND TRANSFER OF ASSETS; CLOSING

2.1 Assets To Be Sold.

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any liens, claims or encumbrances (collectively, "**Encumbrances**"), all of Seller's right, title and interest in and to:

(a) all Inventories (except Excess and Obsolete Inventories and Extra Finished Goods Inventories);

(b) all machinery, equipment and spare parts owned by Seller and used in the design or manufacture of the Products or their packaging and which are located at Seller's leased facility in Byhalia, Mississippi (the "**Byhalia Facility**") and listed in Schedule 2.1(b) (collectively, the "**Byhalia Assets**");

(c) all molds and tooling, wherever located, owned by Seller and used in the manufacture or packaging of any of the Products;

(d) the proprietary trade or service marks and names by which Seller identifies and markets certain of the Products, inclusive of but limited to "Medical Center", "Soft 'n Lovely", "Baby Steps" and "Sierra" (as applied only to solid air freshener) and "Dual Care" (as applied only to toothpaste);

(e) all records of Seller directly and primarily related (and copies of records that otherwise relate) to the Business or the Assets herein identified, specifically including but not limited to Product planning information, marketing strategies, operational information, customer relationships and profiles, and sales estimates relating to the past, present or future Business activities of Seller;

(f) all assignable purchase orders or other contract rights held by Seller with respect to the manufacture or sale of Products which are listed in Schedule 2.1(f);

(g) any goodwill associated with the Business; and

(h) the machinery, equipment and spare parts owned by Seller and used in the design or manufacture of Products or their packaging located at the Seller's facility in Seffner, Florida (the "**Seffner Facility**") and listed in Schedule 2.1(h).

All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "**Assets.**"

rules, regulations, codes, injunctions, judgments, orders, decrees, rulings, and charges thereunder), insofar as they relate to the Assets or the Business (including, without limitation, labeling of Products), of all governmental agencies, including, without limitation, all such laws relating to the protection of the environment, workplace safety, employment practices, ERISA and employee benefits, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against Seller alleging the failure so to comply.

3.10 **Tax Matters.** Seller has filed all Tax Returns that it was required to file. All such Tax Returns were correct and complete in all respects when filed. All Taxes owed by Seller (whether or not shown on any Tax Return) have been paid. Except with respect to extensions for calendar year 2001 on behalf of Seller and its shareholders, Seller currently is not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that have arisen or may arise in connection with any failure (or alleged failure) to pay any Tax.

3.11 **Customers and Suppliers.** Schedule 3.11 contains an accurate and complete list of the names and addresses of the twenty (20) largest customers to whom Seller has sold Products in connection with the Business during the past two (2) calendar years, and the twenty (20) largest suppliers from whom Seller has purchased supplies or inventories in connection with the Business during the past two (2) calendar years. Seller has not received written notice from any customer or supplier whose name appears on such list that such customer or supplier will not continue as a customer or supplier of Buyer after the Closing. Except as set forth in Schedule 3.11, no customer of the Business accounted for more than ten percent (10%) of the revenues generated by the Business for either of the years ended December 31, 2000 or December 31, 2001.

3.12 **Intellectual Property.**

(a) Seller owns or has the right to use pursuant to license, sublicense, agreement, or permission all intellectual property necessary for the operation of the Business as presently conducted. Each such item of intellectual property comprising an Asset (the "**Intellectual Property**") will be owned or available for use by the Buyer on identical terms and conditions immediately subsequent to the Closing hereunder. Buyer has taken all necessary action to maintain and protect each such item of intellectual property that it owns or uses. The proprietary trade or service marks and names identified in Section 2.1(d) comprise all of the proprietary trade or service marks and names relating to the Business.

(b) None of the Intellectual Property interferes with, infringes upon or misappropriates any intellectual property rights of third parties, and Seller has never received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that Seller must license or refrain from using any intellectual property rights of any third party). To the knowledge of Seller, no third party has interfered with, infringed upon or misappropriated any Intellectual Property rights of Seller.

(c) Schedule 3.12(c) identifies each patent, trademark, service mark or registration relating thereto which has been issued to Seller with respect to any of its Intellectual Property, and identifies each license, agreement, or other permission which Seller has granted to any third party with respect to any of its Intellectual Property (together with any exceptions). Seller has delivered to the Buyer correct and complete copies of all such patents, trademarks, service marks, registrations, applications, licenses, agreements, and copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. Schedule 3.12(c) also identifies each trade name or unregistered trademark or service mark used by Seller in connection with the Business. With respect to each item of Intellectual Property required to be identified in Schedule 3.12(c):

(i) Seller possesses all right, title, and interest in and to the item, free and clear of any Encumbrance, license, or other restriction;

(ii) Such item is not subject to any outstanding judgment, order, decree, ruling, or charge;

(iii) No action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the knowledge of Seller, is threatened which challenges the legality, validity, enforceability, use, or ownership of the item; and

(iv) Seller has never agreed to indemnify any person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(d) Schedule 3.12(d) identifies each item of Intellectual Property that any third party owns and that Seller uses in connection with the Business pursuant to any license, sublicense, agreement, or permission. Seller has delivered to the Buyer correct and complete copies of all such licenses, sublicenses, agreements, and permissions (as amended to date). With respect to each item of Intellectual Property required to be identified in Schedule 3.12(d):

(i) the license, sublicense, agreement, or permission covering the item is legal, valid, binding, enforceable, and in full force and effect;

(ii) each item will be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Article 2);

(iii) no party to the license, sublicense, agreement, or permission is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default of permit termination, modification, or acceleration thereunder;

(iv) no party to the license, sublicense, agreement, or permission has repudiated any provision thereof;

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**BUYER:**

CUMBERLAND SWAN HOLDINGS, INC.

By: J. L. D. Bily, Jr.  
Name: J. L. D. Bily, Jr.  
Title: EVP

**SELLER:**

DIAMOND PRODUCTS COMPANY

By: T. C. Smith, Jr.  
Name: Thayer Smith  
Title: CEO

Each of the undersigned joins in this Agreement for the sole purpose of agreeing to execute and deliver at Closing the respective Noncompetition Agreement applicable to him.

T. C. Smith, Jr.  
Thayer C. Smith, Jr.  
Barton Bridges  
Barton Bridges  
David P. Alexander  
David P. Alexander



## ASSIGNMENT

**WHEREAS**, Diamond Products Company, a Florida corporation, located at 3120 Williams Road, Brandon, Florida 33510 (hereinafter the "Assignor"), is the owner of all right, title and interest in and to the trademarks and service marks listed in Schedule A, and the applications and registrations thereof (hereinafter the "Registration Marks");

**WHEREAS**, in the course of its business operations, Assignor may have developed common law rights in the other trademarks, service marks and/or trade dress used in conjunction with its business (hereinafter the "Common Law Marks") (the Common Law Marks and Registration Marks shall hereinafter collectively be referred to as the "Marks");

**WHEREAS**, Cumberland Swan Holdings, Inc., a Tennessee corporation, located at One Swan Avenue, Smyrna, Tennessee 37167 (hereinafter the "Assignee"), is desirous of acquiring all of the Assignor's right, title and interest in and to the Marks, and the goodwill of the business associated therewith.

### **NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN:**

Be it known that for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby assign unto Assignee (1) all right, title and interest in and to the Registration Marks, together with the applications and registrations thereof and the goodwill of the business symbolized by the Registration Marks, including all common law rights, and all claims for damages by reason of past infringement of the Registration Marks, with the right to sue and collect therefor, and (2) all of Assignor's right, title and interest in and to any Common Law Marks and the goodwill of the business symbolized by the Common Law Marks, including all common law rights, and all claims for damages by reason of past infringement of the Common Law Marks, with the right to sue and collect therefor.

Assignor agrees to execute any further documents that may be needed in the future to record and vest full title in and to the Marks, the applications and registrations.

**THIS ASSIGNMENT DOES NOT, NOR SHALL IT BE DEEMED TO, SUPERSEDE, SUPPLANT, EXTINGUISH, MERGE OR EXPAND ANY OF THE REPRESENTATIONS, WARRANTIES, INDEMNITIES OR LIMITATIONS CONTAINED IN THE AGREEMENT.**



