

O:LOWIS &amp; GELLEN LLP COMPANY:200 W ADAMS

## TRADEMARK ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Achievia Direct, Inc.		01/23/2008	CORPORATION:
RECEIVING PARTY DATA			
Name:	Stylmark, Inc.		
Street Address:	2 Sunshine Blvd.		
Internal Address:	care of Mark A. Ascik		
City:	Ormond Beach		
State/Country:	FLORIDA		
Postal Code:	32174		
Entity Type:	CORPORATION: FLORIDA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3099275	CARIBBEAN SUN	
CORRESPONDENCE DATA			
Fax Number:	(312)364-1003		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	3123642500		
Email:	tmcbride@lowis-gellen.com		
Correspondent Name:	Lowis & Gellen LLP		
Address Line 1:	200 W Adams		
Address Line 2:	Suite 1900		
Address Line 4:	Chiago, ILLINOIS 60606		
ATTORNEY DOCKET NUMBER:	5373-2501		
NAME OF SUBMITTER:	Thomas McBride		
Signature:	/Thomas McBride/		

\* ←

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Date:

04/16/2010

**Total Attachments: 9**

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### ASSIGNMENT AND LICENSE-BACK AGREEMENT

This Assignment and License-back Agreement (this "Agreement") is made as of January \_\_, 2006 (the "Effective Date"), by and between Achievia Direct, Inc, a Florida corporation with its principal place of business in Daytona Beach, Florida ("Assignor"), and Stylemark, Inc., a Florida corporation with its principal place of business in Ormond Beach, Florida ("Assignee") (hereinafter referred to collectively as the "Parties" and individually as a "Party").

#### RECITALS

WHEREAS, this Agreement is being entered into pursuant to a Settlement Agreement and General Release (the "Settlement Agreement") being executed concurrently herewith wherein Assignor and Assignee are comprising any and all claims they have or may have with respect to Case No. 05-05-cv-582-Ort-28JGG, as well as any and all actual or potential claims arising prior to the date hereof;

WHEREAS, as contemplated by the Settlement Agreement, and as part of the settlement contemplated therein, the parties desire that each party shall have rights in certain trademarks as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### 1. DEFINITIONS

For the purposes of this Agreement, the following terms will have the meanings ascribed to them as follows:

- 1.1 "Goods" means the products listed in Exhibit "A" herein, products similar thereto, and such other products as Assignor may determine from time to time shall be suitable for use in connection with the Licensed Trademark.
- 1.2 "Initial License Period" shall have the meaning as set forth in Paragraph 3.5 below.
- 1.3 "Licensed Trademark" means the Trademark so indicated on Exhibit "B".
- 1.4 "Net Sales" means the total amount invoiced by Assignor less sales tax, discounts and returns.
- 1.5 "Optional License Period" shall have the meaning as set forth in Paragraph 3.5 below.
- 1.6 "Term" means the period of time during which the license granted hereunder remains in effect pursuant to Paragraph 3.5 below.
- 1.7 "Trademarks" means the product marks set forth in Exhibit "B" and all rights and goodwill associated therewith.

#### 2. ASSIGNMENT

Subject to the terms and conditions of this Agreement, Assignor hereby irrevocably assigns, conveys, sells, grants and transfers and agrees to assign, convey, sell, grant and transfer to Assignee, its successors and assigns all of its rights, title and interest of every kind and character throughout the world, including moral rights, in and to the Trademarks to the full extent of its ownership or interest therein; including, without limitation, all federal, state, foreign, statutory and common law and other rights; all goodwill associated therewith symbolized by the Trademarks; all

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rights to causes of action and remedies related thereto (including, without limitation, the right to sue for past, present or future infringement, misappropriation or violation of rights related to the foregoing); and any and all other rights and interests arising out of, in connection with or in relation to the Trademarks.

### 3. LICENSE; TERMS OF USE; PERIOD OF LICENSE

3.1 Subject to the terms and conditions of this Agreement, Assignee hereby grants and agrees to grant to Assignor, from the date hereof until termination or expiration of the Term, a worldwide, exclusive, fee-bearing, transferable right and license to use the Licensed Trademark for the purposes of conducting Assignor's business, including, but not limited to the marketing and sale of the Goods. Without limiting the rights of Assignor under the foregoing sentence, Assignor may use the Licensed Trademark in connection with any promotion or advertisement for any of the Goods and in any promotional or advertising materials for any of the Goods.

3.2 While the license under this Agreement remains in effect, Assignee will not (i) license or permit anyone else to use the Licensed Trademark or any part of the Licensed Trademark or any imitation, likeness or variation of the Licensed Trademark or of any part of the Licensed Trademark in connection with any product similar to or competitive with any of the Goods, (ii) itself, directly or indirectly, use the Licensed Trademark or any part of the Licensed Trademark or any imitation, likeness or variation of the Licensed Trademark or of any part of the Licensed Trademark in connection with any product similar to or competitive with any of the Goods, or (iii) take or fail to take any other action, the result of which has a material adverse effect on Assignor's right and ability to use the Licensed Trademark as contemplated hereunder.

3.3 Assignee will execute such documents and take such other actions as may be necessary to register the Licensed Trademark in the name of Assignee in association with the Goods, and to maintain such registration, within such jurisdictions in which Assignor may elect to sell the Goods from time to time. Assignor shall cooperate with Assignee as may be reasonably necessary to effect and maintain such registrations. Until the Licensed Trademark has been registered with respect to a particular line of Goods in a particular jurisdiction, Assignor will use any and all proper notations, including the notation "TM" in association with the Licensed Trademark used for those Goods in such jurisdiction. After the Licensed Trademark is registered with respect to a particular line of Goods in a particular jurisdiction, Assignor will use the notation "R" in association with the Licensed Trademark used for those Goods in such jurisdiction.

3.4 The language of paragraph 3.3 notwithstanding, Assignor shall continue using its best efforts to register domestically the Licensed Trademark in International Class 9 at its own expense, including defending and/or settling Opposition No. 91167754 currently pending before the Trademark Trial and Appeal Board with respect to the Licensed Mark (the "Opposition Proceeding"). If successful in registering the Licensed Trademark domestically in International Class 9, Assignor will thereafter assign the registration to Assignee by executing and filing the confirmatory assignment with respect to the Licensed Trademark attached hereto as Exhibit C.

3.5 Subject to the provisions of paragraphs 8 and 9 below, the license granted to Assignor under this Agreement will remain in effect until December 31, 2010, (the "Initial License Period") and, in the absence of Assignor's notice to the contrary delivered to Assignee before December 31, 2010, it will continue thereafter for a second five year period ending on December 31, 2015, (the "Optional License Period"). Notwithstanding the foregoing, Assignor may terminate

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this license at any time by giving Assignee written notice of termination. Such notice shall be deemed given upon mailing.

#### 4. PAYMENT

4.1 For use of the Licensed Trademark during the Initial License Period, Assignor shall pay Assignee \$75,000.00, payable no later than fifteen calendar days following final execution of the Settlement Agreement. Said payment shall not be refundable in whole or in part should Assignor exercise its rights to terminate the License in accordance with paragraph 3.5 during the Initial License Period.

4.2 If the Term continues into the Optional License Period as set forth in paragraph 3.5 above, Assignor shall pay Assignee for each year of additional use of the Licensed Trademark the greater of (a) \$25,000.00, or (b) one percent (1%) of Assignor's Net Sales of Goods sold under the Licensed Trademark during the prior optional license year just ended. This amount shall be paid no later than February 28<sup>th</sup> of the year following the optional license year just ended. Thus, by way of example, Assignor would pay Assignee on or before February 28, 2012, for Assignor's use of the Licensed Trademark in calendar year 2011 (the first year of the Optional License Period). A sale of Goods will be deemed made when Assignor is paid in full for those Goods. Should Assignor terminate this license for any reason at any time before or during the Optional License Period, Assignor shall not be obligated to make any further payments under this Paragraph 4.2 other than a pro rata payment for its actual use of the Licensed Trademark during an optional license year. Thus, by way of example, should Assignor terminate this license on June 30, 2012, it would be obligated to pay Assignee on or before February 28, 2013, one half of one percent of Assignor's Net Sales of Goods sold under the Licensed Trademark during 2012 or one half of \$25,000.00, whichever is greater.

4.3 Assignor will maintain accurate records of all elements comprising Net Sales with respect to which royalties are payable under this Paragraph 4 in accordance with generally accepted accounting principles. During the Optional License Period, Assignor will make such records available to a certified public accountant mutually agreeable to Assignor and Assignee, for examination and copying at Assignee's expense, on reasonable notice, during Assignor's normal business hours.

#### 5. REPRESENTATIONS AND WARRANTIES

5.1 UNLESS EXPLICITLY STATED OTHERWISE IN THIS AGREEMENT, THE TRADEMARKS ARE PROVIDED "AS IS" AND THE PARTIES HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND WITH RESPECT TO ANY OF THE TRADEMARKS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 Assignee warrants to Assignor that Assignee may grant to the Assignor the rights which Assignee grants under this Agreement and it may do so without the approval or consent of anyone and the grant of such rights to Assignor does not violate any agreement binding upon or any obligation of Assignee.

5.3 Assignor warrants to Assignee that Assignor may assign to the Assignee the rights which Assignor has assigned under this Agreement and it may do so without the approval or consent of anyone and the assignment of such rights to Assignee does not violate any agreement binding upon or any obligation of Assignor.

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5.4 Assignee acknowledges that Assignor has apprised Assignee of a claim made by Australian Gold that one or more of the Trademarks infringes upon and/or is likely to cause confusion with one or more of Australian Gold's marks. Assignee further acknowledges that Assignor has apprised Assignee of the Opposition Proceeding. Assignor agrees to work in good faith with Assignee to resolve favorably this or any other proceeding involving the Trademarks before the U.S. Patent and Trademark Office or Trademark Trial and Appeal Board. However, Assignor shall have no responsibility for any costs, liability or expense associated with such proceedings until and unless any applications or registrations with respect to the Trademarks have been assigned to Assignee in accordance with paragraph 3.4.

5.5 Assignee acknowledges and represents that Assignor may, anything to the contrary in this Agreement notwithstanding, agree to expressly abandon the CARIBBEAN GOLD trademark, including but not limited to agreeing to abandon the pending trademark application, Serial No. 78492427, in an effort to resolve the Opposition Proceeding.

5.6 Assignee further acknowledges and agrees that it has seen and approved the Mutual Consent Agreement, attached hereto as Exhibit "D," between Achievis and Australian Gold for the settlement of the Opposition Proceeding.

#### 6. QUALITY CONTROL

Assignor will maintain high standards of quality with respect to all Goods bearing or associated with any Licensed Trademark, including, without limitation, the quality of the materials utilized in their manufacture and the quality of the promotions and advertisement for the Goods. Specifically, the quality of such Goods shall be at least comparable to the quality of the least expensive sunglasses currently sold by Stylemark at mass retailers. Assignee shall have the right, upon at least 60 days prior written notice and on no more than one occasion per year, to purchase and inspect any Goods actually sold in commerce and associated with the Licensed Trademarks, for purposes of determining Assignee's compliance herewith.

#### 7. PROTECTION OF ASSIGNOR'S RIGHTS

Notwithstanding paragraph 2 hereof, Assignor may elect, at its own expense, to take such action (including, without limitation, commencing, maintaining and/or defending any action at law or in equity) to protect, defend and enforce the Licensed Trademark and Assignor's rights to the use thereof against unfair competition, infringement and other violations. Assignee will cooperate and participate in any such action and will execute such documents and take such other action as Assignor reasonably requests, including but not limited to agreeing to have Assignor's counsel prosecute or defend actions involving the Licensed Trademark in Assignee's name. In no event, however, shall Assignee bear any cost, liability or expense associated with Assignor's election hereunder.

#### 8. DEFAULT BY ASSIGNOR

If Assignor fails to pay when due any amount owing under this Agreement and such failure continues for a period of thirty (30) days after Assignor receives notice of the default from Assignee, or if Assignor fails to perform any of its other obligations under this Agreement and such failure continues for a period of sixty (60) days after Assignor receives notice of the default from Assignee, then Assignee may terminate the license under this Agreement by giving the Assignor notice of termination.

## 9. TERMINATION

9.1 As set forth in paragraph 3.5 above, Assignor may terminate the license at any time by giving Assignee written notice of termination. Such notice shall be deemed given upon mailing.

9.2 Except as provided in Paragraph 9.3 below, on proper termination of the license under this Agreement, Assignor will promptly cease using the Licensed Trademark and cease producing any Goods bearing or associated with the Licensed Trademark.

9.3 Notwithstanding the provisions of Paragraph 9.2 above, if the license under this Agreement is terminated for any reason other than default by Assignor, Assignor may, for a period of 180 days following termination, but no longer than to the end of the Optional License Period if such termination occurs in the last year of such period (a) fill all orders which it accepted prior to termination for Goods bearing or associated with the Licensed Trademark, (b) sell all Goods bearing or associated with the Licensed Trademark which are in its possession at the time of termination, and (c) take delivery of and sell all Goods bearing or associated with the Licensed Trademark which are on order by it from manufacturers and suppliers at the time of termination.

## 10. GENERAL

10.1 If either Party commences any action or proceeding against the other Party to enforce this Agreement or any of such Party's rights hereunder, the prevailing Party will be entitled to its reasonable costs and fees related to such action or proceeding, including reasonable attorneys' and expert fees.

10.2 No delay, failure or waiver by either Party to exercise any right or remedy under this Agreement, and no partial or single exercise, will operate to limit, preclude, cancel, waive or otherwise affect such right or remedy, nor will any single or partial exercise limit, preclude, impair or waive any further exercise of such right or remedy or the exercise of any other right or remedy.

10.3 If any provision of this Agreement is determined to be invalid or unenforceable, the validity or enforceability of the other provisions or of this Agreement as a whole will not be affected; and, in such event, such provision will be changed and interpreted so as best to accomplish the objectives of such provision within the limits of applicable law or applicable court decision.

10.4 This Agreement, including any exhibit(s) hereto which are incorporated herein by this reference and the Settlement Agreement, serve to document formally the entire understanding between the Parties relating to the subject matter hereof, and supersede and collectively replace any prior or contemporaneous agreements, negotiations or understandings (whether oral or written), relating generally to the same subject matter. In the event that any of the terms of this Agreement are inconsistent with the terms of the Settlement Agreement, the terms of this Agreement shall control and the Settlement Agreement shall be deemed amended hereby to be consistent herewith. Otherwise, no amendment or modification of any provision of this Agreement will be effective unless in writing and signed by a duly authorized signatory of the Party against which enforcement of the amendment or modification is sought.

10.5 This Agreement creates no relationship between Assignee and Assignor other than that of a licensor to a licensee. Assignor has no authority to commit Assignee in any manner or to incur any obligation on behalf of or in the name of Assignee, except as provided for herein.

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10.6 Notices and other communications under this Agreement shall be in writing and sent to each party at its address or fax number set forth above or, in the event of a change in any address or fax number, then to such other address or fax number as to which notice of the change is given. Notices to Assignee will be sent to the attention of Mark A. Ascik, Stylemark, Inc., 2 Sunshine Blvd., Ormond Beach, FL 32174; notices to Assignor will be sent to the attention of Matthew T. Banker, Achievia Optical Solutions, 430 Oakridge Blvd., Suite 2, Daytona Beach, FL 32118. Notice will be deemed given on mailing.

10.7 This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Any action in connection with this Agreement shall be brought in the courts of the State of Florida, located in Volusia County, or the courts of the United States of America for the Middle District of Florida. Each party hereto irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of said courts. Each party hereto intentionally, knowingly and voluntarily irrevocably waives any right to trial by jury in any proceeding related to this Agreement.


10.8 Paragraph headings are for convenient reference only and shall not affect the meaning or have any bearing on the interpretation of any provision of this Agreement.

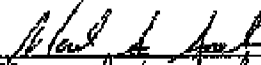
10.9 The language used in this Agreement will be deemed to be the language chosen by Assignor and Assignee to express their mutual intent and no rule of construction or interpretation will be applied against any party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Assignor:  
ACHIEVIA DIRECT, INC.

Assignee:  
STYLEMARK, INC.

By:   
Printed Name: Matt Banker  
Title: President

By:   
Printed Name: Mark A. Ascik  
Title: President



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**EXHIBIT "A"**

**THE GOODS**

1. Sunglasses, sunglasses frames and/or sunglasses lenses
2. Eyeglass accessories
3. Eyeglasses and reading glasses, frames and/or lenses

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**EXHIBIT "B"**

**THE TRADEMARKS AND THE LICENSED TRADEMARK**

The Trademarks are:

1. Caribbean Sun, and
2. Caribbean Gold.

The Licensed Trademark is: Caribbean Sun.

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**EXHIBIT "C"**  
**FORM OF ASSIGNMENT SUITABLE FOR FILING**