

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM790391

SUBMISSION TYPE:	RESUBMISSION
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL
RESUBMIT DOCUMENT ID:	900748720

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Ascent IP Holdings, LLC		09/06/2022	Limited Liability Company: COLORADO

RECEIVING PARTY DATA

Name:	Nashco Products LLC
Street Address:	7 Mountainview Street
City:	Nashua
State/Country:	NEW HAMPSHIRE
Postal Code:	03060
Entity Type:	Limited Liability Company: NEW HAMPSHIRE

PROPERTY NUMBERS Total: 12

Property Type	Number	Word Mark
Registration Number:	2456017	MINUTE GROOM
Registration Number:	2434071	MINUTE GROOM
Registration Number:	4716650	ANY STAIN
Registration Number:	3944310	PROFESSIONAL RESTORER
Registration Number:	2657379	PROFESSIONAL RESTORER
Registration Number:	3145055	ZAP!
Registration Number:	4132675	ZAP!
Registration Number:	2139777	RESTORE 4
Registration Number:	2417821	"DON'T REPLACE IT, RESTORE IT!"
Registration Number:	3490709	SIMPLICITY
Registration Number:	2029697	ZAP!
Registration Number:	4035241	RESTORE IT!

CORRESPONDENCE DATA

Fax Number:

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 8602401059

Email: mmiller@rrlawpc.com

TRADEMARK

Correspondent Name: Mary Mintel Miller
Address Line 1: Reid and Riege, P.C.
Address Line 2: 1 Financial Plaza, 21st Fl.
Address Line 4: Hartford, CONNECTICUT 06103

NAME OF SUBMITTER: Mary Mintel Miller

SIGNATURE: /mmm/

DATE SIGNED: 02/28/2023

Total Attachments: 42

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of September 6th, 2022 (the "**Effective Date**"), is entered into between Ascent IP Holdings, LLC, a Colorado limited liability company ("**Seller**"), and Nashco Products LLC, a New Hampshire limited liability company ("**Buyer**"). Capitalized terms used in this Agreement have the meanings given to such terms herein. This Agreement shall be understood to include all Schedules attached hereto.

RECITALS

WHEREAS, Buyer has in the past distributed various brands owned by Seller; and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the intellectual property associated with certain of Seller's brands, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer (collectively, the "**Parties**") hereby agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Definitions. In addition to the terms defined in Article I, terms are defined throughout this Agreement and indicated by capitalization.

(a) "**Affiliate**" shall mean any entity which controls, is controlled by or is under common control with Buyer, where "control" means beneficial ownership of more than 50 percent of the outstanding shares or securities.

(b) "**Governmental Order**" shall mean any order, writ, judgment, injunction, decree, stipulation, determination, penalty, or award entered by or with any governmental authority.

(c) "**Law**" shall mean any provision of any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, other requirement, or rule of law of any governmental authority.

(d) "**Launch Date**" shall mean the date on which an eCommerce platform store is operational and through which the general public can purchase Products.

(e) "**Marketing Material**" shall mean material in possession of Seller used to promote Products prior to the Effective Date of this Agreement including reasonable efforts by Seller to provide contact information of the creator of the Marketing Material.

(f) "**Net Sales**" shall mean the total amounts actually received by Buyer for the sale of Products, including amounts actually received by Buyer for sales made by Affiliates

and Sublicensees, less: (a) normal discounts actually allowed; (b) credits on returns of Products actually reimbursed; (c) packaging, freight, and postage charges; and (d) customs duties and excise or other taxes.

(g) “**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association, or other entity.

(h) “**Product(s)**” shall mean any and all products manufactured, used, sold or transferred by Buyer, its Affiliates and Sublicensees that incorporate any of the Registered Intellectual Property that has not been held unenforceable, unpatentable, or invalid by a decision of a court of competent jurisdiction, and that has not been admitted invalid or unenforceable.

(i) “**Purchased Assets**” shall mean all of Seller’s right, title, and interest in, to, and under the intellectual property included in the Registered Intellectual Property, Seller Internet Domain Names, and Marketing Materials.

(j) “**Registered Intellectual Property**” shall mean: (i) the patents and patent applications set forth on Schedule 1 hereto and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations, and renewals thereof (the “**Patents**”); (ii) the trademark registrations and applications set forth on Schedule 2 hereto and all issuances, extensions, and renewals thereof (the “**Trademarks**”), together with the goodwill of the business connected with the use of, and symbolized by, the Trademarks; (iii) all rights of any kind whatsoever of Seller accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world; (iv) any and all royalties, fees, income, payments, and other proceeds due or payable on or after the Effective Date with respect to any and all of the foregoing; and (v) any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

(k) “**Seller Internet Domain Names**” shall mean all domain names owned by Seller set forth on Schedule 3.

(l) “**Sublicensee**” shall mean third parties other than Affiliates, to whom Buyer has granted a sublicense.

(m) “**Transaction**” shall have the meaning set forth in Section 1.03.

(n) “**Transaction Value**” shall mean the aggregate value of all cash and the fair market value of any services, securities and other property paid or payable to Buyer in connection with any Transaction.

Section 1.02 Assignment of Assets. Subject to the terms and conditions set forth herein, Seller hereby irrevocably conveys, assigns, and transfers to Buyer, and Buyer hereby accepts from Seller, the Purchased Assets.

Section 1.03 Consideration. In return for the Purchased Assets, beginning on the Effective Date, Buyer agrees to pay Seller:



Section 1.04 Commencing with the Effective Date, and within thirty (30) calendar days after the close of each half-year (i.e. June 30 and December 31) Buyer will furnish Seller with a written report providing: (a) all worldwide Net Sales in U.S. dollars during the preceding calendar half-year period, if none so indicate; (b) the amount of royalties due in U.S. dollars for the preceding calendar half-year reporting period pursuant to the provisions hereof; and (c) payment of the royalties due in U.S. dollars to Seller. Buyer agrees to keep adequate records of Net Sales of Products in sufficient detail to enable royalties payable hereunder to be determined and to provide such records for inspection by authorized representatives of Seller not more often than twice per calendar year, with reasonable notice, at any time during regular business hours of Buyer.

Section 1.05 Buyer shall be responsible to pay any recording fees, taxes or transfer fees related to the Purchased Assets. Commencing with the Effective Date, Buyer shall be responsible for all fees and costs related to the prosecution and maintenance of the Purchased Assets.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Article II are true and correct as of the date hereof.

Section 2.01 Organization and Authority of Seller. Seller is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of Colorado. Seller has full corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement has been duly authorized by all requisite corporate, board, and shareholder action on the part of Seller. This Agreement constitutes legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

Section 2.02 No Conflicts or Consents. The execution, delivery, and performance by Seller of this Agreement do not and will not violate or conflict with any provision of the certificate of incorporation, by laws, or other governing documents of Seller.

Section 2.03 Title to Purchased Assets. As of the Effective Date, to Seller's knowledge, it has good and valid title to all of the Purchased Assets, free and clear of any encumbrances, including licenses previously granted to other Persons regarding the Purchased Assets, except as otherwise set forth in Schedule 4. In connection with the foregoing, Seller agrees that Buyer may, at its sole expense, file this agreement (with the financial arrangement redacted), with the United States Patent and Trademark Office ("USPTO").

Section 2.04 Legal Proceedings; Governmental Orders. There are no claims, actions, causes of action, demands, lawsuits, arbitrations, inquiries, audits, notices of violation, proceedings, litigation, citations, summons, subpoenas, governmental orders or investigations of any nature, whether at law or in equity (collectively, "Actions") pending or, to Seller's knowledge, threatened against or by Seller relating to or affecting the Purchased Assets.

Section 2.05 Full Disclosure. To Seller's knowledge, no representation or warranty by Seller in this Agreement and no statement contained in the Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 2.06 DISCLAIMERS AND LIMITATIONS.

EACH OF THE CONVEYED PURCHASED ASSETS IS BEING CONVEYED "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AS OF THE DATE OF THIS ASSIGNMENT, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED OTHER THAN AS SET FORTH IN THIS AGREEMENT. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT THERETO, EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT. BUYER IS HEREBY THUS ACQUIRING THE PURCHASED ASSETS AND PRODUCTS DERIVED FROM THE PURCHASED ASSETS BASED SOLELY UPON BUYER'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTION OF THE PURCHASED ASSETS

AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER'S AGENTS EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT.

NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY GIVES THE OTHER PARTY ANY ASSURANCE REGARDING THE PATENTABILITY OF ANY INVENTION THAT IS OR MIGHT BE CLAIMED IN, OR THE VALIDITY OR ENFORCEABILITY, OF ANY OF THE PURCHASED ASSETS OR PRODUCTS DERIVED FROM THE PURCHASED ASSETS ASSIGNED UNDER THIS AGREEMENT, OR THAT THE MANUFACTURE, USE, SALE, OFFERING FOR SALE, IMPORTATION, EXPORTATION, OR OTHER DISTRIBUTION OF ANY PRODUCT OR METHOD DISCLOSED OR CLAIMED IN ANY OF THE PURCHASED ASSETS OR PRODUCTS DERIVED FROM THE PURCHASED ASSETS ASSIGNED UNDER THIS AGREEMENT WILL OR WILL NOT CONSTITUTE AN INFRINGEMENT OF SUCH RIGHTS OR ANY INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER PERSONS OR ENTITIES, OR THAT THE MANUFACTURE, USE, SALE, OFFERING FOR SALE, IMPORTATION, EXPORTATION, OR OTHER DISTRIBUTION OF ANY PRODUCT OR METHOD BY ANY OTHER PERSON OR ENTITY SHALL INFRINGE THE CLAIMS OF ANY OF THE ASSIGNED PURCHASED ASSETS OR PRODUCTS DERIVED FROM RIGHTS ASSIGNED UNDER THIS AGREEMENT.

EXCEPT IN THE EVENT OF A BREACH OF ANY REPRESENTATION OR WARRANTY EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY WILL HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE, OR IMPUTED), REPRESENTATION, STRICT LIABILITY, OR PRODUCT LIABILITY), FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL, MULTIPLIED, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, OR LOSS OF REVENUE, PROFIT, SAVINGS, OR BUSINESS OR OTHER LOSS ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY "LOSSES" UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF PAYMENTS PAID BY BUYER TO SELLER DURING THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM.

Seller shall not be responsible for any injury to or death of persons or other living things or damage to or destruction of property or for any other loss, damage or injury of any kind whatsoever resulting from Buyer's use of the Purchased Assets, or Products derived from the Purchased Assets.

Buyer shall be fully responsible for its own acts related to the performance of this Agreement and its exploitation of the Purchased Assets, or Products derived from the Purchased Assets, or related to the intellectual property rights in any third party.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article III are true and correct as of the date hereof.

Section 3.01 Organization and Authority of Buyer. Buyer is a limited liability company duly organized, validly existing, and in good standing under the Laws of the State of New Hampshire. Buyer has authority to enter into this Agreement, to carry out its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement has been duly authorized by all requisite member action on the part of Buyer. This Agreement constitutes legal, valid, and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

Section 3.02 No Conflicts; Consents. The execution, delivery, and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby and thereby, does not and will not violate or conflict with any provision of the certificate of incorporation, by-laws, or other governing documents of Buyer.

ARTICLE IV MISCELLANEOUS

Section 4.01 Survival. All representations, warranties, covenants, and agreements contained herein and all related rights to indemnification shall survive the completion of the obligations in Article I.

Section 4.02 Indemnification.

Subject to the disclaimers and limitations set forth in Article II and the terms and conditions of this Article IV, Seller shall indemnify and defend the Buyer and its Affiliates against, and shall hold each of them harmless from and against, any and all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees (collectively, "**Losses**") arising from any inaccuracy of the representations, or breach of the warranties, of Seller contained in this Agreement.

Buyer shall be fully responsible for its own acts related to the performance of this Agreement and its past and future exploitation of the Purchased Assets and Products derived from the Purchased Assets or related to the intellectual property rights in any third party, and in this respect it shall indemnify, hold harmless, and defend Seller, and the Seller's, officers, directors, representatives, employees, or agents against any and all Losses arising out of or in connection with or relating to the: a) design, development, manufacture, use, packaging, distribution, shipment, advertising, promotion, offer for sale, sale, or other commercialization of

Product(s) or other products or services; b) use of the Purchased Assets; c) the creation, development, obtainment or use of improvements to the Purchased Assets or Products; or d) any breach of any representation, warranty, or covenant of Buyer hereunder.

Any person seeking indemnification hereunder (an “**Indemnified Person**”) shall notify the person from whom it is seeking indemnification (the “**Indemnifying Person**”) of the commencement of any indemnifiable action or claim promptly after such Indemnified Person becomes aware of such commencement (provided that the failure to make such notification shall not affect such Indemnified Person’s rights to indemnification, except to the extent the Indemnifying Person is materially prejudiced by such failure), and shall consult in good faith with the Indemnifying Person as to the conduct of the defense of such action or claim that may give rise to an indemnity hereunder, which defense shall be reasonable under the circumstances. No Indemnified Person shall compromise or settle any action or claim that may give rise to an indemnity hereunder without the consent of the Indemnifying Person, which consent shall not be unreasonably withheld. The obligations set forth in this Section shall survive the termination of this Agreement and the succession or substitution of any party hereto.

Section 4.03 Interpretation; Headings. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 4.04 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

Section 4.05 Entire Agreement. This Agreement and the Schedules appended hereto constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency, the statements in the body of this Agreement will control.

Section 4.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 4.07 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by the Parties. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

Section 4.08 Dispute Resolution.

(a) Informal Negotiation. Other than injunctive relief which the Parties may, but need not, choose to pursue in a court of law, in the event of any controversy or dispute under, arising from, or relating to this agreement or a breach thereof, each side to the dispute shall first attempt in good faith to resolve the dispute informally without the necessity of a formal proceeding through negotiations between senior executives of the Parties, who have the authority to settle the dispute. The Party requesting informal negotiation of a dispute shall provide written notice demanding informal negotiation and a description of the issue or issues disputed to be informally negotiated. The Parties shall conduct informal negotiations within the thirty (30) day period following receipt of the notice at such place and times as mutually agreed upon between the Parties.


(b) Arbitration. If Parties do not reach a resolution of the dispute through informal negotiations within a period of thirty (30) days following receipt of the notice, the Parties agree to submit any dispute arising hereunder to binding arbitration before a qualified arbitrator selected by the parties who shall apply the commercial arbitration rules of the American Arbitration Association or the Association for International Arbitration (AIA). Each Party shall pay its own expenses relating to the arbitration and each party shall pay its pro rata share of all fees and costs billed by the mediator, provided that, the arbitrator shall award the prevailing party its reasonable attorneys' fees, costs and disbursements.

Section 4.09 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

--SIGNATURES ON FOLLOWING PAGE--

Ascent IP Holdings, LLC

By 

Merrie Wycoff, Vice President authorized
to sign on behalf of Ascent IP Holdings,
LLC

Nashco Products LLC

By 

Michael Haynes, Managing Member



SCHEDULE 1
ASSIGNED PATENTS AND PATENT APPLICATIONS

United States Patents				
Patent No.	Issue Date	Application No.	Filing Date	Title
9,926,514	March 27, 2018	12/655,855	January 9, 2010	Cleaning Compositions
10,570,353	February 25, 2020	15/936,204	March 26, 2018	Cleaning Compositions
9,669,241	June 6, 2017	14/187,072	February 21, 2014	Waterless Animal Bath
D658,499	May 1, 2012	29/348,530	January 15, 2010	Plastic Vessel With Handle
D774,913	December 27, 2016	29/537,522	August 26, 2015	Bottle
9,062,277	June 23, 2015	13/857,966	April 5, 2013	Composition And Method For Treating Surfaces
9,663,746	May 30, 2017	14/744,895	June 19, 2015	Composition And Method For Treating Surfaces
D653,548	February 7, 2012	29/345,205	October 12, 2009	Plastic Container With Handle
D659,541	May 15, 2012	29/408,879	December 16, 2011	Plastic Container With Handle
D668,155	October 2, 2012	29/417,219	March 30, 2012	Container
D704,551	May 13, 2014	29/414,784	March 2, 2012	Container Handle

Pending United States Patent Applications				
Application No.	Publication No.	Filing Date	Status	Title
16/747,392	2020-0157471	January 20, 2020	Pending	Cleaning Compositions
17/531,521	2022-0081647	November 19, 2021	Pending	Cleaning Compositions

Lapsed United States Patent Applications				
Application No.	Publication No.	Filing Date	Status	Title
61/204,704		January 9, 2009	Expired	Cleaning Compositions
61/768,376		February 22, 2013	Expired	Waterless Animal Bath
60/844,964		September 15, 2006	Expired	Composition and Method for Cleaning Surfaces
61/271,539		July 22, 2009	Expired	Cubic eco-package for liquid products
61/278,752		October 9, 2009	Expired	Cubic eco-package for liquid products with finger engageable pull
12/804,556	2011-0017625	July 22, 2010	Abandoned	Cubic eco-package for liquid products with finger
14/595,009	Not Available	January 12, 2012	Abandoned	Cubic eco-package for liquid products with finger engageable pull

SCHEDULE 2

ASSIGNED TRADEMARK REGISTRATIONS AND APPLICATIONS

Trademark Registrations

Mark	Jurisdiction	Registration Number	Registration Date
MINUTE GROOM	USPTO	2456017	5/29/2001
MINUTE GROOM	USPTO	2434071	3/6/2001
ANY STAIN	USPTO	4716650	4/7/2015
PROFESSIONAL RESTORER	USPTO	3944310	4/12/2011
PROFESSIONAL RESTORER	USPTO	2657379	12/3/2002
	USPTO	3145055	9/19/2006
	USPTO	4132675	4/24/2012
RESTORE 4	USPTO	2139777	2/24/1998
“DON’T REPLACE IT, RESTORE IT!”	USPTO	2417821	1/2/2001
SIMPLICITY	USPTO	3490709	8/19/2008
	USPTO	2029697	1/14/1997
RESTORE IT!	USPTO	4035241	10/4/2011
	Canada	A677212	11/17/2006
RESTORE 4	Madrid Protocol AU, NZ	1345022	02/24/2017
RESTORE 4	United Kingdom	00801345022	02/24/2017

SCHEDULE 3
SELLER INTERNET DOMAIN NAMES

Anystain.com

Anystaincarpet.com

Fleaandtickspray.com

Greatrestorers.com

Itcheliminator.com

Minutegroom.com

Restore4.com

Simplicitycleaning.com

Simplicitylaundry.com

Waterlessdogbath.com

Zaproducts.com

Zaprofessionalrestorer.com

Zaprestoration.com

SCHEDULE 4
Exceptions to Section 2.03

1. Sirius Products, Inc. and L&C Spinco, Inc. -- Consent Agreement.
2. Sirius Products, Inc. and The Valspar Corporation -- Settlement Agreement.
3. Sirius Products, Inc. and Victor Enterprises -- Trademark Agreement.

CONSENT AGREEMENT

This Consent Agreement ("Consent") is made and entered into this 19 day of ~~OCTOBER~~ 2001, by and between Sirius Products, Inc. ("Sirius"), a California corporation with a principal place of business at 18911 Nordhoff Street, Suite 37, Northridge, California 91324, and L & C Spinco, Inc. ("Spinco"), a Delaware corporation with a principal place of business at 1420 Peachtree Street, N.E., Atlanta, Georgia 30309;

WHEREAS, Sirius has used and continues to use the mark ZAP on various durable products including household restorers, maintainers, sealants, and other goods which are sold through retail outlets, direct consumer advertising, television commercials, and direct mail order through shopping networks and catalogs;

WHEREAS, NSI Enterprises, Inc. ("NSI"), through its licensee, Zep Manufacturing Company, a division of National Service Industries, Inc., used the well-known mark ZEP on a wide array of chemical cleaning and sanitation products distributed to a wide array of users, prior to August 31, 2001;

WHEREAS, on August 31, 2001, NSI assigned all of the ZEP Marks and ZIP Marks (specified below) to Spinco;

WHEREAS, subsequent to August 31, 2001, Spinco through its licensee Zep Manufacturing Company, now a division of The Zep Group, Inc., has used and continues to use the well-known mark ZEP on a wide array of chemical cleaning and sanitation products distributed to a wide array of users;

WHEREAS, Sirius is the owner of the following trademark applications in the United States and in the European Community, which incorporate the formative mark ZAP:

- ZAP (Ser. No. 74/626,831) for "preparations for restoring and cleaning porcelain, fiberglass, tile and grout," in International Class 3;
- ZAP! 2000 (Ser. No. 75/821,834) for "cleaning preparations for cleaning linoleum, plastic laminate, concrete, asphalt, tile, grout, porcelain, fiberglass, vinyl, glass, stucco, marble, acoustic tiles, and building materials and home furnishings made from methacrylate resins and/or other artificial or synthetic resins" in International Class 3, and "cleaning and scouring pads for cleaning linoleum, plastic laminate, concrete, asphalt, tile, grout, porcelain, fiberglass, vinyl, glass, stucco, marble, acoustic tiles, and building materials and home furnishings made from methacrylate resins and/or other artificial or synthetic resins" in International Class 21; and
- ZAP! and Design, Community Trade Mark application (App. No. 1921105) for "cleaning, polishing, scouring and abrasive preparations and substances; bleaching preparations and other substances for restoring surfaces; preparations and substances for restoring floors, tiles, counter tops, sinks, baths, toilets and showers; preparations and substances for restoring porcelain,

TRADEMARK

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fiberglass and grout; preparations and substances for removing stains, rust, scale, film and dirt" in International Class 3; "disinfectants, sanitary preparations and substances; fungicides and germicides; air freshening preparations; deodorants" in International Class 5; and "cleaning materials" in International Class 21.

WHEREAS, Sirius is the owner of the following United States trademark registrations, which incorporate the formative mark ZAP:

- ZAP! and design (Reg. No. 2,486,564) for "cleaning preparations, namely, linoleum and plastic laminate cleaner" in International Class 3;
- ZAP! and design (Reg. No. 2,486,565) for "cleaning preparations, namely, shower-door framer cleaner" in International Class 3;
- ZAP (Reg. No. 2,486,567) for "cleaning preparations, namely, linoleum and plastic laminate cleaner" in International Class 3;
- ZAP (Reg. No. 2,486,568) for "cleaning preparations, namely, shower-door framer cleaner" in International Class 3;
- ZAP! and Design (Reg. No. 2,029,697) for "preparations for restoring and cleaning porcelain, fiberglass, tile and grout" in International Class 3;
- ZAP-IT (Reg. No. 1,311,843) for "heavy duty cleaner and degreaser for industrial use" in International Class 3; and
- ZAP! PAD (Reg. No. 2,492,823) for "cleaning scouring pads for cleaning tiles, fiberglass, grout and porcelain" in International Class 21; and

WHEREAS, through its predecessors, Spinco has used the ZEP mark - alone and with other marks - since at least as early as 1937, and continues to use the mark extensively, and is the owner of at least fifty federal trademark registrations consisting of or incorporating the fanciful term Zep" including the following registrations (collectively, the "ZEP Marks"):

ZEP	681,037
ZEP	1,782,304
ZEP	688,947
ZEP	686,052
ZEP	686,796
ZEP & DESIGN	695,495
ZEP & Oval Design	1,782,303
ZEP & Oval Design	681,038
ZEP & Oval Design	696,197
ZEP & Oval Design	686,197
ZEP AEROSOLVE	867,277
ZEP DYNA SOL	1,343,741
ZEP ERASE	1,043,904
ZEPFOAMATE	1,613,476
ZEP FORCE	2,325,143

ZEP FORMULA 158	886,023
ZEP FORMULA 165	86,026
ZEP FORMULA 4358	886,465
ZEP FORMULA 6556	886,027
ZEP GLOVE	1,612,576
ZEP MICRONEX	1,611,850
ZEP PLUS	88,406
ZEP PROTECT- ALL	1,376,781
ZEP SILENCE	1,513,259
ZEP STEP-IT	1,612,577
ZEP WEED DEFEAT	1,540,052
ZEP WOOD DOCTOR	1,090,618
ZEP-A-LUME	881,415
ZEP-AID	882,397
ZEP-FLO	882,413
ZEP-O-BRITE	686,057
ZEP-O-KREME	686,058
ZEP-O-SUDS	684,550
ZEP-OFF	881,408
ZEP-P AR	904,591
ZAPASEPTIC	1,680,020
ZEP AX	882,228
ZEPCOREX	683,791
ZEPERFEX	683,791
ZEPEXO	882,231
ZEPLUBE	683,549
ZEPOMIST	683,792
ZEPOSECTOR	683,953
ZEPOWER	882,229
ZEPRESERVE	881,127
ZEPRESTO	881,409
ZEPSECURE	881,414
ZEPTEEN	683,795
ZEPVALOR (stylized)	881,407

WHEREAS, through its predecessors, Spinco has used the mark ZIP since at least as early as January 14, 1960, and is the owner of the following United States trademark registrations for the mark ZIP ("ZIP Marks"):

- ZIP (Reg. No. 707,356) for "washing, cleaning and polishing preparations for automobile finishes and the like" in International Class 3; and

- ZIP WAX (Reg. No. 838,164) for “combination washing, cleaning and polishing preparations for automobile finishes, and the like” in International Class 3;

WHEREAS, NSI initiated a cancellation proceeding in the United States Patent and Trademark Office (Cancellation No. 28,429) to cancel Sirius’ federal registration for the mark ZAP! and Design (Reg. No. 2,029,697), and initiated an opposition to Community Trade Mark application no. 11921105 for the mark ZAP! and Design in the Office for Harmonization in the Internal Market (“OHIM”)(Opposition No. B432882);

WHEREAS, Sirius and Spingo wish to resolve the disputes between the parties underlying NSI’s cancellation and opposition proceedings against Sirius, and to universally resolve all disputes between the parties regarding Sirius’ adoption, use, and ownership of a federal trademark registration for the mark ZAP! and Design (Reg. No. 2,029,697);

WHEREAS, Sirius and Spingo desire to clearly delineate the differences between Sirius’ goods and Spingo’s goods, as identified by their respective marks, to avoid any likelihood of confusion, and to permit Sirius and Spingo to continue to use the marks ZAP and ZEP and ZIP in the future; and

WHEREAS, under the terms of this Consent, the parties believe that confusion between Sirius’ mark ZAP and Spingo’s marks ZEP and ZIP is not likely to occur in the future.

NOW, THEREFORE, in consideration of the recitations, mutual promises and covenants set forth in this Consent and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree to the following:

1. For the purposes of this Consent, the “ZAP Marks” shall be defined as all marks worldwide comprised of, including, or incorporating the mark ZAP, which have been registered, applied for, or obtained by Sirius through assignment, license, or otherwise, or otherwise used by Sirius, including but not limited to the applications and federal registrations specified above.

2. Sirius shall use the ZAP Marks only in a stylized form, which always shall include an exclamation point following the term ZAP and superimposed over a circular background design as depicted in or substantially similar to the design depicted in Exhibit A. Sirius may use the ZAP Marks in text form only in the following three circumstances:

- (a) on the instructions and directions included with the product packaging for products sold by Sirius under the ZAP Marks, provided that the ZAP Mark is used with an exclamation point;
- (b) in voice-overs in commercial advertising for the ZAP Marks; and

- (c) in descriptions and identifications of products sold by Sirius under the ZAP Marks found in print advertisements where use of the ZAP Marks in stylized form would be impractical, provided that the ZAP Marks are used with an exclamation point and the print advertisement also includes prominent use of the ZAP Marks in stylized form (i.e. with an exclamation point and superimposed over a circular background design as depicted in or substantially similar to the design depicted in Exhibit A).

3. Sirius will limit its use of the ZAP Marks to the restorer and maintainer products and the grout sealer product that have been or currently are being sold by Sirius.

4. Sirius agrees to limit its sales of products bearing the ZAP Marks to its current channels of trade (which are certain wholesale and retail outlets, consumer direct marketing and advertising (including "infomercials") by not selling products bearing the ZAP Marks, either directly or through distributors, to:

- (a) The Home Depot;
- (b) retail outlets (including but not limited to cooperatives) that as their principal business sell products such as hardware, tools, home improvement, and cleaning supplies;
- (c) farm and feed stores;
- (d) business enterprises for their internal use;
- (e) institutional markets;
- (f) military markets; and
- (g) industrial markets.

5. Breach of this Consent shall be governed by the following:

- (a) Sirius shall not be deemed to be in violation of this Consent if Sirius has taken all reasonable steps to comply with this Consent; and upon receipt of written notice of breach of this Consent, Sirius cures such breach within ten (10) days;
- (b) Notwithstanding the foregoing, Sirius shall not be deemed to be in violation of this Consent, with regard to a breach of Paragraph 2(c), if:

- (1) Sirius has issued instructions to third parties as to the proper use of the ZAP Marks in print advertising, provided in Paragraph 2(c);
 - (2) a third party which has received such instructions subsequently issues print advertising violating Paragraph 2(c); and
 - (3) Sirius, within ten (10) days of discovering the violation by a third party ("the Discovery Date"), initiates reasonable efforts to cure such breach. In the event Sirius discovers any such breach, Sirius shall notify Spingo in writing within ten (10) days of the Discovery Date of such breach and of the reasonable efforts to be taken by Sirius to cure such breach. In the event Spingo discovers such breach, Spingo shall notify Sirius in writing of the discovery of such breach and Sirius shall notify Spingo in writing within ten (10) days of the date of receipt of such notice of the reasonable efforts to be taken by Sirius to cure such breach.
- (c) If Sirius does not within ten (10) days cure the breach, or with regard to a breach of Paragraph 2(c), make reasonable efforts to cure such breach as described in subparagraph (b) above, Sirius shall be in violation of this Consent.

6. Sirius agrees to the following to comply with the provisions of this Consent:

- (a) Within thirty (30) days after the execution of this Consent, Sirius shall amend the description of goods in its federal registration for the mark ZAP! and Design (Reg. No. 2,029,697) by filing the appropriate amendment documents with the United States Patent and Trademark Office. Specifically, Sirius shall delete the words "and cleaning" from its current description of goods. Accordingly, the new description will read as follows: "preparations for restoring porcelain, fiberglass, tile, and grout."
- (b) Within thirty (30) days after the execution of this Consent, Sirius shall amend its Community Trade Mark application for the mark ZAP! and Design (Application No. 1921105) by filing the appropriate amendment documents with OHIM. Specifically, Sirius shall delete the word "cleaning" from the description of goods in International Class 3; delete the entire description of goods in International Class 5; and delete the entire description of goods in International Class 21. Accordingly, the new description of goods will read as follows: "polishing, scouring and abrasive preparations and substances;

bleaching preparations and other substances for restoring surfaces; preparations and substances for restoring floors, tiles, counter tops, sinks, baths, toilets and showers; preparations and substances for restoring porcelain, fiberglass and grout; preparations and substances for removing stains, rust, scale, film and dirt" in International Class 3.

- (c) Within thirty (30) days after the execution of this Consent, Sirius shall expressly abandon its remaining trademark applications by filing Notices of Express Abandonment with the United States Patent and Trademark Office for the following applications:
 - (1) ZAP! 2000 (Ser. No. 75/821,834); and
 - (2) ZAP (Ser. No. 74/626,831).

- (d) Within thirty (30) days after the execution of this Consent, Sirius shall surrender its trademark registrations by filing the appropriate surrender of trademark registration documents with the United States Patent and Trademark Office for the following marks:
 - (1) ZAP! and Design (Reg. No. 2,486,564);
 - (2) ZAP! and Design (Reg. No. 2,486,565);
 - (3) ZAP (Reg. No. 2,486,567);
 - (4) ZAP (Reg. No. 2,486,568);
 - (5) ZAP-IT (Reg. No. 1,311,843); and
 - (6) ZAP! PAD (Reg. No. 2,492,823).

7. Sirius shall serve copies of the following documents filed with the United States Patent and Trademark Office and OHIM pursuant to paragraph 6(a) – (d) above on counsel for Spinco addressed to William H. Brewster, Esq., Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta Georgia 30309-4530:

- (a) Requests for Amendment of its registration for the mark ZAP (Reg. No. 2,029,697) and Community Trade Mark application for the mark ZAP! and Design (Application No. 1921105);
- (b) Notices of Express Abandonment for the applications for the marks ZAP! 2000 (Ser. No. 75/821,834) and ZAP (Ser. No. 74/626,831);

- (c) Notices of Surrender of Registration for all of the marks specified in paragraphs 6(d)(1) – (6) above.

8. Sirius shall serve copies of notification from the United States Patent and Trademark Office regarding acceptance of the amendments to the description of goods in Sirius' registration for the mark ZAP! and Design (Reg. No. 2,029,697), and notification from OHIM regarding acceptance of the amendments to the description of goods in Sirius' pending Community Trade Mark application for the mark ZAP! and Design (App. No. 1921105) to counsel for Spinco addressed to William H. Brewster, Esq., Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta Georgia 30309-4530:

9. Within thirty (30) days after receipt of all of the documents listed in paragraphs 7(a) – (c) and 8 above, Spinco shall withdraw NSI's Petition to Cancel the mark ZAP! and Design (Cancellation No. 28,429), and withdraw the opposition filed by NSI against Community Trade Mark application for the mark ZAP! and Design (Opp. No. B432882).

10. Upon execution of this Consent, Spinco shall not petition to cancel, oppose or otherwise challenge Sirius' use of the ZAP Marks, its registration for the mark ZAP! and Design (Reg. No. 2,029,697), or its pending application for the ZAP! and Design Mark (Community Trade Mark Application No. 1921105) provided that Sirius complies with the provisions of this Consent at this time and in the future.

11. Sirius shall agree not to adopt, use, or file applications to register ZAP Marks or confusingly similar marks, which are not consistent with this Consent in the future. In particular, Sirius shall agree not to adopt, use, or file applications to register ZAP Marks or confusingly similar marks in connection with cleaning products or cleaning preparations, or to include the term "cleaning" in the description of goods in any future trademark applications.

12. Spinco shall not object or otherwise challenge Sirius' future adoption, use, or registration of ZAP Marks that are in compliance with the provisions of this Consent.

13. If any provision of this Consent is declared or determined by any court to be illegal or invalid, the validity of the remaining part, terms or provisions shall not be affected, and the said illegal or invalid part, term or provision shall be deemed to not be a part of this Consent. The language of all parts of this Consent shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties.

14. This Consent shall be binding upon the parties, and their agents, employees, officers, directors, parents, subsidiaries, affiliates, licensees, successors and assigns.

15. Unforeseen circumstances, both within and outside the control of the parties, may create the possibility of inadvertent customer confusion or mistake as to the source of

origin of, sponsorship of, or affiliation with, goods or services offered by the parties. Each party shall make good faith efforts and take reasonable steps to avoid trading upon the reputation or of goodwill of the other party, to avoid inadvertent customer confusion, and to avoid future confusion if any confusion occurs.

16. The parties agree to cooperate and consult with each other in good faith should future conditions or developments suggest to either party the possibility that further action or agreements are reasonably necessary to avoid confusion or effectuate the provisions of this Consent.

17. This Consent sets forth the entire agreement between the parties concerning this matter and supersedes any and all prior agreements or understanding between the parties pertaining in any way to the subject matter of this Consent.

18. This Consent may be amended only by a writing signed by the parties.

19. This agreement will apply to all ZAP Marks registered, applied for, or otherwise used by Sirius currently or at any time in the future on a worldwide basis.

20. Two copies of this Consent will be executed and each copy shall constitute a duplicate original.

IN WITNESS WHEREOF, the parties have authorized their representatives to execute this Consent, effective as of the 19 day of OCTOBER, 2001.

SIRIUS PRODUCTS, INC.

By: _____

Name: _____

Title: _____

Dated: _____

[Signature]
[Signature]
PATRICIA WYDOLFF
VICE PRESIDENT
10-19-01

L & C SPINCO, INC.

By: _____

Name: _____

Title: _____

Dated: _____

[Signature]
[Signature]
Kenyon W. Murphy
Sr. V.P. & General Counsel
10/29/01

FIELD'S PROTECT

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is made as of this 15 day of February, 2001, by and between Sirius Products, Inc., a corporation organized under the laws of California, having an address of 18911 Nordhoff Street, Suite 37, Northridge, California 91324 (hereinafter "Sirius"), and The Valspar Corporation, a corporation organized under the laws of Delaware, having an address of 1101 Third Street South, Minneapolis, Minnesota, 55415 (hereinafter "Valspar").

WHEREAS, Sirius is a company engaged in part in the business of marketing and selling cleaning and restoring preparations in the United States and worldwide; and

WHEREAS, Valspar is a company engaged in part in the business of marketing and selling paint primer and stain sealer products in the United States and worldwide; and

WHEREAS, both Sirius and Valspar use trademarks consisting of the formative "ZAP," (hereinafter, "ZAP Marks"), including numerous ZAP Marks that are the subject of Trademark Registrations on the Principal Register of the United States Patent and Trademark Office ("PTO") ("Registrations"), as well as Trademark Registration Applications ("Applications"), the specifics of which Registrations and Applications are described in Paragraph 1 below;

WHEREAS, on or about September 18, 1997, Valspar filed an Opposition against Sirius' Application Serial No. 74/626831, which Opposition was designated No. 107,846, and which Opposition was sustained by the Trademark Trial and

Appeal Board ("TTAB") on September 15, 2000 (the "TTAB Judgment"); and

WHEREAS, on or about December 11, 1998, Valspar filed a Petition for Cancellation of Sirius' Registration No. 2,029,697, which action was designated Cancellation No. 28,259 (the "Petition for Cancellation"); and

WHEREAS, on or about July 3, 2000, Valspar filed an Opposition against the following Sirius' Applications: Serial No. 75/603104, Serial No. 603105, Serial No. 75/605144, and Serial No. 75/605145; which Opposition was designated No. 119,347; and

WHEREAS, on or about September 15, 2000, Valspar filed an Opposition against Sirius' Application Serial No. 75/821834, which Opposition was designated No. 120,112; and

WHEREAS, it is the intent and desire of the parties to settle and resolve all outstanding disputes between them relating to ZAP Marks, including, but not limited to, those claims which are the subject of the Petition for Cancellation and the Opposition proceedings;

WHEREAS, it is also the intent and desire of the parties to avoid future litigation concerning ZAP Marks;

WHEREAS, Sirius is desirous of selling its products through Shopko Stores, Inc.;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as

follows:

1. **THE PARTIES' ZAP MARKS:**

- a. The "Sirius Marks" shall mean the following:
1. The mark ZAPI (Logo) for "preparations for restoring and cleaning porcelain, fiberglass, tile and grout" in class 3, as used and registered under Registration No. 2,029,697; and the mark ZAP-IT for "heavy duty cleaner and degreaser for industrial use" in class 3, as used and registered under Registration No. 1,311,843;
 2. The mark ZAP for "cleaning preparations, namely shower-door frame cleaner" in class 3, as used and applied for registration under Application Serial No. 75/605145; the mark ZAPI (Logo) for "cleaning preparations, namely, shower-door frame cleaner" in class 3, as used and applied for registration under Application Serial No. 75/603105; the mark ZAP for "cleaning preparations, namely, linoleum and plastic laminate cleaner" in class 3, as used and applied for registration under Application Serial No. 75/605144; the mark ZAPI (Logo) for "cleaning preparations, namely, linoleum and plastic laminate cleaner" in class 3, as used and applied for registration under Application Serial No. 75/603104; the mark ZAP for "preparations for restoring and cleaning porcelain, fiberglass, tile and grout" in class 3, as used and applied for registration under Application Serial No.

74/626831; and the mark ZAP! 2000 for "cleaning preparations for cleaning linoleum, plastic laminate, concrete, asphalt, tile, grout, porcelain, fiberglass, vinyl, glass, stucco, marble, acoustic tiles, and building materials and home furnishings made from methacrylate resins and/or other artificial or synthetic resins" in class 3 and "cleaning and scouring pads for cleaning linoleum, plastic laminate, concrete, asphalt, tile, grout, porcelain, fiberglass, vinyl, glass, stucco, marble, acoustic tiles, and building materials and home furnishings made from methacrylate resins and/or other artificial or synthetic resins" in class 21, as used and applied for registration under Application Serial No. 75/821834.

b. The "Valspar Marks" shall mean the following:

1. The mark ZAPZ for "paint primer and stain sealer" in class 2, as used and registered under Registration No. 1,744,184; and
2. The mark ZAP2 for "primer paint" in class 2, as used and applied for registration under Application Serial No. 75/588803; and the mark ZAP for "primer paint" in class 2, as used and applied for registration under Application Serial No. 75/118901.

2. **REGISTRATION:** With respect to all Applications and Registrations of any ZAP Mark, including, but not limited to, the Sirius Marks and the Valspar Marks, the parties agree to the following:

- a. The parties agree to immediately withdraw all cancellation actions pending against any ZAP Mark registration owned by the other party. To this end, Valspar agrees that, simultaneously with the execution of this Agreement, it will execute the Withdrawal of Petition for Cancellation in the form attached hereto as Appendix C. Valspar agrees that, within thirty (30) days following execution of this Agreement and the Withdrawal of Petition for Cancellation, it will file the Withdrawal of Petition for Cancellation with the PTO.
- b. The parties agree to immediately withdraw all opposition actions pending against any ZAP Mark registration application owned by the other party. To this end, Valspar agrees that, simultaneously with the execution of this Agreement, it will execute the Withdrawal of Opposition No. 120,112, in the form attached hereto as Appendix D, and the Withdrawal of Opposition No. 119,347, in the form attached hereto as Appendix E. Valspar agrees that, within thirty (30) days following execution of this Agreement and the Withdrawals of Opposition, it will file the Withdrawals of Opposition with the TTAB.
- c. Sirius agrees that it will not exercise its right to appeal the TTAB Judgment by filing an appeal with the U.S. Court of Appeals for the Federal Circuit, by commencing a civil action, or in any other manner.
- d. The parties covenant that they will not petition to cancel or oppose or otherwise seek to interfere in any manner with the other party's use or registration of any ZAP Marks which are registered or sought to be

registered by the parties as herein agreed.

- e. Both parties agree to enter into any supplemental or additional consent agreements consistent with this Agreement as may be required by the PTO or similar foreign governmental authority to assist the other party in obtaining registrations in accordance with this Agreement.

3. **USE:** The parties agree to use their respective ZAP Marks as follows:

- a. Sirius agrees to only use the Sirius Marks and any other ZAP Marks in the form of the ZAPI (Logo), as shown in Appendix A, with the exception of the mark ZAPI 2000, which will be used as specified in Application Serial No. 75/821834.
- b. Sirius further agrees to limit its use of any ZAP Mark to the goods identified for the Sirius Marks in paragraph 1.
- c. Valspar agrees to only use the Valspar Marks and any other ZAP Marks as shown in Appendix B.
- d. Valspar further agrees to limit its use of any ZAP Mark to the goods identified for the Valspar Marks in paragraph 1.
- e. The parties covenant that they will not seek to interfere in any manner with the other party's use of any ZAP Marks which are used by the parties as herein agreed.

4. **SHOPKO:** Sirius agrees to promptly pay Valspar the amount of \$50,000.00 if Valspar can arrange the regular sale and distribution of Sirius' ZAP

products through Shopko within sixty (60) days of execution of this Agreement.

5. **BENEFIT OF THE PARTIES:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
6. **INTEGRATION:** This Agreement contains and embodies the entire Agreement and understanding of the parties concerning the subject matter hereof. No warranties, representations, understandings, inducements, promises, guarantees, agreements or conditions, express or implied, which are not expressly contained herein, have been made or shall be enforceable by either party concerning the subject matter hereof.
7. **ENFORCEMENT:** In any action to enforce this Agreement or arising out of any alleged dispute, breach, default or misrepresentation in connection with any of its provisions, the prevailing party shall be awarded its reasonable attorney fees, expenses and costs. Such recovery shall not bar the recovery of other forms of monetary or equitable relief.
8. **FURTHER COVENANTS:** The parties agree to execute any and all further documents as may reasonably be required to carry out the terms of this Agreement and the intention of the parties as expressed herein.
9. **NON-ADMISSION OF LIABILITY:** This Agreement and all discussions and negotiations with respect thereto, and all other agreements, instruments, certificates and other documents related thereto, whether or not consummated, shall not be, and shall not be construed to be, an admission

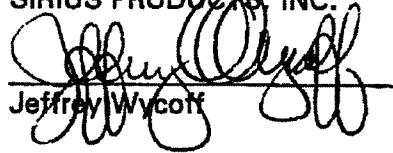
by any party hereto of any liability whatsoever arising from or relating in any way to any claim or cause of action subject to the terms of the Agreement.

10. **ENFORCEABILITY**: If any one or more paragraph, clause or other portion hereof is determined to be illegal, invalid or invalidated or unenforceable within any jurisdiction by reason of any existing law or statute, then, to that extent and only within the jurisdiction in which it is illegal, invalid or unenforceable, it shall be limited, construed or severed and deleted herefrom, and the remaining portions hereof shall survive, remain in full force and effect, continue to be binding upon the parties, and shall not be affected thereby, except insofar as may be necessary to make sense hereof, and shall be interpreted to give effect to the intention of the parties insofar as that is possible.
11. **CONFIDENTIALITY**: Except as expressly provided herein, the parties agree that the existence and terms of this Agreement will be kept confidential and shall not be disclosed to any third party except as may be required by order of a court or administrative agency, with the exception of disclosures made to each of the parties' respective legal, tax and investment advisors, insurers, and persons or entities acquiring, or in good faith considering acquiring as part of customary due diligence, the assets or stock of either party, and with the exception of disclosure made under court order and made to the PTO in the consents to the registration of the parties' respective trademark applications. Without limiting the foregoing, the parties agree not to comment publicly on the settlement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to
be effective as of the date first above written.

SIRIUS PRODUCTS, INC.

By:


Jeffrey Wycott

VICE PRESIDENT
Title

THE VALSPAR CORPORATION

By:


Kenneth Arthur

Group Vice President
Title

APPENDIX A



ZAP™



APPENDIX C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE VALSPAR CORPORATION,
Petitioner,
vs.
SIRIUS PRODUCTS, INC.,
Registrant.

CANCELLATION NO. 28,259

WITHDRAWAL OF PETITION FOR CANCELLATION

Pursuant to a settlement between the parties, Petitioner hereby withdraws with prejudice its Petition for Cancellation of Registration No. 2,029,697.

Respectfully submitted,

Dated: February __, 2001

By: _____
attorney's name
attorney's address

Attorneys for Petitioner

TRADEMARK AGREEMENT

THIS AGREEMENT, made and entered into as of this 30th day of August, 2006 by and between VICTOR, also known as Victor Victor, an individual and citizen of the United States, doing business as Victor Enterprises and having a place of business at 1316 W. Highway 76, # 235, Branson, Missouri 65616 ("Victor"), and SIRIUS PRODUCTS, INC., a California corporation having a place of business at 21755 Ventura Boulevard, Suite 346, Woodland Hills, California 91364 ("Sirius"),

WITNESSETH:

WHEREAS, Victor has filed the following trademark applications in the United States Patent and Trademark Office (variously the "ZAP-OUT! Marks" and the "ZAP-IT! Mark"):

- (a) ZAP-OUT!, Serial No. 76/179,561, filed December 13, 2000, for registration of the word mark ZAP-OUT! for all purpose cleaner in International Class 003;
- (b) ZAP-OUT! AND DESIGN, Serial No. 76/236,869, filed April 9, 2001, for registration of the words ZAP-OUT! and a starburst design on a square background, with certain colors designated, for all purpose cleaner in International Class 003;
- (c) ZAP-OUT! AND DESIGN, Serial No. 76/236,870, filed April 9, 2001, for registration of the words ZAP-OUT! and a lightning bolt design on a square background, with no designation of any particular color, for all purpose cleaner in International Class 003;
- (d) ZAP-OUT! AND DESIGN, Serial No. 76/236,871, filed April 9, 2001, for registration of the words ZAP-OUT! and a starburst design on a square background, with no designation of any particular color, for all purpose cleaner in International Class 003;
- (e) ZAP-OUT! AND DESIGN, Serial No. 76/240,179, filed April 13, 2001, for registration of the words ZAP-OUT! and a lightning bolt design on a square background, with certain colors designated, for all purpose cleaner in International Class 003; and
- (f) ZAP-IT!, Serial No. 76/330,442, filed October 26, 2001, for registration of the word mark ZAP-IT! for all purpose cleaner in International Class 003;

and

WHEREAS, each of the marks was approved for publication for opposition by the United States Patent and Trademark Office; and

WHEREAS, in October 2002, Sirius commenced opposition proceedings in the Trademark Trial and Appeal Board to oppose the ZAP-OUT! Marks and the ZAP-IT! Mark, and those proceedings are pending as follows (jointly, the "Opposition Proceedings"):

- (a) Opposition No. 91153321 (ZAP-OUT!, Serial No. 76/179,561)
- (b) Opposition No. 91153304 (ZAP-OUT! AND DESIGN, Serial No. 76/236,869)
- (c) Opposition No. 91153303 (ZAP-OUT! AND DESIGN, Serial No. 76/236,870)
- (d) Opposition No. 91153413 (ZAP-OUT! AND DESIGN, Serial No. 76/236,871)
- (e) Opposition No. 91153454 (ZAP-OUT! AND DESIGN, Serial No. 76/240,179)
- (f) Opposition No. 91153221 (ZAP-IT!, Serial No. 76/330,442);

and

WHEREAS, Sirius believes itself to be the owner of certain common-law trademark rights in the stylized word ZAP! superimposed upon a dark ball dating to at least as early as June 1995: and

WHEREAS, Sirius has applied to register the ZAP! Mark in the United States Patent and Trademark Office under Serial No. 78/713,905, for preparations for restoring porcelain, fiberglass, tile, grout, wood, plastic laminate, marble, granite, brass, copper, chrome, cast iron posts and pans, and non-metallic, resin based surfaces; and

WHEREAS, the parties believe that there is no reasonable likelihood of confusion between Sirius' products and Victor's product; and

WHEREAS, the parties desire to resolve the Opposition Proceedings without further delay and litigation expense;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereby agree as follows:

1. *No present reasonable likelihood of confusion.* There presently exists no reasonable likelihood of consumer confusion, deception, or mistake between the “ZAP-OUT! Marks” and the “ZAP-IT! Mark,” on the one hand, and the ZAP! Mark, or any common-law right that Sirius may have in connection with the ZAP! Mark, Sirius’ application Serial No. 78/713,905, or any of Sirius’ other marks, on the other hand. In making this determination, the parties have considered the following, without limitation:

- (a) There has been no actual confusion in the time the parties’ marks have coexisted.
- (b) There have been no misdirected communications in the time the parties’ marks have coexisted.
- (c) The marks are different in appearance, sound, and meaning, and each mark creates a separate commercial impression. Without intending to limit the generality of that statement, the parties note the following:
 - (i) The word components of the parties’ marks are different. The word components of Victor’s marks are ZAP-OUT! and ZAP-IT!, while the word component of Sirius’ First ZAP! Mark and Sirius’ application Serial No. 78/713,905 is ZAP!
 - (ii) Sirius’ ZAP! Mark and Sirius’ application Serial No. 78/713,905 contains a design feature, which Victor’s word marks ZAP-OUT! and ZAP-IT! do not contain.
 - (iii) To the extent that the ZAP-OUT! Marks contain design features, those designs are either a starburst or a lightning bolt superimposed upon a square background. Neither is similar in design or appearance to the dark ball that underlies the stylized word ZAP! in the ZAP! Mark or Sirius’ application Serial No. 78/713,905.
 - (iv) To the extent that the ZAP-OUT! Marks contain design features, those designs further differ from the dark ball design of the ZAP! Mark and Sirius’ application Serial No. 78/713,905 in these respects:
 - (A) The ZAP-OUT! Marks that appear without designation of color show only the outline of a starburst or a lightning bolt superimposed upon the outline of a square, whereas the dark ball in the First ZAP! Mark and Sirius’ application Serial No. 78/713,905 is completely filled in and is not an outline of a circle.
 - (B) The ZAP! Mark and Sirius’ application Serial No. 78/713,905 have no designation of color. Typically, however, Sirius has used the

mark with the word ZAP! in white letters, outlined in black, with a blue ball in the background. In contrast, the ZAP-OUT! Marks that appear with a designation of color show that the mark is used as follows: The words "ZAP-OUT!" are red, outlined in white; the lightning bolt or starburst design, whichever is appropriate, is yellow in the center, variegating to orange at the top and the bottom; and the background square, surrounding the rest of the design, is horizontally variegated blue, ranging from dark blue at the top, to light blue in the center, to dark blue at the bottom. Victor has not changed the appearance of either the design or the coloration of the mark from this description.

- (d) The parties' goods are different, as described above. Specifically, Victor's goods are an all purpose cleaner, while Sirius sells a restorer porcelain, fiberglass, tile, grout, wood, plastic laminate, marble, granite, brass, copper, chrome, cast iron posts and pans, and non-metallic, and resin based surfaces.
- (e) The channels of trade for the parties' goods are different. This necessarily follows, in part, from the differences in the parties' goods. As part of this agreement, the parties have also agreed to an arrangement relating to their respective channels of trade, and that arrangement appears in Paragraph 2 below.
- (f) The parties' promotional materials are different.

2. *Channels of trade.* Victor agrees not to market his ZAP-OUT! and ZAP-IT! products directly through supermarkets and through retailers such as Wal-Mart, Costco, Bed, Bath and Beyond, and Target. Victor may market in such venues through in-store demonstrations, and may market directly through "do-it-yourself" type home improvement stores such as Home Depot and Lowes. Sirius agrees not to market its ZAP! products directly through "do-it-yourself" type home improvement stores such as Home Depot and Lowes and agrees not to market through in-store demonstrations in supermarkets or in retailers such as Wal-Mart, Costco, Bed, Bath and Beyond, and Target.

3. *No likelihood of confusion if differences remain.* There is no likelihood of consumer confusion, mistake, or deception between the ZAP-OUT! Marks and the ZAP-IT! Mark, on the one hand, and the ZAP! Mark and Sirius' application Serial No. 78/713,905, on the other hand, and the goods to which they are respectively applied, as long as the differences recited above remain. The parties shall maintain these differences in the goods for which their respective marks are used.

4. Victor hereby consents to the registration of the ZAP! Mark by Sirius as shown in application Serial No. 78/713,905. Neither registration of the ZAP-OUT! Marks nor registration of the ZAP-IT! Mark for all purpose cleaner in International Class 003 shall bar re-registration of Sirius' First ZAP! Mark, as it currently appears in the record, for preparations for restoring porcelain, fiberglass, tile, grout, wood, plastic laminate, marble, granite, brass, copper, chrome, cast iron posts and pans, and non-metallic, resin based surfaces in International Class 003, as set forth in application Serial No. 78/713,905. Upon request from Sirius, as promptly as practicable Victor shall to execute a consent to registration, for filing in the United States Patent and Trademark Office, to give his consent to allow Sirius to register the ZAP! Mark for preparations for restoring the items set forth in application Serial No. 78/713,905.

5. *Dismissal of Opposition Proceedings.* Promptly following the execution of this Agreement, Sirius will withdraw the Opposition Proceedings, and the parties, through their respective counsel, will file in the Trademark Trial and Appeal Board a stipulation for dismissal or termination of the Opposition Proceedings, with each party to bear his or its own costs, including attorneys' fees.

6. *Registration of the ZAP-OUT! Marks and the ZAP-IT! Mark.* The ZAP! Mark, the mark shown in application Serial No. 78/713,905, and Sirius' common-law or statutory trademark rights in any similar mark shall not bar registration of Victor's ZAP-OUT! Marks and his ZAP-IT! Mark. The parties do not contemplate that Sirius' formal consent to registration of those marks will be necessary, but, to the extent that the United States Patent and Trademark Office may request it, Sirius shall, as promptly as practicable upon request from Victor, execute a consent to registration, for filing in the United States Patent and Trademark Office, to give its consent to allow Victor to register the ZAP-OUT! Marks and the ZAP-IT! Mark as they currently appear of record for all purpose cleaner in International Class 003.

7. *No concession of incorrectness in previous positions.* This Agreement addresses the parties' relationship as it presently exists. This Agreement shall not be construed as either (a) an admission by Victor that there ever was any reasonable likelihood of confusion or (b) an admission by Sirius that there was no reasonable likelihood of confusion (c) between the "ZAP-OUT! Marks" and the "ZAP-IT! Mark," on the one hand, and the ZAP! Mark, the mark shown in

application Serial No. 78/713,905, or any of Sirius' other marks, on the other hand, as applied to the goods of Victor and Sirius.

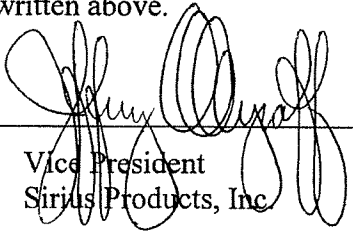
8. *Assignment of Sirius' marks to Victor upon cessation of use by Sirius.* In the event that Sirius should abandon its use of the ZAP! Mark and cease marketing and selling restorers, cleaners, and similar goods under a mark containing the word ZAP (whether the ZAP! mark in its application Serial No. 78/713,905, or some other mark), with no intent to resume use, Sirius shall provide Victor with a right of first refusal to obtain an assignment of all of Sirius' right, title, and interest, whether existing by way of registration, at common law, or otherwise, in and to all of its marks containing the word ZAP. The intent of this provision is to allow Victor to obtain whatever rights Sirius may have in and to marks containing the word ZAP if, but only if, Sirius ceases to use marks containing the word ZAP in connection with restorers, cleaners, and similar goods; and Sirius shall have no obligation to assign anything to Victor under this provision as long as it continues to use any mark containing the word ZAP in connection with such goods. Nothing in this Paragraph 8 shall be construed to permit Sirius to adopt, use, or register any mark containing the word ZAP in association with a starburst or lightning bolt design identical or similar to the designs that Victor uses in the ZAP-OUT! and ZAP-IT! marks.

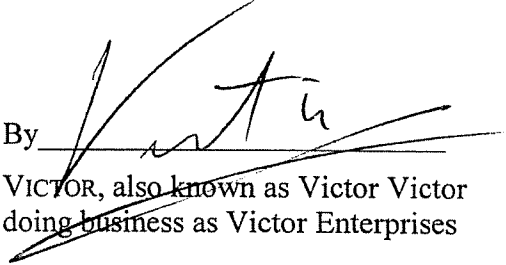
9. *Mutual release.* The parties hereby release, acquit, and forever discharge each other and (as applicable) their respective heirs, personal representatives, executors, administrators, corporate parents, subsidiaries, affiliates, predecessors and successors, officers, directors, employees, independent contractors, manufacturers, distributors, and customers from any and all claims, counterclaims, cross-claims, demands, suits, actions, causes of action, damages, and costs that exist up to the date of execution of this Agreement, whether known or unknown, arising out of or related in any way to the use, registration, or attempted registration in the United States of any of the ZAP-OUT! Marks, the ZAP-IT! Mark, or the ZAP! mark contained in Serial No. 78/703,915; *provided, however*, that nothing in the foregoing shall be construed to release either party from his or its obligations imposed by this Agreement itself.

10. *Binding effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, executors, administrators, affiliates, successors, assigns, and licensees.

11. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be effective as an original agreement, but all of which together shall be deemed to be one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

By 
Vice President
Sirius Products, Inc

By 
VICTOR, also known as Victor Victor
doing business as Victor Enterprises