

07-27-1998

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To the Honorable Commissioner



100777533

attached original documents or copy thereof.

NIPED 7-21-98

1. Name of conveying party(ies):  
**SCEPTER MANUFACTURING COMPANY LIMITED**

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

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

3. Nature of conveyance:  
 Assignment                       Change of Name  
 Security Agreement               Other

Execution Date: January 1, 1997

2. Name and address of receiving party(ies):  
Name: **SCEPTER CORPORATION**  
Internal Address: \_\_\_\_\_  
Street Address: **170 Midwest Road**  
City: **Toronto** State: **Ontario, Canada** M1P 3A9  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_

Corporation-State - Canada corporation  
 Other \_\_\_\_\_  
If assignee is not domiciled in the United States, a domestic representative designation is attached:       Yes       No

(Designations must be a separate document from Assignment)  
Additional name(s) & address(es) attached?       Yes       No

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)

B. Trademark registration No.(s)  
1,694,226      1,708,176      2,002,591

Additional numbers attached?       Yes       No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: **Carol L.B. Matthews**  
Internal Address: **Gadsby & Hannah LLP**  
Street Address: **1747 Pennsylvania Avenue, NW**  
City: **Washington** State: **DC** ZIP: **20006**

6. Total number of applications and registrations involved: 3 3  
7. Total fee (37 CFR 3.41): ..... \$ **90.00**  
 Enclosed  
 Authorized to be charged to deposit account  
8. Deposit account number: \_\_\_\_\_

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

**Carol L.B. Matthews**                      *Carol L.B. Matthews*                      **7-21-98**  
Name of Person Signing                      Signature                      Date

07/24/1998 SSMITH 00000031 1694226                      Total number of pages comprising cover sheet: 1

01 FC:481 40.00 DP  
02 FC:482 50.00 DP  
OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:  
**Commissioner of Patents and Trademarks**  
**Box Assignments**  
**Washington, D.C. 20231**

Public burden reporting for this sample cover sheet is estimated to average 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, DC 20231

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Trademark Registration of Scepter Corporation

Registered: June 16, 1992

Registration No. 1,694,226

Mark: SCEPTER

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Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**POWER OF ATTORNEY**

Registrant hereby appoints Carol L. B. Matthews, Paul F. Kilmer, Thomas W. Brooke, and Stephen J. Jeffries all members of the Bar of the District of Columbia, and Gadsby & Hannah LLP, and all having an address at 1747 Pennsylvania Avenue, N.W., Suite 700, Washington, D. C. 20006, with full power of substitution and revocation, to represent it in all proceedings affecting the mark and registration which may arise in the Patent and Trademark Office hereafter. Any previous powers of attorney relating to the mark and registration are hereby revoked.

**DOMESTIC REPRESENTATIVE**

Gadsby & Hannah LLP, whose postal address is Suite 700, 1747 Pennsylvania Avenue, N.W., Washington, D. C. 20006, is hereby designated Registrant's representative upon whom notices or process in proceedings affecting the mark may be served.

SCEPTER CORPORATION

BY: 

Robert S. Torokvei

TITLE: President

DATE: July 2, 1998

## TRANSFER AGREEMENT

THIS AGREEMENT made as of the 1st day of January, 1997

**B E T W E E N:**

**SCEPTER MANUFACTURING COMPANY LIMITED**, a corporation incorporated under the laws of the Province of Ontario

(hereinafter called the "Vendor")

- and -

**SCEPTER CORPORATION**, a corporation incorporated under the laws of the Province of Ontario

(hereinafter called the "Purchaser")

**WHEREAS** the Vendor carries on the business of manufacturing, distributing and selling moulded plastic and other products (the "Business") at its premises at 170 Midwest Road, Scarborough, Ontario;

**AND WHEREAS** the Vendor desires to sell and the Purchaser desires to purchase certain of the undertaking, property and assets of and pertaining to the Business as a going concern upon and subject to the terms and conditions hereinafter set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the respective covenants and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto) the parties hereto agree as follows:

INTERPRETATION

1. **Definitions.** Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

- (a) "Agreement" means this transfer agreement, all schedules and all instruments supplemental hereto or in amendment or confirmation hereof;
- (b) "Assets" means all assets, interests, property and undertaking, other than the Excluded Assets, owned and used by the Vendor or held by it for use in, or in respect of, the operation of the Business as at and from the date hereof, including, without limitation, the following properties, assets and rights:
  - (i) all machinery and equipment and all tools, parts, tooling moulds, dies, jigs or patterns, handling equipment, furniture, furnishings and accessories;
  - (ii) real property or any interest therein, together with the buildings, structures, improvements and appurtenances situated hereon;
  - (iii) all inventories;
  - (iv) all new and unused production, shipping and packaging supplies;
  - (v) all of the accounts receivable of the Business ("Accounts Receivable");
  - (vi) all of the notes receivable of the Business; and
  - (vii) the full benefit of all agreements including franchise, licence or management agreements and all other contracts or commitments to which the Vendor is entitled in connection with the Business including, without limiting the generality of the foregoing:

- A. all unfilled orders received by the Vendor in connection with the Business;
  - B. all forward commitments to the Vendor for supplies or materials entered into in the usual and ordinary course of business for use in the Business whether or not there are any written contracts with respect thereto; and
  - C. distribution and agency agreements.
- (viii) the full benefit of all licences, registrations, permits and quotas required to carry on the Business in its usual and ordinary course;
- (ix) all the right, title, benefit and interest of the Vendor in and to all registered trade marks, trade names, patents and copyrights, all unregistered trade marks, trade names and copyrights and all patent applications, trade mark registration applications and copyright registration applications, both domestic and foreign, owned or made by the Vendor in connection with the Business;
- (x) all the right, title, benefit and interest of the Vendor in and to all of the designs, inventions, licences, sub-licences, franchises, formulae, recipes, processes, technology and other industrial property of or used in connection with the Business;
- (xi) computer software;
- (xii) the goodwill of the Business including, without limiting the generality of the foregoing:
- A. the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor and the right to use any words indicating that the Business is so carried on; and

- B. all records of sales, customer lists and supplier lists of or used in connection with the Business;
  
- (xiii) all pre-paid expenses and deposits relating to the Business the benefit of which will accrue to the Purchaser;
  
- (xiv) the full benefit of all warranties and warranty rights (implied, express or otherwise) against manufacturers or sellers which apply to any of the Assets and the net realizable value of any warranty claims relating to the Assets outstanding as of the date hereof;
  
- (xv) all work in progress and finished goods pertaining to the Business;
  
- (xvi) the full benefit of all policies of insurance of the Vendor except life insurance and insurance relating to the Excluded Assets;
  
- (xvii) all personnel records, inspection records and other records, books, documents and data bases relating to the Business or to the Assets as are in the possession or under the control of the Vendor but not including any corporate records (i.e. minute books, share certificate books and other like documents) of the Vendor.
  
- (c) "Assumed Liabilities" means all of the debts, liabilities and obligations of the Vendor as listed in Schedule A hereto;
  
- (d) "Excluded Assets" means all of the assets listed in Schedule B hereto and the following property and assets of the Vendor pertaining to the Business:
  - (i) all records relating to any Excluded Assets and all the corporate, financial and other records of the Vendor not pertaining primarily to the Business;

- (ii) any debts or obligations payable or owing to the Vendor by any persons not dealing at arm's length with the Vendor as such term is defined in the Income Tax Act (Canada) (the "Tax Act");
  - (iii) the interest of the Vendor in all life insurance and all insurance policies relating to the Excluded Assets;
  - (iv) contracts under which the Vendor is supplied with utilities; and
  - (v) all income tax instalments paid by the Vendor and the right to receive any refund of income taxes paid by the Vendor.
- (e) "Promissory Note Amount" means the amount, if any, by which the elected amount of the assets transferred pursuant to subsection 85(1) of the Tax Act, (as described in Section 12 below), plus the fair market value of the other assets transferred to the Purchaser under this agreement, exceeds the Assumed Liabilities; and
- (f) "Purchase Price" means the purchase price to be paid by the Purchaser to the Vendor for the Assets as provided in Section 6 hereof.

2. **Extended Meanings.** In this Agreement words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

3. **Schedules.** The following Schedules attached to this Agreement shall be construed with and are an integral part of this Agreement to the same extent as if they had been set forth herein:

- Schedule A - Assumed Liabilities
- Schedule B - Excluded Assets
- Schedule C - Allocation of Purchase Price.

**PURCHASE AND SALE**

4. **Purchase and Sale.** Subject to the terms and conditions of this Agreement and in reliance upon the representations, warranties and conditions set forth herein, the Vendor hereby sells, assigns and transfers to the Purchaser the Assets for an amount equal to the Purchase Price set forth in Section 6 and payable as hereinafter provided.

5. **Non-Assignable Assets.** Notwithstanding any other provision hereof, if any of the Assets shall not be assignable, or shall only be assignable with the consent or approval of any other third party (hereinafter in this Section 5 referred to as a "Third Party Consent"), the Vendor shall:

- (a) use all reasonable efforts in co-operation with the Purchaser, to secure any Third Party Consent required in connection with the assignment thereof; and
- (b) pending the effective transfer thereof, hold all rights or entitlements that the Vendor has thereto in trust for the exclusive benefit of the Purchaser, provided that the Purchaser shall pay, perform and discharge all obligations arising or accruing with respect thereto during such period.

6. **Purchase Price and Allocation Thereof.** The Purchase Price payable to the Vendor for the Assets (such amount being hereinafter referred to as the "Purchase Price") shall be their fair market value, which amount shall be allocated in accordance with the provisions of Schedule C hereto (subject to any adjustment in the Purchase Price which the parties may make pursuant to Section 15 hereof).

7. **Excluded Liabilities.** Except as provided in this Agreement, the Purchaser does not assume and shall not be liable for any obligations, commitments or liabilities of the Vendor whatsoever including, without limiting the generality of the foregoing, any taxes under the Tax Act or any other taxes whatsoever.



8. **Transfer Taxes.** The Purchaser shall be liable for and shall pay all federal and provincial sales taxes (including any GST, retail sales taxes and land transfer taxes) and all other taxes, duties, fees or other like charges of any jurisdiction properly payable in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.

9. **Income Tax Election.** The Purchaser and the Vendor agree to elect jointly in the prescribed form under Section 22 of the Tax Act as to the sale of the Accounts Receivable and to designate in such election an amount equal to the portion of the Purchase Price allocated to such assets pursuant to Section 6 hereof as the consideration paid by the Purchaser therefor.

10. **Goods and Services Taxes.** The amounts specified in Schedule C hereto are stated exclusive of GST. The Purchaser and the Vendor shall jointly elect under subsection 167(1) of the Excise Tax Act in the manner and in the form prescribed for the purposes of that subsection, in respect of the sale and transfer of the Assets hereunder, and the Purchaser shall file such election in its GST return for its reporting period that includes the date hereof.

11. **Payment of the Purchase Price.** The Purchase Price shall be satisfied by (i) the assumption by the Purchaser of the Assumed Liabilities; (ii) the issuance by the Purchaser to the Vendor of a non-interest bearing demand promissory note in the amount of the Promissory Note Amount; and (iii) the issuance by the Purchaser to the Vendor of 999 fully paid and non-assessable common shares in the capital stock of the Purchaser (hereinafter the "Issued Shares") in respect of the balance of the Purchase Price. For greater certainty, the parties agree that, with respect to each of the Assets that qualify as "eligible property" for purposes of Section 85 of the Tax Act (other than Accounts Receivable), at least a common share in the capital stock of the Purchaser or a part of such a share shall be allocated as consideration for the purchase of each such Asset.

12. **Election under the Income Tax Act (Canada).** In connection with such purchase and sale, each of the parties shall do, sign, execute and file all things, forms and documents necessary or desirable and at the time prescribed in order to make a joint statutory election pursuant to the provisions of subsection 85(1) of the Tax Act. The amount to be used in the joint statutory election with respect to each of the Assets transferred hereunder that qualify as

"eligible property" for purposes of Section 85 of the Tax Act (other than Accounts Receivable) and which will be filed with Revenue Canada, Taxation in accordance with subsection 85(6) of the Tax Act shall be the amount which results in the least amount of income tax being payable by the Vendor in respect of this Agreement.

13. **Representation and Warranties of the Vendor.** The Vendor hereby represents and warrants to the Purchaser that:

- (a) all of the Assets are owned by the Vendor as the legal and beneficial owner (other than Real Property of which the Vendor is only the beneficial owner) with good and marketable title thereto, free and clear of all mortgages, liens, charges, security interests, adverse claims, pledges, encumbrances and demands whatsoever;
- (b) no person, firm or corporation has any agreement or option or any right or privilege (whether by law, preemptive or contractual) being or capable of becoming an agreement or option for the purchase from the Vendor of any of the Assets; and
- (c) the Vendor is not a non-resident of Canada for the purposes of the Tax Act.

14. **Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants to the Vendor that:

- (a) the Purchaser has been duly incorporated and is a validly subsisting corporation;
- (b) the Purchaser has full corporate power and authority to enter into and carry out the provisions of this Agreement, and to hold its assets and to carry on its business in, and is in good standing in the Province of Ontario; and

- (c) the common shares will be validly allotted and issued to the Vendor as fully paid and non-assessable shares, free and clear of any and all liens, charges and encumbrances.

**15. Adjustment of Purchase Price.**

- (a) In this section:
  - (i) "Fair Market Value" means the fair market value of the Assets on the effective date hereof;
  - (ii) "Purchase Consideration" means the amount of the Assumed Liabilities, the Promissory Note Amount and the fair market value of the Issued Shares;
  - (iii) "Final Determination" means the earliest to occur of:
    - A. the concurring decision of the parties hereto and the competent taxing authority; or
    - B. the final determination of the competent taxing authority in respect of which either no objection or appeal has been instituted within the time prescribed by applicable legislation or all objections or appeals have been withdrawn or discontinued before delivery of any judgment by the court of first instance; or
    - C. the decision of a court of competent jurisdiction in respect of which either no appeal has been instituted within the time prescribed by applicable legislation or all appeals have been discontinued before delivery of any judgment by the appellate court; or

D. the decision of a court of competent jurisdiction from which no further appeal may be taken.

(iv) "Benefit Rate" means the rate of interest prescribed by the Tax Act in calculating taxable benefits to taxpayers in respect of low interest or interest-free loans compounded daily.

(b) Notwithstanding anything herein contained, the Vendor and the Purchaser declare that it is their intent that the Purchase Consideration should equal the Fair Market Value and that they have taken reasonable steps to determine the Fair Market Value and that the Purchase Consideration is equal to the Fair Market Value. Accordingly, if at any time hereafter any competent taxing authority shall: (i) allege that the Purchase Consideration is not the Fair Market Value; or (ii) propose to make an assessment on the basis that the Purchase Consideration is greater or less than the Fair Market Value; then upon the Final Determination of the Fair Market Value, the Purchase Consideration for the Assets shall be adjusted as from the date hereof to reflect the Fair Market Value as so determined by the Final Determination and the parties hereto shall do or cause to be done all things as are necessary in order to effect such adjustment. Any payments required to be made shall be made together with interest thereon calculated at the Benefit Rate from the date of this transfer to the date of payment.

16. **Assumption of Liabilities.** The Purchaser hereby assumes all of the Assumed Liabilities and agrees to indemnify the Vendor and its successors and assigns against all of the Assumed Liabilities and all claims, demands, suits, proceedings, losses, damages, costs and expenses (including, without limitation, reasonable legal costs) resulting from or arising out of the Assumed Liabilities.

17. **Further Assurances.** Each of the parties shall, at its expense, promptly and duly execute and deliver such further documents and promptly take such further action not inconsistent with the terms hereof as the other may from time to time reasonably request in order to more

effectively carry out the intent and purpose of this Agreement or to perfect and protect the interest of the Purchaser in the Assets.

18. Costs. All costs and expenses incurred or to be incurred by the Vendor and all provincial taxes incurred or payable in connection with the sale of the Assets shall be borne by the Purchaser and the Purchaser shall reimburse the Vendor on demand for any such costs, expenses or taxes.

19. Time of the Essence. Time shall be of the essence in all respects of this Agreement.

20. Survival. All warranties, representations, covenants, provisions and terms contained in this Agreement by the parties shall not merge but shall survive the transfer of the Assets and shall not merge upon the delivery of a validly issued share certificate representing the Issued Shares.

21. Conflict of Laws. This Agreement shall be construed and performed in accordance with the laws of the Province of Ontario and shall extend and enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

SCEPTER MANUFACTURING COMPANY LIMITED

By: \_\_\_\_\_

c/s

SCEPTER CORPORATION

By: \_\_\_\_\_

c/s

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SCHEDULE

SCEPTER CORPORATION

U.S. Trade-marks

<u>Trade-mark</u>	<u>Registration No.</u>
SCEPTER	1,694,226
SCEPTER & Design	1,708,176
ODJOB	2,002,591