

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	CORRECTIVE ASSIGNMENT												
<b>NATURE OF CONVEYANCE:</b>	Corrective Assignment to correct the assignment filed after review of 77/568,810 office action which lists the owner Tilia Int'l instead of Jarden Corporation. previously recorded on Reel 003989 Frame 0610. Assignor(s) hereby confirms the assignment of Tilia, International to Sunbeam Products, Inc. should be Jarden Corporation to Hearthmark, LLC..												
<b>CONVEYING PARTY DATA</b>													
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;">Name</th> <th style="width:30%;">Formerly</th> <th style="width:15%;">Execution Date</th> <th style="width:25%;">Entity Type</th> </tr> </thead> <tbody> <tr> <td>Jarden Corporation</td> <td></td> <td>05/20/2009</td> <td>CORPORATION: DELAWARE</td> </tr> </tbody> </table>		Name	Formerly	Execution Date	Entity Type	Jarden Corporation		05/20/2009	CORPORATION: DELAWARE				
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<b>RECEIVING PARTY DATA</b>													
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:20%;"><b>Name:</b></td> <td>Hearthmark, LLC</td> </tr> <tr> <td><b>Street Address:</b></td> <td>14611 Commerce Drive</td> </tr> <tr> <td><b>City:</b></td> <td>Boca Raton</td> </tr> <tr> <td><b>State/Country:</b></td> <td>FLORIDA</td> </tr> <tr> <td><b>Postal Code:</b></td> <td>33431</td> </tr> <tr> <td><b>Entity Type:</b></td> <td>LIMITED LIABILITY COMPANY: DELAWARE</td> </tr> </table>		<b>Name:</b>	Hearthmark, LLC	<b>Street Address:</b>	14611 Commerce Drive	<b>City:</b>	Boca Raton	<b>State/Country:</b>	FLORIDA	<b>Postal Code:</b>	33431	<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: DELAWARE
<b>Name:</b>	Hearthmark, LLC												
<b>Street Address:</b>	14611 Commerce Drive												
<b>City:</b>	Boca Raton												
<b>State/Country:</b>	FLORIDA												
<b>Postal Code:</b>	33431												
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: DELAWARE												
<b>PROPERTY NUMBERS Total: 1</b>													
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<b>CORRESPONDENCE DATA</b>													
Fax Number: (561)912-4182 <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> Phone: 5619125185 Email: jmeehan@jarden.com Correspondent Name: Lawrence J. Shurupoff Address Line 1: 2381 Executive Center Drive Address Line 4: Boca Raton, FLORIDA 33431													
<b>ATTORNEY DOCKET NUMBER:</b>	JARDIA-48521												
<b>NAME OF SUBMITTER:</b>	Lawrence J. Shurupoff												

CH \$40.00 1878205

Signature:	/Lawrence J. Shurupoff/
Date:	05/21/2009
<p>Total Attachments: 17</p> <p>source=003989-1610 Diamondware#page1.tif source=003989-1610 Diamondware#page2.tif source=003989-1610 Diamondware#page3.tif source=003989-1610 Diamondware#page4.tif source=003989-1610 Diamondware#page5.tif source=Diamond Trademark Assignment#page1.tif source=Diamond Trademark Assignment#page2.tif source=Diamond Trademark Assignment#page3.tif source=OA 77568810#page1.tif source=OA 77568810#page2.tif source=OA 77568810#page3.tif source=OA 77568810#page4.tif source=OA 77568810#page5.tif source=OA 77568810#page6.tif source=OA 77568810#page7.tif source=OA 77568810#page8.tif source=OA 77568810#page9.tif</p>	

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

05/19/2009  
 900134359

SUBMISSION TYPE:	NEW ASSIGNMENT										
NATURE OF CONVEYANCE:	MERGER										
EFFECTIVE DATE:	06/30/2006										
<b>CONVEYING PARTY DATA</b>											
<table border="1"> <thead> <tr> <th>Name</th> <th>Formerly</th> <th>Execution Date</th> <th>Entity Type</th> </tr> </thead> <tbody> <tr> <td>Tilia International, Inc.</td> <td></td> <td>06/30/2006</td> <td>CORPORATION: DELAWARE</td> </tr> </tbody> </table>				Name	Formerly	Execution Date	Entity Type	Tilia International, Inc.		06/30/2006	CORPORATION: DELAWARE
Name	Formerly	Execution Date	Entity Type								
Tilia International, Inc.		06/30/2006	CORPORATION: DELAWARE								
<b>RECEIVING PARTY DATA</b>											
Name:	Sunbeam Products, Inc.										
Street Address:	2381 Executive Center Drive										
City:	Boca Raton										
State/Country:	FLORIDA										
Postal Code:	33431										
Entity Type:	CORPORATION: DELAWARE										
<b>PROPERTY NUMBERS Total: 1</b>											
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<b>CORRESPONDENCE DATA</b>											
Fax Number:	(561)912-4182										
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>											
Phone:	561-912-5185										
Email:	jmeehan@jarden.com										
Correspondent Name:	Lawrence J. Shurupoff										
Address Line 1:	2381 Executive Center Drive										
Address Line 4:	Boca Raton, FLORIDA 33431										
ATTORNEY DOCKET NUMBER:	JARDIA-410495										
NAME OF SUBMITTER:	Lawrence J. Shurupoff										
Signature:	/Lawrence J. Shurupoff/										

CH \$40.00 1878205

O: LAWRENCE J. SHURUPOFF COMPANY: 2381 EXECUTIVE CENTER DRIVE

Date:

05/19/2009

Total Attachments: 4

source=Tilia International to Sunbeam Products Inc#page1.tif

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**TRADEMARK ASSIGNMENT**

THIS ASSIGNMENT, effective this 19th day of May, 2009, is by and between Jarden Corporation, a Delaware corporation ("Assignor") having its principal place of business at 555 Theodore Fremd Avenue, B-302, Rye, New York 10580 and Hearthmark, LLC, a Delaware limited liability company, ("Assignee"), having its principal place of business at 14611 Commerce Drive, Daleville, Indiana 47334.

WHEREAS, Assignor has adopted, used and is the owner of all right, title and interest in and to the registered trademark listed on Schedule A attached hereto and made a part hereof (hereinafter referred to as the "Trademark Rights"); and

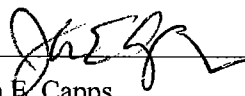
WHEREAS, Assignee desires to acquire said Trademark Rights together with all of the goodwill of the business symbolized by the Trademark Rights; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby, grant, assign, transfer, convey and set over unto Assignee, all of Assignor's right, title and interest in and to the Trademark Rights, and the registration therefor, together with the goodwill of the business symbolized by the Trademark Rights, all priority rights under any applicable convention, and all rights to damages and profits, due or accrued, arising out of past infringements of said Trademark Rights, and the right to sue for and recover the same.

Assignor has not and will not enter into any agreement in conflict with the rights assigned herein.

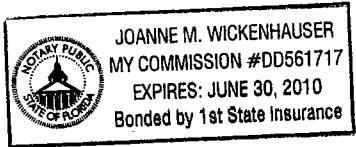
IN WITNESS WHEREOF, Assignor has caused this assignment to be executed by its duly authorized officer effective as of the day and year first written above.

Jarden Corporation  
(Assignor)

By:   
Name: John E. Capps  
Title: Sr. Vice President, General Counsel, Secretary  
Date: May 20, 2009

STATE OF FLORIDA            )  
  ) ss  
COUNTY OF PALM BEACH    )

On this 20th day of May 2009, before me appeared John E. Capps to me personally known and known to me the person who executed the foregoing Assignment; and who being by me duly sworn, did depose and say that he is the Sr. Vice President, General Counsel, Secretary of JARDEN CORPORATION ("Assignor"), that he is authorized to sign this Assignment on behalf of Assignor, and unto me acknowledged said Assignment to be the free act and deed of Assignor.



*Joanne M. Wickenhauser*  
Joanne M. Wickenhauser  
Notary Public

**SCHEDULE A**  
**ASSIGNED TRADEMARK**

Trademark	Country	App. No.	File Date	Reg Date	Reg. No.	Status
Miscellaneous Design (diamond shape)	US	71/158,821	2/3/1922	5/1/1923	167,347	REGISTERED
DIAMOND	US	71/158,820	2/3/1922	5/1/1923	167,348	REGISTERED
DIAMOND	US	71/294,209	12/30/1929	5/6/1930	270,580	REGISTERED
DIAMOND	US	72/176,286	9/4/1963	6/9/1964	771,013	REGISTERED
DIAMOND BRANDS and Design	US	73/748,116	8/24/1988	9/11/1990	1,612,581	REGISTERED
DIAMONDWARE	US	74/414,799	7/13/1993	2/7/1995	1,878,205	REGISTERED
DIAMOND and Design	US	73/748,117	8/24/1988	8/21/1990	1,610,353	REGISTERED
DIAMOND Stylized	US	71/588,287	11/25/1949	12/19/1950	535,047	REGISTERED
DIAMOND SIGNATURE SERIES	US	76/597,386	6/15/2004	4/18/2006	3,083,296	REGISTERED

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/568810

MARK: DIAMOND

CORRESPONDENT ADDRESS:

LAWRENCE J. SHURUPOFF  
JARDEN CORPORATION  
2381 NW EXECUTIVE CENTER DR  
BOCA RATON, FL 33431-7321



RECEIVED  
DEC 29 2008

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Hearthmark, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

Jardia-410495

CORRESPONDENT E-MAIL ADDRESS:

*OIA due Larry-  
6/16/09*

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: DEC 16

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

Multiple-Class Application

The application identifies goods that are classified in four classes; however, the fees submitted are sufficient for only one class. In a multiple-class application, a fee for each class is required. 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1403.01.

Therefore, applicant must either (1) restrict the application to the number of classes covered by the fee(s) already paid, or (2) submit the fees for the additional class(es).

Specifically, the goods are classified as follows:

- Plastic cutlery – International Class 8
- Plastic servingware – International Class 21
- Straws – International Class 20
- Lighters primarily for lighting grills, fireplaces and candles – International Class 11

*[Handwritten signature]*



See 37 C.F.R. §§2.32(a)(7), 2.85; TMEP §§1401.02(a), 1401.03(b).

Pending the amendment of the application to delete all but one class of goods, or the payment of additional filing fees, the application has been examined as to **the goods in International Class 8 only**. As to the other goods, the search of the Office records and a review of the merits of the application are both deferred until applicant responds. TMEP §704.02.

### **Refusal to Register**

As to the goods in International Class 8, registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 1872258, 1878205 and 3083296. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

The applicant's mark, DIAMOND, is similar to the registered marks, DIAMOND CUT, DIAMONDWARE and DIAMOND SIGNATURE SERIES, respectively, in that the dominant element in each mark is DIAMOND. The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection

of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

The applicant's goods, "plastic cutlery," are identical to, or at least closely related to, the goods in each of the registrations, "cutlery," "plastic forks, knives and spoons," and "plastic cutlery," respectively. If the goods and/or services of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

If the marks in the cited registrations have been assigned to applicant, applicant can provide evidence of ownership of the marks by satisfying one of the following:

- (1) Record the assignment with the Assignment Services Division of the Office and provide a written statement to the trademark examining attorney that the assignment has been duly recorded;
- (2) Submit copies of documents evidencing chain of title; or
- (3) Submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "Applicant is the owner of U.S. Registration Nos. 1872258, 1878205 and 3083296."

TMEP §812.01; *see* 15 U.S.C. §1060; 37 C.F.R. §§3.25, 3.73; TMEP §502.02(a).

If the applicant responds to the refusal to register, the applicant must also respond to the requirement(s) set forth below.

### **Identification of Goods**

The wording "plastic servingware" in the identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant may change this wording to "plastic servingware for serving food," if accurate. *See* TMEP §1402.01.

The wording "straws" in the identification of goods is indefinite and must be clarified. *See* TMEP §1402.01. Applicant may change this wording to "drinking straws," if accurate. *See* TMEP §1402.01.

Identifications of goods can be amended only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

## Prior Registration

If applicant is the owner of U.S. Registration No. 3425528, then applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812. The following standard format is suggested:

Applicant is the owner of U.S. Registration No. 3425528.

/James A. Rauen/  
Trademark Examining Attorney  
Law Office 109  
571-272-9211

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

**Print: Dec 15, 2008****74414799****TYPED DRAWING****Serial Number**

74414799

**Status**

REGISTERED AND RENEWED

**Word Mark**

DIAMONDWARE

**Standard Character Mark**

No

**Registration Number**

1878205

**Date Registered**

1995/02/07

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**TILIA INTERNATIONAL, INC. C/O JARDEN CORPORATION CORPORATION DELAWARE  
555 THEODORE FREMD AVE. SUITE B-302 RYE NEW YORK 10580**Goods/Services**Class Status -- ACTIVE. IC 008. US 023. G & S: plastic forks,  
knives and spoons. First Use: 1993/06/01. First Use In Commerce:  
1993/07/01.**Filing Date**

1993/07/13

**Examining Attorney**

FINE, STEVE

**Attorney of Record**

ALEX D. FORMAN

**Print: Dec 15, 2008****74440988****TYPED DRAWING****Serial Number**

74440988

**Status**

REGISTERED AND RENEWED

**Word Mark**

DIAMOND CUT

**Standard Character Mark**

No

**Registration Number**

1872258

**Date Registered**

1995/01/10

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**B & F System, Inc., The CORPORATION TEXAS 3920 S. Walton Walker Blvd.  
Dallas TEXAS 75236**Goods/Services**

Class Status -- ACTIVE. IC 008. US 023. G &amp; S: cutlery, namely fillet knives, paring knives, grapefruit knives, picnic knives, tomato knives, boning knives, butcher knives, chef's knives, steak knives, ham slicers, bread slicers, sukiyaki knives, meat cleavers, carving knives and forks, household shears, and frozen food knives. First Use: 1987/10/09. First Use In Commerce: 1987/10/09.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CUT" APART FROM THE MARK AS SHOWN.

**Filing Date**

1993/09/27

**Examining Attorney**

JEFFRIES, STEPHEN

**Print: Dec 15, 2008**

**74440988**

**Attorney of Record**  
ROY W. HARDIN

**Print: Dec 15, 2008****76597386****DESIGN MARK****Serial Number**

76597386

**Status**

REGISTERED

**Word Mark**

DIAMOND SIGNATURE SERIES

**Standard Character Mark**

Yes

**Registration Number**

3083296

**Date Registered**

2006/04/18

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**Jarden Corporation CORPORATION DELAWARE 555 Theodore Fremd Avenue  
Suite B-302 Rye NEW YORK 10580**Goods/Services**Class Status -- ACTIVE. IC 008. US 023 028 044. G & S: Plastic  
cutlery. First Use: 2004/08/06. First Use In Commerce: 2004/08/06.**Prior Registration(s)**0167347;0167348;0270580;0535047;0771013;0771379;1610353;1612581;1878205-  
;2232149;AND OTHERS**Disclaimer Statement**NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "Series" APART FROM THE  
MARK AS SHOWN.**Filing Date**

2004/06/15

**Examining Attorney**

POWERS, ALEXANDER L.

# DIAMOND SIGNATURE SERIES