

01-12-2001



101581235

Docket No.:

SUNH-001

12-27-00

Tab settings

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

1. Name of conveying party(ies):
Heritage Inks International Corporation

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State **Delaware**
 Other _____

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: **Sun Chemical Corporation**

Internal Address: _____

Street Address: **222 Bridge Plaza South, P. O. Box 1302**

City: **Fort Lee** State: **NJ** ZIP: **07024**

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **Delaware**
 Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes No
(Designations must be a separate document from
Additional name(s) & address(es) Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: **6/15/1998**

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

A. Trademark Application No.(s)

Additional numbers

B. Trademark Registration No.(s)

738,460
548,776

Yes No

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

Name: **Rex A. Donnelly IV**

Internal Address: _____

Ratner & Prestia

Suite 209, Webster Bldg.

Street Address: **3411 Silverside Road**

P. O. Box 7228

City: **Wilmington** State: **DE** ZIP: **19803**

6. Total number of applications and registrations involved:..... **2**

7. Total fee (37 CFR 3.41):.....\$ **\$65.00**

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

18-0350

DO NOT USE THIS SPACE

01/11/2001 MTHAI1 00000112 738460
01 FC:481 40.00 DP
02 FC:482 25.00 DP

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.

Rex A. Donnelly IV
Name of Person Signing

December 21, 2000
Signature Date

EXECUTION

ASSET PURCHASE AGREEMENT

by and between

SUN CHEMICAL CORPORATION,

as Purchaser, and

HERITAGE INKS INTERNATIONAL CORPORATION,

as Seller.

May 13, 1998

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of May 13, 1998, by and between (i) Sun Chemical Corporation, a Delaware corporation ("Purchaser"), and (ii) Heritage Inks International Corporation, a Delaware corporation ("Seller"). Defined terms used herein and not otherwise defined herein have the meanings ascribed thereto in Section 1.1 below.

Subject to the terms and conditions set forth herein, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, Seller's business of producing printing inks used in the printing of materials in various media, together with all related assets and properties used in the operations of such business (the "Business").

In consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement, the parties hereto intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the indicated meanings:

"Affiliate" of any Person means (i) any other Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such first Person and includes (a) any partner, shareholder, officer, director or employee of a particular Person, and (b) any individual related by blood, marriage or adoption to a Person or any partner, shareholder, officer, director or employee of a particular Person, or (ii) any Person in which any of the foregoing owns a beneficial interest. For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

"Base Rate" means the rate of interest announced from time to time by Citibank, N.A. as its prime commercial lending rate.

"Cause" means (i) a material breach by Employee of the terms and conditions of its employment with Purchaser that is not susceptible to remedy or cure, or if susceptible to remedy or cure, is not cured or remedied and continues for fifteen (15) business days after the Purchaser has given written notice to Employee specifying in reasonable detail the manner in which Employee has breached such terms and conditions, (ii) the determination by the Purchaser, in the exercise of its reasonable judgment, that Employee committed a felony, a crime involving moral turpitude, or other act causing material harm to the standing and reputation of Purchaser, in each case after notice to Employee, or (iii) Employee's continued failure to perform its duties to Purchaser other than by

setting forth Environmental Requirements, including but not limited to all hazardous substances or wastes, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or by-products, asbestos, polychlorinated biphenyl and radioactive materials.

"Health and Safety Requirements" shall mean all federal, state, local, and foreign statutes, regulations, ordinances, and similar provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law binding on Seller concerning public health and safety (other than Environmental Requirements) and worker health and safety.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"includes" and **"including"** mean includes and including, without limitation.

"Intellectual Property" means all patents, patent applications, trademarks, service marks, trade dress, trade names and corporate names, including the name "Heritage Inks International", and all goodwill associated therewith; all copyrights, trade secrets, technical and computer data, process and formulation technology, know-how, inventions, designs and related information and all licenses, related agreements, and other proprietary rights.

"IRS" means the Internal Revenue Service.

"Knowledge" means actual knowledge without independent investigation.

"Liability" means any debt, liability, or obligation of any nature whatsoever, whether accrued or fixed, absolute or contingent, liquidated or unliquidated, due or to become due, determined or indeterminable.

"Lien" means any lien, mortgage, pledge, security interest, restriction, charge, or other similar encumbrance.

"Material Adverse Effect" means any material adverse effect on (i) the condition and results of operations, of the Business, or (ii) the transactions contemplated hereby or by the Related Documents.

"Net Assets" means the difference between Total Assets and Total Liabilities..

"Net Asset Target" means \$23,872,000, as calculated in accordance with Schedule

3.4.

"Ordinary Course of Business" means the ordinary course of business consistent with past practice.

"Permitted Liens" means (i) purchase money security interests in supplies and equipment, (ii) precautionary liens filed by lessors with respect to leased equipment,

"Taxes" means all taxes, charges, fees, levies or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, personal or real property taxes or other taxes, customs duties, fees, assessments, or charges of any kind whatsoever, whether disputed or not, together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Agency.

"Termination Date" means, with respect to any employee of Seller that accepts an offer of employment by Purchaser, the date on which such employee's employment with Purchaser is terminated.

"Total Assets" means, for the Seller for any period, the sum of (A) cash, (B) net accounts receivable, (C) inventories less obsolescence, (D) other current assets, (E) fixed assets minus accumulated depreciation, and (F) other assets, each as calculated in accordance with the books and records of Seller and those procedures set forth on Exhibit I attached hereto.

"Total Liabilities" means, for the Seller for any period, the sum of (A) accounts payable and (B) accrued liabilities, including, but not limited to, adequate reserves for any claims, litigation, accrued employee liabilities, each as calculated, in each case, in accordance with the books and records of Seller and those procedures set forth on Exhibit I attached hereto.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Assets. At the Closing, Purchaser shall purchase from Seller, and Seller shall sell, convey, assign, transfer, and deliver to Purchaser, all properties, assets, and rights of Seller, whether tangible or intangible, real or personal, but excluding the Excluded Assets (the "Subject Assets"). The Subject Assets include as of the Closing Date, without limitation, all of the rights, title, and interest of Seller in and to the following, other than with respect to the Excluded Assets:

- (a) all cash and cash-equivalents including credits, rebates, investments, advance payments, pension funds, prepaid items and deferred charges of Seller;
- (b) all raw materials, manufactured and purchased parts, work-in-process, finished goods, consigned goods, goods of customers, inventories of whatever kind, and related supplies, parts, packaging materials, and other materials and other accessories related thereto of Seller;
- (c) the tangible assets owned or leased by Seller as of the Closing Date;
- (d) all accounts receivable and other receivables, evidences of indebtedness, notes, bonds, and all collateral security and guarantees of any kind given by any Person which arise from or relate to products sold or services rendered in connection with the Business, whether or not invoices relating thereto have been issued;

(e) all Intellectual Property of Seller as of the Closing Date, together with goodwill;

(f) all real property owned or leased by Seller, including all leaseholds or other interests in all plants, buildings, and other improvements located on such leased property (collectively, the "Real Estate");

(g) all rights existing under contracts, leases, subleases, licenses, permits, or other similar rights and all other agreements, arrangements and understandings;

(h) all right, title, and interest of Seller in the Business as a going concern, including goodwill (if any) and all other intangible assets, including causes of action, judgments, claims, rights of recovery, rights of setoff, and rights of recoupment, associated with the Business;

(i) to the extent transferable, all franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from all Government Entities; and

(j) all books and records of the Seller, except as excluded pursuant to Section 2.2(a).

Section 2.2 Excluded Assets. Notwithstanding Section 2.1 hereof, the following assets of Seller (the "Excluded Assets") are expressly excluded from the purchase and sale contemplated hereby and, as such, are not included in the Subject Assets:

(a) qualifications to do business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, Tax Returns and materials related to the preparation of such Income Tax returns, taxpayer and other identification numbers, seals, minute books, transfer books and other documents relating to the organization, maintenance, and existence of Seller, and original financial papers, financial reports, and other financial information located at Seller's offices;

(b) Seller's rights under or pursuant to this Agreement, the Related Documents, or any other agreement between (i) Seller, on the one hand, and (ii) Purchaser, on the other hand, entered into in connection herewith or therewith; and

(c) all claims related to the Excluded Assets and all claims for reimbursement, refunds, or otherwise with respect to Taxes paid by or assessed against Seller.

Section 2.3 No Assignment in Certain Circumstances. Notwithstanding anything else contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to sell, convey, assign, transfer, or deliver any interest in any instrument, commitment, contract, lease, permit, sales, or purchase order or other agreement or arrangement or any claim, right, or benefit arising thereunder or resulting therefrom, if a sale, conveyance, assignment, transfer, or delivery or an attempt to make such a sale, conveyance, assignment, transfer or delivery without the authorization, approval, consent or waiver of a third Person would constitute a breach or violation thereof or affect adversely the rights of Purchaser thereunder; any sale, conveyance, assignment, transfer or delivery to Purchaser of any interest under any such instrument, commitment, contract,

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first above written.

SUN CHEMICAL CORPORATION

By: Melvin M. Cox
Name: Melvin M. Cox
Title: Vice President & General Counsel

HERITAGE INKS INTERNATIONAL CORPORATION

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first above written.

SUN CHEMICAL CORPORATION

By: _____
Name:
Title:

HERITAGE INKS INTERNATIONAL CORPORATION

By: Eric Schuler
Name: Eric Schuler
Title: Chief Operating Officer

BILL OF SALE

BILL OF SALE dated as of June 5, 1998, from HERITAGE INKS INTERNATIONAL CORPORATION, a Delaware corporation (the "Grantor"), to SUN CHEMICAL CORPORATION, a Delaware corporation ("Grantee").

Grantor and Grantee are parties to an Asset Purchase Agreement dated as of May 13, 1998 (the "Purchase Agreement"). A condition precedent to Grantee's obligations under the Purchase Agreement is that the Grantor deliver to Grantee this Bill of Sale.

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

1. Capitalized terms used but not otherwise defined herein shall have the meanings assigned such terms in the Purchase Agreement.
2. Grantor hereby sells, transfers, conveys, assigns, and delivers to Grantee, its successors and assigns all of the right, title, and interest of Grantor and its Affiliates in and to the Subject Assets, as the same shall exist on the date hereof.
3. Notwithstanding anything contained in Section 2 hereof to the contrary, Grantor is not selling, and Grantee is not purchasing, any of the Excluded Assets, all of which shall be retained by Grantor.
4. From time to time after the Closing, for a period not to exceed 180 days from the Closing Date, Grantor shall execute and deliver (or cause its Affiliates to execute and deliver) to Grantee such instruments of sale, transfer, conveyance, assignment, and delivery, and such consents, assurances, powers of attorney, and other instruments as may be reasonably requested by Grantee or its counsel in order to vest in Grantee all right, title, and interest of Grantor and its Affiliates in and to the Subject Assets and otherwise in order to carry out the purpose and intent of this Bill of Sale.
5. Notwithstanding any other provisions of this Bill of Sale to the contrary, nothing contained herein shall (i) in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge, or in any way affect the provisions set forth in the Purchase Agreement, or (ii) expand or enlarge any remedies under the Purchase Agreement, including, without limitation, any rights to indemnification specified therein. This Bill of Sale is intended only to effect the transfer of certain property sold and purchased pursuant to the terms and conditions of the Purchase Agreement and shall be governed entirely in accordance with the terms and conditions of the Purchase Agreement.

HERITAGE INKS INTERNATIONAL CORP

IN WITNESS WHEREOF, Grantor has caused this Bill of Sale to be executed and delivered on the date and year first written above.

HERITAGE INKS INTERNATIONAL CORPORATION

By: J. E. Schuler
Name: Eric Schuler
Title: Chief Operating Officer

ACKNOWLEDGED AND AGREED:

SUN CHEMICAL CORPORATION

By: Melvin M. Cox
Name: Melvin
Title:

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