

ESTTA Tracking number: **ESTTA775367**

Filing date: **10/07/2016**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Akerue Industries, LLC d/b/a Kay Home Products
Granted to Date of previous extension	10/12/2016
Address	90 McMillen Road Antioch, IL 60002 UNITED STATES
Attorney information	Lora L LoCoco Rose & deJong SC 161 S. First Street, Suite 400 Milwaukee, WI 53204 UNITED STATES lll@rosedejong.com Phone:414-274-1400

**Applicant Information**

Application No	86514638	Publication date	06/14/2016
Opposition Filing Date	10/07/2016	Opposition Period Ends	10/12/2016
Applicant	Classic Brands, LLC 3600 Yosemite Street, Suite 1000 Denver, CO 80237 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 021. First Use: 2011/04/15 First Use In Commerce: 2011/12/15 All goods and services in the class are opposed, namely: Bird feeders; plastic storage containers for storing and dispensing bird seed for domestic use
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**Grounds for Opposition**

The mark comprises matter that, as a whole, is functional	Trademark Act Section 2(e)(5)
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act Sections 1, 2 and 45; and Section 2(f)

Related Proceedings	United States District Court, District of Colorado, Classic Brands, LLC v. The Nylen Corporation d/b/a Woodlink, Ltd., Case No. 15 CV 2512 US Patent and Trademark Office, Trademark Trial and Appeal Board, Opposition # 91227568, Classic Brands, LLC, Serial # 86514644 US Patent and Trademark Office, Trademark Trial and Appeal Board, Opposition # 91227569, Classic Brands,
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	LLC, Serial # 86514627
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Attachments	doc01826320161007105827.pdf(3056016 bytes ) doc01826420161007105901.pdf(3585092 bytes ) doc01826520161007105928.pdf(1848012 bytes ) doc01826620161007105947.pdf(3880252 bytes ) doc01826720161007110005.pdf(3482505 bytes ) doc01826820161007110024.pdf(3469638 bytes ) doc01826920161007110045.pdf(2795277 bytes ) doc01827020161007110102.pdf(2234480 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lora L LoCoco/
Name	Lora L LoCoco
Date	10/07/2016

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

In re Trademark Application of:

Applicant: Classic Brands, LLC

Serial No: 86514638

Filed:

Mark: Design as depicted on Exhibit A.

AKERUE INDUSTRIES LLC d/b/a  
KAY HOME PRODUCTS

Opposer,

Opposition No. \_\_\_\_\_

v.

CLASSIC BRANDS, LLC

Applicant.

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NOTICE OF OPPOSITION

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Akerue Industries LLC d/b/a Kay Home Products, through counsel, Rose & deJong S.C., hereby opposes the registration of the alleged trademark described in Application Serial No. 86514638. In support of its opposition, opposer alleges the following:

1. Classic Brands, LLC (“Applicant”), a limited liability company organized under the laws of the State of Colorado, filed an application (“the Application”) for an alleged trademark in the United States Patent and Trademark Office (“PTO”) on January 26, 2015 for a design as depicted on Exhibit A, and described as “[t]he mark consists of a three-dimensional configuration of a bird feeder, consisting of a vessel with a swirl ridge pattern on the vessel which is depicted in solid lines. The opening of the vessel and base of the vessel are not features

of the mark and are depicted in broken lines. Color is not claimed as a feature of the mark.” (“Applicant’s Alleged Mark”)

2. Applicant’s Alleged Mark is the swirl ridge pattern on a vessel.

3. The Application identified the goods as “Bird feeders; plastic storage containers for storing and dispensing bird seed.” (“Applicant’s Goods”)

4. The Application listed the date of first use anywhere as “at least as early as 04/15/2011” and the first use in commerce dates was listed as “at least as early as 12/15/2011.”

5. Applicant seeks registration on the Principal Register under 15 U.S.C. 1052(f), asserting that Applicant’s Alleged Mark has acquired distinctiveness and is, thus, entitled to registration. For at least the following reasons, Applicant has failed to meet the standards for proving acquired distinctiveness under Section 2(f) and, thus, this Opposition should be sustained and the Application should be refused registration.

6. The Application, which was assigned Serial No. 86514638 was published for opposition in the USPTO *Official Gazette* on December 29, 2015. Opposer requested and was granted an extension of time to oppose the Applicant’s Alleged Mark on January 26, 2016.

7. Prior to allowance of the Applicant’s Alleged Mark, and in the Response to Office Action Applicant had stated that the first date of continuous use in commerce was as early as October 30, 2010. This statement was made by Applicant in support of its contention that the Applicant’s Alleged Mark had “become distinctive of the goods/services of the Applicant’s substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least five years immediately before the date of this statement.” (Exhibit B at 3.)

8. On February 15, 2016 the Applicant filed a post-publication amendment, which sought to amend this statement from its Response to Office Action filed on November 5, 2015.

The amendment sought to change that statement to “Applicant’s mark has been in continuous use in commerce since at least as early as December 15, 2011.”

9. The amendment was accepted, the application was re-examined by the Examiner, but eventually the Application was republished in the USPTO *Official Gazette* on June 14, 2016.

10. Opposer requested and was granted an extension of time to oppose the Applicant’s Alleged Mark on July 12, 2016 which provided until October 12, 2016 to oppose the Applicant’s Alleged Mark.

11. Akerue Industries LLC d/b/a Kay Home Products (“Opposer”) is a limited liability company organized under the laws of the State of Ohio and doing business under the trade name Kay Home Products and Woodlink, LLC.

12. Opposer is a well-known provider of patio, lawn, and garden products, including but not limited to, bird-feeders.

13. In 2008 Opposer purchased the assets, including but not limited to all inventory and intellectual property, of Artline, another company in the same line of business.

14. At least as early as 2000, Artline began selling the Model 5549 glass swirl bottle feeder, an image of which is attached hereto as Exhibit C. (“Opposer’s Design”). As early as 1999 Artline’s catalog offered for the glass model 5549 and plastic model of the same design under Model 5542, which were referred to as “Glass Swirl Feeder” and “Plastic Swirl Design Feeder,” respectively, in the catalog.

15. Opposer has continued to use and develop Opposer’s Design in association with several of its hummingbird feeders, including but not limited to, several variations of Opposer’s Cherry Valley and Audubon feeders, images of which are attached hereto as Exhibit D.

16. In addition, several other products, including bird feeders that are sold in the marketplace by others than Applicant and Opposer and in the same channels as Applicant's goods contain substantially similar designs. See attached Exhibit F.

17. Further, Applicant's Goods featuring Applicant's Alleged Trademark are not unique as they are in use by Opposer and other manufacturers, with and without designs substantially similar to the Applicant's Mark, images of which are attached hereto as Exhibit E.

18. Applicant's Alleged Trademark does not function as a trademark and has not been and is not now used by Classic Brands as a trademark.

19. Applicant's Alleged Trademark is not capable of acquiring distinctiveness.

20. Applicant's Alleged Trademark is limited to a conventional swirl ridge pattern on a cylindrical vessel. Such design is used on all sorts of products in all sorts of markets many of which have been patented in the past. See Exhibit G.

21. As stated above, Applicant's Alleged Trademark has been used on bird feeders long before Applicant's use, and is still used on many that are not produced by the Applicant, and therefore, it is not unique or unusual in this field.

22. The Applicant's Alleged Trademark is merely incorporates a long and well-known form refinement of ornamentation for bird feeders, as can be seen by the existence of the Opposer's designs and others in the marketplace.

23. The Applicant's swirl ridge pattern on a cylindrical vessel is not inherently distinctive.

24. Further, Applicant's Alleged Trademark has not acquired distinctiveness.

25. During examination Applicant did not set forth sufficient evidence that Applicant's Alleged Mark has actually acquired distinctiveness with respect to the goods in the application.

26. The customer comments provided to the examiner by the Applicant do not establish that the customer associates the Applicant's Alleged Mark with the Applicant; at best the comments establish that Applicant's Alleged Mark is aesthetically pleasing. Applicant's summary of customer comments is as follows:

As stated by customers: "The feeder itself is pretty! The swirled glass is simply, pretty!" Beautiful feeder..." "Very pretty. Real glass. Nice design..." "Best design on the market..." "This particular feeder is aesthetically pleasing to the eye..." "I bought this feeder for its attractive style."

(Exhibit B: Applicant's response to office action.)

27. The record is devoid of any evidence linking Applicant's advertisements and sales of Classic Brands' goods to a public association of the swirl ridge design and Classic Brands as the single source.

28. Applicant provides no consumer survey evidence or sworn declarations from customers which support any claim by Applicant that customers identify Applicant as the single source of Applicant's Goods because of customer's recognition of Applicant's Alleged Trademark.

29. Likewise, Applicant's advertising does not draw a connection between Applicant and Applicant's Alleged Mark, but instead only advertises based on the attractiveness of the design and functionality. (See attached as Exhibit H Product descriptions from Applicant's website and Amazon.)

30. Further, Applicant states in its Response to the Examiner's Office Action that "Applicant's advertising and promotional efforts for the applied-for-mark have focused on its fun

playful design that catches light when its hung.” (Ex. B: Applicant’s Response to Office Action at 2.)

31. Applicant has not established that it has had substantially exclusive and continuous use in commerce of Applicant’s Alleged Mark for five years or more.

32. Further, any alleged use by Applicant during this time period was not substantially exclusive as required by 15 U.S.C. § 1052(f), as others were marketing feeders with swirl patterns during the time period of 2011 to the present.

33. Many products and bird feeders with identical or substantially similar designs to the Applicant’s Alleged Trademark have been used and continue to be used and sold to consumers in the marketplace.

34. Additionally, features of the Alleged Trademark are functional, and therefore, are not entitled to trademark protection.

35. Specifically, the size and shape of the bottle is a functional aspect that allows the bottle to hold a certain amount of bird food and allows for easy filling and cleaning. These statements are specifically made on Applicant’s website. (Exhibit H.)

36. Additionally, Applicant’s statements in its response to Office Action that “Applicant’s advertising and promotional efforts for the applied-for-mark have focused on its fun playful design that catches light when its hung” and its product descript on Amazon signal that the swirl ridge design is functional as well. (See Exhibit B.)

37. The Applicant’s Mark is not distinctive, has not acquired distinctiveness, and is entirely or partially functional, and if the Applicant succeeds in registering Applicant’s Alleged Trademark, statutory rights will be created which will wrongfully prevent Opposer from using Opposer’s Artline Design (developed in 1999 and acquired in 2008) and subsequent derivations

or wrongfully expose Opposer to liability for use of an Opposer's Artline Design and subsequent derivations. Therefore, registration of the Applicant's Alleged Trademark should be denied under Section 2(f) of the Lanham Act. (15 U.S.C. § 1052(d)).

WHEREFORE, Opposer files this Notice of Opposition and prays that this Opposition be sustained and the Application rejected; and Opposer requests such other and further relief as may be deemed just and proper.

Dated this 7 day of October, 2016.

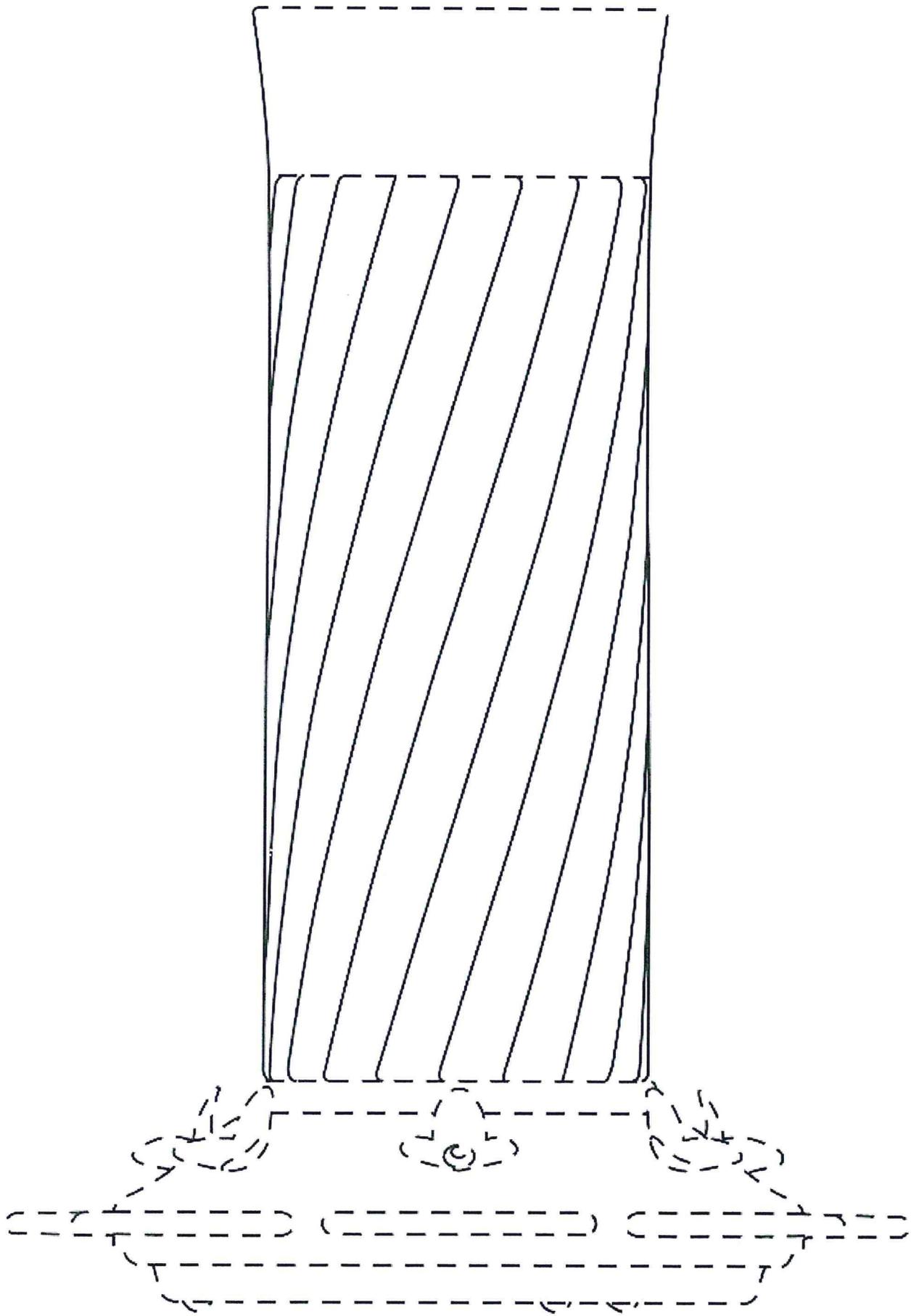
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# **EXHIBIT A**



# Diamond

Bring more birds and more joy to your yard



Home / Products / Hummingbird Feeders



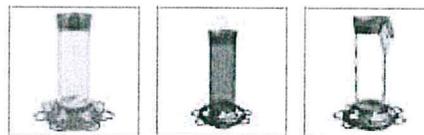
[VIEW LARGER](#)

## Diamond

Hummingbird Feeders

30 oz. Capacity

Model #37



Description

**Specifications**

Featuring a glass bottle and built-in ant moat, the Diamond hummingbird feeder is an instant classic. The large 30 oz., wide mouth bottle is easy to fill and clean.

For best results, use More Bird™ Premium Nectar, which simulates natural nectar found in flowers.

### Patents

US Patent D678,628

US Patent D682,461



## **EXHIBIT B**

## I. NON-DISTINCTIVE PRODUCT DESIGN

### Inherently Distinctive

Applicant respectfully disagrees with the Examiner's refusal of the applied-for mark on the basis that "the applied-for mark consists of a nondistinctive product design or nondistinctive features of a product design." Applicant strongly believes that the applied-for mark is inherently distinctive and thus, eligible for trademark protection.

As set forth in *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992), the Supreme Court held that the establishment of inherent distinctiveness sufficiently evokes trade dress protection without the need for proof of a secondary meaning. See *Id.* at 763. Courts have developed a variety of tests and factors for determining whether trade dress is inherently distinctive. As established in *Duraco Prod., Inc. v. Joy Plastic Enter., Ltd.*, the Third Circuit applies the following three-pronged test for inherent distinctiveness: inherently distinctive trade dress is (1) unusual and memorable, (2) conceptually separate from the product, and (3) likely to serve primarily as a designator of origin of the product. 40 F.3d 1431, 1449 (3d. Cir. 1994).

All three prongs of the *Duraco* test are met by the applied-for mark. First, Applicant's swirl ridge vessel design and vessel profile shape create a unique visual impression. In this context of a bird feeder, this design is extremely unique and memorable. As demonstrated by the attachments submitted under the Evidence file, there are countless different designs for bird feeders. However, Applicant's feeder featuring the applied-for mark is unique and is not in use by any other manufacturer. As set forth in *Brooks Shoe Mfg. v. Suave Shoe Corp.*, 716 F.2d 854, 858 (11<sup>th</sup> Cir. 1983), to evaluate the inherent distinctiveness of trade dress, the design must be unique and *not* a basic shape. Applicant's feeders featuring the applied-for mark are not basic shapes as seen in many other feeders, but instead a very creative and original design. As explained by a member of Applicant's design team, Lindsey Nifong (Marketing Manager for Applicant), "*The swirl is a very distinct pattern. The eye travels up the swirls towards the cap. It is more eye-catching than a plain smooth bottle would be. . . Many alternative designs were developed and ultimately discarded in favor of the final swirl ridge design. We also explored a smooth bottle and one with straight vertical lines. We also explored various sizes of swirls. These alternatives were not as visually appealing as the final swirl design we chose.*"

Second, the design of the food-containing vessel for Applicant's bird feeder is conceptually separate from the bird feeder product itself. Applicant's swirl ridge vessel design in no way enhances or assists the utilitarian function of the overall product – namely, holding and dispensing bird food. The design is totally separate from this utilitarian function, and serves a purely decorative purpose to enhance customer's notice and attraction to the product (as compared to countless other feeder products).

Third, the applied-for mark serves primarily as a designator of origin for Applicant's bird feeder products. The "Diamond" feeder sold by Applicant features the swirl design and vessel profile shape solely for purpose of drawing consumer's eyes to the product, and to assist consumers in distinguishing Applicant's products from competitor products. (See *Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1008 (2d. Cir. 1995), *aff'd* 104 F.3d 353 (2d. Circ. 1996), holding that trade dress is inherently distinctive when the owner shows that the *primary intention* of the design is to function as a source identifier for a particular product." Please also see the attached customer reviews from sales of the "Diamond" feeders on Amazon.com, indicating customers' recognition of the feeder as sold by Applicant, as well as customer's attraction to the design. As stated by customers: "The feeder itself is pretty! The swirled glass is simply, pretty!" Beautiful feeder." . . . "Very pretty. Real glass. Nice design." . . . "Best design on the market." . . . "This particular feeder is aesthetically pleasing to the eye." . . . "I bought this feeder for its attractive style."

According to relevant case law, consumer surveys are the most useful evidence of acquired distinctiveness because "the chief inquiry [in trademark law] is . . . whether or not the consumer identifies a mark with a specific producer." *Sec. Ctr., Ltd. v. First Nat'l Sec. Ctrs.*, 750 F.2d 1295, 1301 (5th Cir. 1985). Indeed, courts have routinely held that customer survey evidence "is the most direct and persuasive way of establishing secondary meaning." *Id.* (quoting *Zatarains, Inc. v. Oak Grove Smokehouse, Inc.*, 698 F.2d 786, 795 (5th Cir. 1983)).

Further, the Eleventh Circuit conducts the following examination to determine whether trade dress is inherently distinctive: (1) whether the particular trade dress consists of a "common basic shape or design"; (2) "whether it is unique or unusual in a particular field"; and (3) "whether it is a mere refinement of a commonly-adopted and well-known form of ornamentation for the [particular class of] goods." *Brooks Shoe Mfg. v. Suave Shoe Corp.*, 716 F.2d 854, 857-58, (11th Cir. 1983) (quoting *Seabrook Foods, Inc. v. Bar-Well Foods Ltd.*, 568 F.2d 1342, 1344 (C.C.P.A. 1977)). Clearly, the design features of the applied-for mark are *not* common or basic designs for a bird feeder, but rather are very unique for a bird feeder.

### Acquired Distinctiveness

In the event the Examiner does not find Applicant's arguments of inherent distinctiveness convincing, **Applicant alternatively seeks to amend the application to seek registration on the Principal Register based on a claim of acquired distinctiveness under Section 2(f)**, based on: (1) actual evidence that the mark has acquired distinctiveness of the goods and/or services (which evidence is attached under the 2(f) claim of this Response form; and (2) the fact that this the mark has become distinctive of the goods and/or services through Applicant's substantially exclusive and continuous use in commerce for at least five years immediately before the date of this statement (Applicant's mark has been in continuous use in commerce since at least as early as October 30, 2010).

**2(f) Claims:**

Based on Five or More Years' Use:

The mark has become distinctive of the goods/services through the Applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least five years immediately before the date of this statement.

Based on Evidence:

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence, which includes: examples of Applicant's advertising, marketing and promotional materials for the applied-for mark; and consumer recognition relating to the applied-for mark.

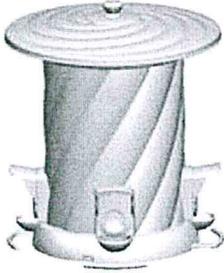
If trade dress is not inherently distinctive, the owner of the trade dress may seek to prove secondary meaning under Section 43(a) of the Lanham Act. Pursuant to the Supreme Court's decision in *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, secondary meaning exists when "in the minds of the public, the primary significance of a product feature . . . is to identify the source of the product rather than the product itself." 450 U.S. 844, 851 (1982) (citing *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 118 (1938)).

**II. REQUIREMENT FOR INFORMATION**

- (1) A written statement as to whether the applied-for mark, or any feature(s) thereof, is or has been the subject of a design or utility patent or patent application, including expired patents and abandoned patent applications. Applicant must also provide copies of the patent and/or patent application documentation.

Certain features of the applied-for mark – particularly the swirl pattern of the vessel and the vessel profile shape - are the subject of three design patents owned by Applicant (two of which have been granted, one of which is currently pending). A summary of each design patent is provided below. Full copies of each design patent registration or application, as applicable, are attached to under the "Evidence" folder of this Response.

The swirl ridge pattern and the vessel's profile shape are purely decorative features and have no function other than ornamentation designed to enhance the overall appearance of Applicant's bird feeder and storage container products which contain vessels featuring the applied-for mark.

PRODUCT NAME	PROTECTABLE FEATURE	PROTECTION MECHANISM TITLE	APPL'N OR REG. NO. & STATUS
UNITY	Overall design. 	Design Patent  BIRD FEEDER	GRANTED  29/387,518 Filed 3/14/11 Granted 4/02/2013  Design Patent No. D679,453 Issued: 4/02/2013
2012 NECTAR FEEDERS NAMELY GLORY, (COPPER METAL) RUBY, GARNET, AND DIAMOND	Bottle design with four embodiments (Straight with smooth side, straight with swirl side). 	Design application  NECTAR BOTTLE FOR A BIRD FEEDER	GRANTED  29/416,890 Filed 3/28/12 Granted 3/19/2013  Design Patent No. D678,628 Issued: 3/19/2013
2012 NECTAR FEEDERS NAMELY GLORY, (COPPER METAL) RUBY, GARNET, AND DIAMOND	Bottle design with swirl side. 	Reissue Design Application  Reissue Application of Design Patent No. 678,628 Issued 3/19/2013  NECTAR BOTTLE FOR A BIRD FEEDER - REISSUE	PENDING  29/486,002 Filed 3/25/2014  Reissue Design Patent No. RE45715  Issue date: 10/6/2015

*(2) Advertising, promotional, and/or explanatory materials concerning the applied-for configuration mark, particularly materials specifically related to the design feature(s) embodied in the applied-for mark.*

To date, Applicant's total sales revenue for products featuring the applied-for mark totals approximately \$1.79 million USD. Applicant has spent a total of at least \$2,000 USD to date on advertising products featuring the applied-for mark. Applicant's principal forms of advertising include print brochures, information available on its website, [www.morebirds.com](http://www.morebirds.com), and social media (i.e., its Facebook page available at: <https://www.facebook.com/Classic-Brands-More-Birds-203758209746952/>, and its Pinterest page available at: <https://www.pinterest.com/Classicbrands/>). Please see the attached files under the Evidence folder for examples of Applicant's advertising, promotional and explanatory materials concerning the design features embodied in the applied-for mark, including: (i) print brochures and order catalogues from 2012, 2013, 2014, 2015 and 2016; (ii) screenshots from Applicant's website; screenshots from Applicant's social media pages; (iv) photographs of Applicant's products featuring the applied-for mark; (v) examples of listings in major national retail stores for Applicant's products featuring the applied-for mark.

Applicant's advertising and promotional efforts for the applied-for mark have focused on its fun, playful design that catches the light when it is hung outside. As a result, the applied-for mark is a distinctive, unique and clever design, and it creates a very distinguishable commercial impression that is significantly different than other bird feeder designs.

*(3) A written explanation and any evidence as to whether there are alternative designs available for the feature(s) embodied in the applied-for mark, and whether such alternative designs are equally efficient and/or competitive. Applicant must also provide a written explanation and any documentation concerning similar designs used by competitors.*

**Alternative Designs:** There are numerous alternative designs available for bird feeders and bird seed storage container vessels other than a swirl ridge pattern and the particular straight profile shape claimed as features of the applied-for mark. Options range from smooth-surfaced vessels to various textures, and vessel profile shapes included curved shapes, rounded shapes, and "ballooning" shapes. Please see the attached files under the "Evidence" section of this Response, which include photographs of various alternative vessel designs sold by variety of large, national retailers. In fact, Amazon.com, the world's largest online retailer, carries hundreds of brands and varieties of bird feeders and seed storage containers. *Except for the instances of trademark infringement noted below*, Applicant's products are the only bird feeder products featuring a swirl ridge design.

The swirl ridge design and profile shape are a purely ornamental choice without a functional purpose. Applicant chose to manufacture the swirl design and profile shape in order to make its feeders more attractive, competitive and desirable to consumers. The look and feel of the vessel enhances the overall aesthetics of Applicant's bird feeders.

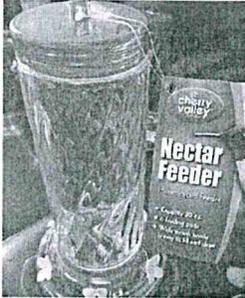
Although bird feeders serve the functional purpose of feeding birds, but they serve an equally important – if not *more* important – purpose of ornamentation (both in terms of the feeder itself – as hung – and the variety of birds the feeder attracts). This ornamental purpose is the main factor driving consumer recognition and sales of a particular bird feeder. Applicant’s swirl ridge vessel design is designed to enhance the overall appearance of Applicant’s bird feeder and to draw consumer attention.

**Similar Designs Used by Competitors:** Applicant’s products featuring the swirl ridge pattern and straight profile shape are among the most popular and highest-grossing products offered for sale by Applicant. As a result of such strong consumer popularity, Applicant has become aware of several intentional “knock-off” products that feature identical or highly similar designs to Applicant’s propriety design. Applicant has, and continues to, actively fight to enforce its priority rights in the applied-for mark against competitors and infringers who seek to copy its original design. Applicant’s efforts to fight such infringement include filing the instant trade dress application for the applied-for mark.

Courts view intentional copying of trade dress as *probative* of secondary meaning. See *Perfect Fit Indus. v. Acme Quilting Co.*, 618 F.2d 950, 954 (2d Cir. 1980). In addition, intentional copying creates a *presumption* that the copier intended to create a confusing similarity of appearance, and will be presumed to have succeeded. *Id.*; *RJR Foods, Inc. v. White Rock Corp.*, 603 F. 2d 1058, 1060 (2d. Circ. 1979); *Harold F. Ritchie, Inc. v. Chesebrough-Pond’s, Inc.*, 281 F.2d 755, 758-59 (2d Cir. 1960); *American Chiclet Co. v. Topps Chewing Gum, Inc.*, 208 F.2d 560, 562-63 (2d Cir. 1953).

Examples of infringing designs are summarized in the comparison chart below, and photographic evidence of such infringement is attached to this Argument, including (i) photographs of “knock-off” bird feeders sold by Woodlink (located in Mount Ayr, IA) featuring a swirl pattern and straight profile vessel design copied from Applicant’s design (the “Audubon” design feeder); and (ii) photographs of “knock-off” bird feeders sold by Cherry Valley (located in Antioch, IL) featuring a swirl pattern and straight profile design copied from Applicant’s design (the “Nectar Feeder” design feeder).

Infringing Product Description & Manufacturer	Photograph of Infringing Product	Applicant’s Design	Photograph of Applicant’s Product(s)
<p>Swirl Nectar Feeder AUDUBON NA 35227 Swirl Glass Hummingbird Feeder, 30 ounce</p> <p><u>Manufacturer:</u> Woodlink, Ltd. PO Box 508 1010 Cleveland St.</p>		<p>Applicant’s 2012 line of nectar feeders with swirl bottle, including the “Diamond” design</p>	

<p>Mounty Ayr, IA</p> <p>Cherry Valley Swirl Nectar Feeder</p> <p><u>Manufacturer:</u> Akerue Industries, LLC d/b/a Cherry Valley 90 McMillen Road, Antioch, IL</p>		<p>Applicant's 2012 line of nectar feeders with swirl bottle, including the "Diamond" design</p>	
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*(4) A written statement as to whether the product design or packaging design at issue results from a comparatively simple or inexpensive method of manufacture in relation to alternative designs for the product/container. Applicant must also provide information regarding the method and/or cost of manufacture relating to applicant's goods.*

Applicant's vessels featuring the applied-for mark are significantly more expensive to manufacture than other vessels, such as smooth vessels. One of the main reasons for the increased cost is that Applicant's swirl ridged vessels are more complex than smooth vessels, and therefore the molds and tooling necessary to manufacture such vessels are more expensive. There is also an additional inspection/approval process during manufacturing required for the swirl-ridged design, given the more intricate nature of this design versus a smooth design. This adds additional cost to the manufacturing process for Applicant's design in order to achieve the features claimed in the applied-for mark.

The total manufacturing cost for a vessel featuring the swirl ridge pattern and straight profile design is \$0.50 per unit – as compared to \$0.29 per unit for certain of Applicant's smooth surface vessels.

The specific tooling and molds required to create the swirl ridge pattern with straight profile design (comprising the applied-for mark) on Applicant's vessels costs an additional \$5,000 (as compared to the cost of the tooling and molds needed to manufacture vessels featuring smooth surfaces). After placing an order, the manufacturing process takes approximately 60 to 90 days for each batch of vessels ordered by Applicant featuring the applied-for mark.

Applicant's manufacturer of vessels featuring the swirl ridge pattern (comprising the applied-for mark) is Jiang Su Xuzhou Kai Rui Glassware Co., Ltd., located in China (Mapo Industrial Area, Tong Shan, Xuzhou City, Jiang Su Province).

(5) Any other evidence that applicant considers relevant to the registrability of the applied-for configuration mark.

The swirl ridge pattern and straight profile design claimed as features of the applied-for mark were specifically chosen to differentiate Applicant's products from other competitor products, and for purely ornamental and decorative reasons. By choosing the swirl ridge pattern with straight profile, designed specifically to draw the eye up the vessel as it hangs and spins in the air catching light on the swirls, Applicant hoped to increase the aesthetic appearance of its vessels and thus, make them more appealing and recognizable to consumers.

**Statements from Applicant's Design Team:**

Applicant's marketing and design team has provided the following explanatory statements regarding the design and distinctiveness of the applied-for mark:

Regarding why Applicant chose the particular design featured in the applied-for mark:

*"The swirl is a very distinct pattern. The eye travels up the swirls towards the cap. It is more eye-catching than a plain smooth bottle would be."*

- John Bruno, VP Sales and Marketing
- Bob Donegan, CEO
- Lindsey Nifong, Marketing Manager

Applicant's design engineer (who developed the mold for the swirl-ridge pattern) offers the following explanatory statement with respect to the applied-for mark:

Regarding the design process:

*"I explored several options and presented a variety of concepts as potential designs. Client [Classic Brands (the Applicant)] agreed that the swirl pattern was the most eye catching and the overall preferred design."*

Regarding the design stages necessary to finalize the design:

*"First, research and idea generation. Second, conceptual development. Third, design refinement. Fourth, design detailing."*

Regarding alternative designs that were rejected due to a preference for the applied-for mark:

*"Many alternative designs were developed and ultimately discarded in favor of the final swirl ridge design. We also explored a smooth bottle and one with straight vertical lines. We also explored various sizes of swirls. These alternatives were not as visually appealing as the final swirl design we chose."*

- Bryan Krueger, Product Engineer

III. IDENTIFICATION OF GOODS

Applicant adopts the following revised identification of goods:

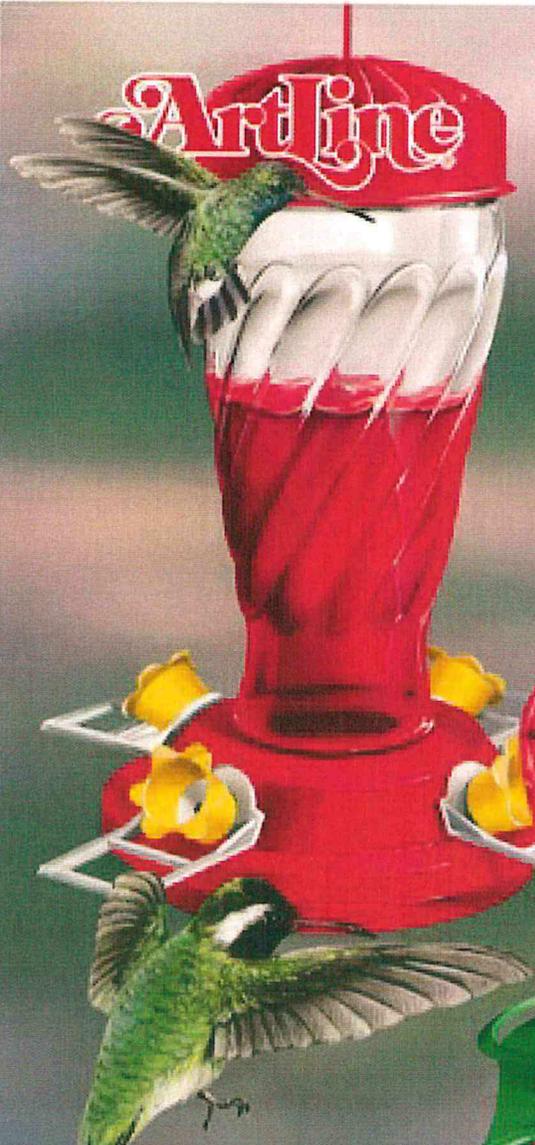
International Class 21: Bird feeders; *plastic storage containers for storing and dispensing bird seed for domestic use.*

IV. DESCRIPTION OF MARK

Applicant adopts the following revised description of the mark:

**Color is not claimed as a feature of the mark. The mark consists of a three-dimensional *packaging* of a bird feeder vessel. The opening of the vessel and base of the vessel are not features of the mark and are depicted in broken lines. Color is not claimed as a feature of the mark.**

## **EXHIBIT C**



No. 5549  
 14 Oz. GLASS SWIRL  
 4 feeding stations &  
 4 removable perches

Size: 7-1/4" x 7-1/4" x 8-1/2"  
 Pack 12 Wt: 15.00 Cube: 1.68



No. 5554  
 24 Oz. STRAWBERRY  
 4 feeding stations &  
 4 integral perches

Size: 6" x 6" x 7-1/2"  
 Pack 12 Wt: 7.00 Cube: 2.24



## **EXHIBIT D**



Audubon  
NA35227

KAY-000031



Cherry Valley  
30 oz.

**KAY-000032**



Audubon  
NA35225

**KAY-000033**



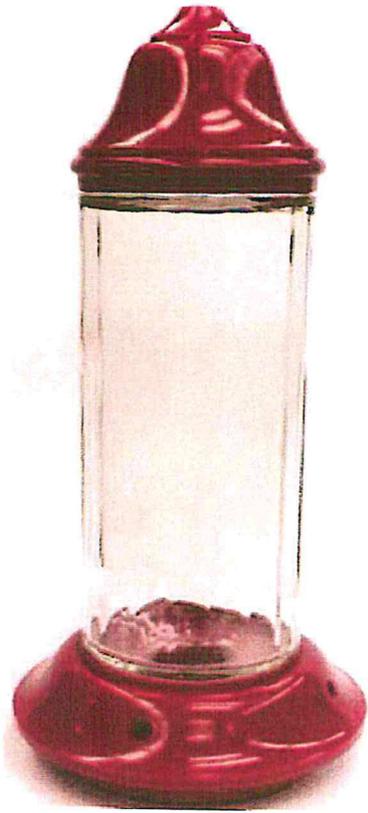
**KAY-000034**

# **EXHIBIT E**



Perky Pet  
209B

KAY-000035



2002 Outline  
Model 5522  
Crystal Lantern

KAY-000036

## **EXHIBIT F**



# Birder's Bible<sup>®</sup>

The Ultimate  
Bird Watcher's  
Reference  
Guide

2005 Edition



## Seed Feeders: **First Nature**



**SEED-SELECTOR FEEDER**



**SUNFLOWER SEED FEEDER**

### **SEED-SELECTOR BIRD FEEDERS**

First Nature's Seed-Selector feeder has several features which are unique, not the least of which is a colorful seed hopper (available in blue, green or clear). The durable, molded hopper holds a full five pounds of seed.

The Seed Selector Ring, located inside the feeder base, can be rotated into either of two positions. In one position, a large opening allows the feeder to dispense wild birdseed. In the other position, smaller openings allow finches and wrens to extract thistle seed. The rain guard helps to keep seed

dry and allows birds to feed even in inclement weather.

**MSRP:..... \$16.95**

### **SUNFLOWER SEED BIRD FEEDER**

Count on First Nature to come up with a feeder that feeds either black oil or gray stripe sunflower seed...or a mix of both.

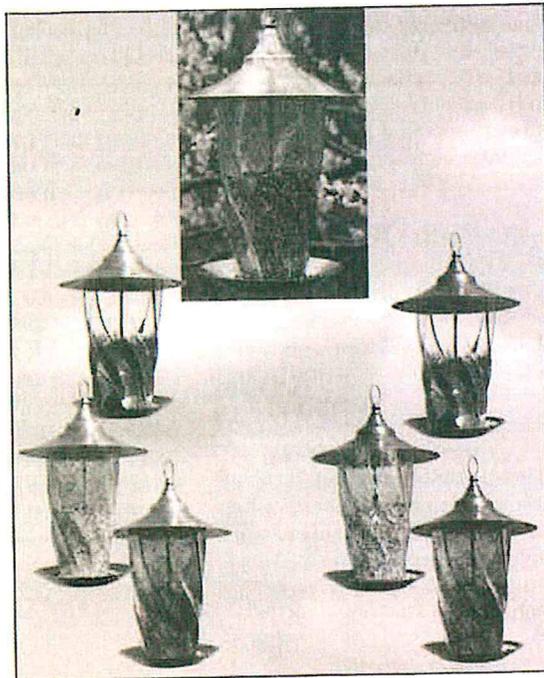
The colorful yellow hopper, reminiscent of giant sunflowers, is the signature of the First Nature brand: color. Made of durable material, the hopper and base can be easily washed with warm soapy water.

The colorful seed hopper has a large capacity. The base, which fills from the bottom, has two different sizes of feeding slots – some placed horizontally and some vertically. The different sizes accommodate the two sizes of sunflower seed and accommodate various species of birds at their natural feeding heights.

**MSRP:..... \$16.95**

**BIRD FEEDERS**

## Seed Feeders: **Garden Dance**



### **HAND BLOWN GLASS SONGBIRD FEEDERS**

Elegant and functional, our hand blown glass feeders are crafted with rust proof copper and brass. Handspun by skilled metal smiths, the metal base and pagoda top are available in silver or copper finish. The stunning hand blown glass is finished with an iridescent texture that sparkles like a jewel in the garden. All glass is hand blown; variations in color are desirable and to be expected. The glass is available in 3 colors: Crystal clear, Sapphire blue and Iridescent amethyst.

**MSRP:..... \$52.00**

# Nectar Feeders: Havahart

CERAMIC ORANGE  
MODEL 2310



CERAMIC APPLE  
MODEL 2320



BLOWN GLASS  
MODEL 2330



BIRD FEEDERS

## CERAMIC ORANGE HUMMINGBIRD FEEDER Model 2310

Hand painted, decorative and colorful design attracts hummingbirds. For use with nectar solutions for feeding. Glazed interior prevents nectar from molding in ceramic pores. No assembly required. Holds 13 oz.  
MSRP: ..... \$5.99

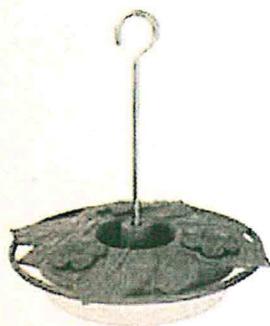
## CERAMIC APPLE HUMMINGBIRD FEEDER Model 2320

Hand painted, decorative and colorful design attracts hummingbirds. For use with nectar solutions for feeding. Glazed interior prevents nectar from molding in ceramic pores. No assembly required. Holds 11 oz.  
MSRP: ..... \$5.99

## BLOWN GLASS HUMMINGBIRD FEEDER Model 2330

Havahart blown glass hummingbird feeders have a decorative design to attract hummingbirds. The metal hanger allows the feeder to be hung anywhere. The red trumpet shaped flower feeding tube attracts hummingbirds to the feeder. For use with nectar solutions for feeding. Holds up to 18 oz. of nectar.  
MSRP: ..... \$6.40

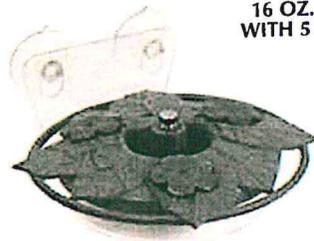
# Nectar Feeders: Heritage Farms



8 OZ. SAUCER  
WITH 3 FLOWERS



16 OZ. SAUCER  
WITH 5 FLOWERS



8 OZ. WINDOW FEEDER

## 8 OZ. SAUCER HUMMINGBIRD FEEDER WITH 3 FLOWERS

MSRP: ..... 12.99

## 16 OZ. SAUCER HUMMINGBIRD FEEDER WITH 5 FLOWERS

MSRP: ..... \$18.99

## 8 OZ. HUMMER WINDOW FEEDER

MSRP: ..... \$14.99

# Nectar Feeders: Heritage Farms



WIRE AND GLASS FEEDER

## WIRE & GLASS HUMMINGBIRD FEEDER

25 oz. capacity.

MSRP:..... \$19.99

## TEARDROP HUMMINGBIRD FEEDER

Cobalt, 25 oz. capacity.

MSRP:..... \$19.99

## APPLE HUMMINGBIRD FEEDER

25 oz. capacity

MSRP:..... \$14.99

## PEACH HUMMINGBIRD FEEDER

8 oz. capacity.

MSRP:..... \$10.99

## PEAR HUMMINGBIRD FEEDER

8 oz. capacity.

MSRP:..... \$10.99

## COSMIC SWIRL HUMMINGBIRD FEEDER

14 oz. capacity. Available in Blue, Red or Amber.

MSRP:..... \$12.99

## ROUND SWIRL HUMMINGBIRD FEEDER

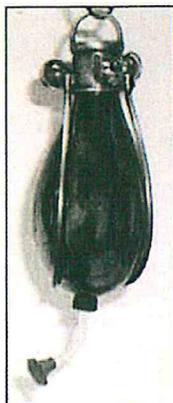
Cobalt, 32 oz. capacity.

MSRP:..... \$16.99

## MELON SWIRL HUMMINGBIRD FEEDER

Red, 25 oz. capacity.

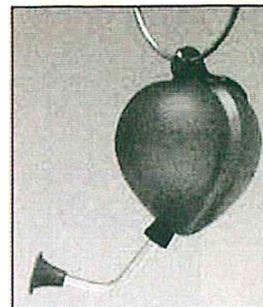
MSRP:..... \$14.99



TEARDROP FEEDER



APPLE FEEDER



PEACH FEEDER



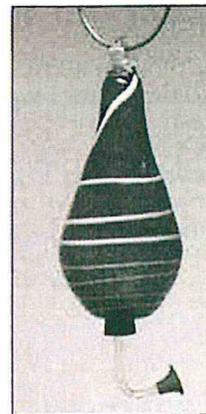
PEAR FEEDER



COSMIC SWIRL FEEDER



ROUND SWIRL FEEDER



MELON SWIRL FEEDER

BIRD FEEDERS

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ooks.com

## Nectar Feeders: Anthony Stoneware



### HUMMING BIRD FEEDER

The Humming Bird Feeder attracts the most delightful garden visitors. This elegant form was created to compliment the stationary flight of the tiny, jeweled hummer and the spectacular, aerial, acrobatics of these avian

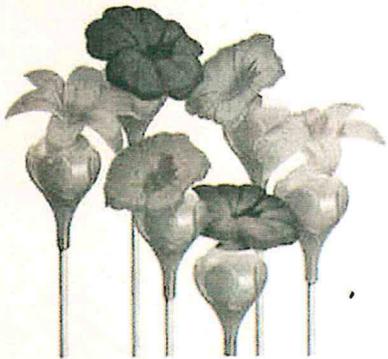
visitors. Nectar recipe, care instructions and red-tipped feeding tube with ball bearing are included.

**Measures:** 9" in height.

**Colors:** White, Royal Blue, Teal Green or French Blue.

**MSRP:** ..... \$25

## Nectar Feeders: Artline



FLOWER BOUQUET FEEDERS



CAROUSEL FEEDER

### FLOWER BOUQUET FEEDERS

Set of three 2 oz. flowers. 5" long with 20" steel mounting rod included.

**Model 5539:** ..... \$24.99

### CAROUSEL FEEDER

Five feeding stations with integral perches. 8 oz. 7 1/2" x 1 3/4" high.

**Model 5540:** ..... \$9.95



HANGING FLOWER DESIGN FEEDER

### HANGING FLOWER DESIGN FEEDER

One feeding station. 4 oz. 3" x 7" high.

**Model 5541:** ..... \$3.99



SWIRL DESIGN FEEDER

### SWIRL DESIGN FEEDER

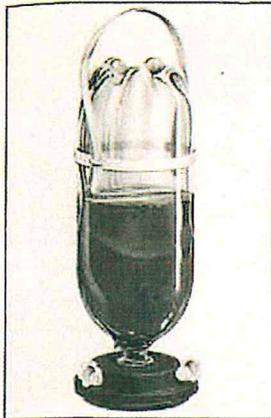
Four feeding stations with four removable perches. 16 oz. 6 1/8" x 9 1/4" high.

**Model 5542:** ..... \$9.95

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# Nectar Feeders: Artline

BIRD FEEDERS



2 LITER BOTTLE FEEDER



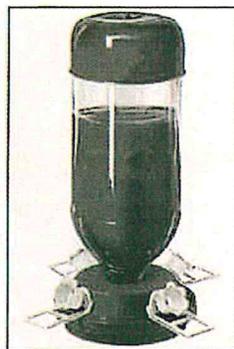
FEEDING BOTTLE



GLASS FEEDER 5548



GLASS SWIRL FEEDER



GLASS FEEDER 5550



STRAWBERRY FEEDER 5553



STRAWBERRY FEEDER 5554



STRAWBERRY FEEDER 5555

## 2 LITER POP BOTTLE FEEDER KIT

Purchaser uses a 2 liter soda/pop bottle. Three feeding stations. (Bottle not included.) 5" x 17/8" high.  
**Model 5544:..... \$4.95**

## FEEDING BOTTLE

Two feeding stations with two removable perches. 12 oz. 6 1/8" x 3 1/4" x 11" high.  
**Model 5545:..... \$6.99**

## GLASS FEEDER

Three feeding stations with three removable perches. 16 oz. 7 1/4" x 9 3/4" high.  
**Model 5548:..... \$12.99**

## GLASS SWIRL FEEDER

Four feeding stations with four removable perches. 14 oz. 7 1/4" x 8 1/2" high.  
**Model 5549:..... \$11.49**

## GLASS FEEDER

Four feeding stations with four removable perches. 32 oz. 7 1/4" x 10 1/4" high.  
**Model 5550:..... \$15.95**

## STRAWBERRY FEEDER

Six feeding stations with six removable perches. 50 oz. 7 1/4" x 9" high.  
**Model 5553:..... \$14.99**

## STRAWBERRY FEEDER

Four feeding stations with four integral perches. 24 oz. 6" x 7 1/2" high.  
**Model 5554:..... \$7.99**

## STRAWBERRY FEEDER

Three feeding stations with three removable perches. 24 oz. 6" x 7 1/2" high.  
**Model 5555:..... \$9.95**

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4" high.

\$9.95

books.com



US00D347714S

# United States Patent [19]

[11] Patent Number: **Des. 347,714**

Maple et al.

[45] Date of Patent: **\*\* Jun. 7, 1994**

[54] **HUMMINGBIRD FEEDER BOTTLE**

[75] Inventors: **Wade A. F. Maple, Wooster; Stanley Mathey, Orrville, both of Ohio**

[73] Assignee: **Rubbermaid Incorporated, Wooster, Ohio**

[\*\*] Term: **14 Years**

[21] Appl. No.: **925,477**

[22] Filed: **Aug. 5, 1992**

[52] U.S. Cl. .... **D30/128; D9/552; D9/521; D9/538**

[58] Field of Search ..... **119/52.1-52.3, 119/53, 54, 57.8-57.9, 77; D9/521, 538-539, 542, 552, 565; D30/121-122, 124-128, 132-133**

[56] **References Cited**

**U.S. PATENT DOCUMENTS**

- D. 178,917 10/1956 England ..... D9/539
- D. 205,772 9/1966 Blair ..... D30/128
- D. 216,361 12/1969 Pappas ..... D9/552
- D. 278,168 3/1985 Latham et al. .... D30/127
- 3,125,069 3/1964 Fowler ..... 119/77
- 3,244,150 4/1966 Blair ..... 119/52.3
- 4,691,665 9/1987 Hefner ..... 119/77
- 4,732,112 3/1988 Fenner et al. .... 119/52.2
- 4,901,673 2/1990 Overstreit ..... 119/77
- 5,140,945 8/1992 Barnhart et al. .... 119/52.2

**FOREIGN PATENT DOCUMENTS**

- 2815211 10/1979 Fed. Rep. of Germany .
- 3320833 12/1984 Fed. Rep. of Germany .
- 2241635 9/1991 United Kingdom ..... 119/77

**OTHER PUBLICATIONS**

Signatures Catalog page; Hummingbird Feeder.  
 Signals Catalog; p. 37; Hummingbird Feeder.  
 United States Purchasing Exchange Catalog; Spring '91; p. 56; Hummingbird Feeder.  
 P. 98, Hummingbird Feeders, Walter Drake & Sons, 10 Drake Building, Colorado Springs, Colo. 80940. Publication date 1990.  
 Catalog Page, Hummingbird Feeders, Briggs Associates Inc., P.O. Box 29310, Thornton, Colo. 80229. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application

date of this instant application; items GL-18, p-12, p-32, GL-32.

Catalog Page, Hummingbird Feeders, Briggs Associates Inc., P.O. Box 29310, Thornton, Colo. 80229. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application date of this instant application; items P-14, P-16, P-10, PC32.

P. 8, Hummingbird Feeders, Hyde Bird Feeder Co., 56 Felton Street, P.O. Box 168, Waltham, Mass. 02254. Publication date Fall-Winter 1989-1990.

Pp. 3, 4, 6 and 7, Hummingbird Feeders, Opus, P.O. Box 525, Bellingham, Mass. 02019. Publication date Jun. 1990.

Catalog Page, Hummingbird Feeders, Perky-Pet Products Co., 2201 South Wabash Street, Denver, Colo. 80231. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application date of this instant application; items 203-C, 203CP, 204CP.

Catalog Page, Hummingbird Feeders, Perky-Pet Products Co., 2201 South Wabash Street, Denver, Colo. 80231. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application date of this instant application; items 209, 210P, 211, 212, 219, 212P.

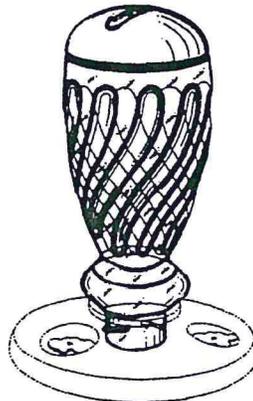
Catalog Page, Hummingbird Feeders, Perky-Pet Products Co., 2201 South Wabash Street, Denver, Colo. 80231. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application date of this instant application; items 217, 218, 213, 208.

Catalog Page, Hummingbird Feeders, Perky-Pet Products Co., 2201 South Wabash Street, Denver, Colo. 80231. It is believed that the product depicted herein has been on sale for more than one (1) year prior to the application date of this instant application; items 201C, 202, 202-C, 202-CF, 214, 215.

Catalog Page, Hummingbird Feeder, Rubbermaid Incorporated, 1147 Akron Road, Wooster, Ohio 44691. Publication date 1984; item: 3410.

Catalog Page, Hummingbird Feeder, Rubbermaid Incorporated, 1147 Akron Road, Wooster, Ohio 44691. Publication date 1984; items 3410 & 3420.

Catalog Page, Hummingbird Feeder, Rubbermaid In-



corporated, 1147 Akron Road, Wooster, Ohio 44691.  
Publication date 1984; items 3426, 3427, 3428, 3408.

*Primary Examiner*—Cathy Anne MacCormac  
*Attorney, Agent, or Firm*—Richard B. O'Planick; Lisa B. Riedesel

[57]

**CLAIM**

The ornamental design for a hummingbird feeder bottle, as shown and described.

**DESCRIPTION**

FIG. 1 is a top left front perspective view of a hum-

mingbird feeder bottle showing our new design, and showing, in phantom, a feeder base which could be attached to said hummingbird feeder bottle;

FIG. 2 is a front elevational view thereof; the rear elevational view being a mirror image;

FIG. 3 is a left side elevational view thereof; the opposite side being a mirror image;

FIG. 4 is a top plan view thereof; and,

FIG. 5 is a bottom plan view thereof.

The broken lines in FIG. 1 are for purposes of illustration only and form no part of the claimed design.

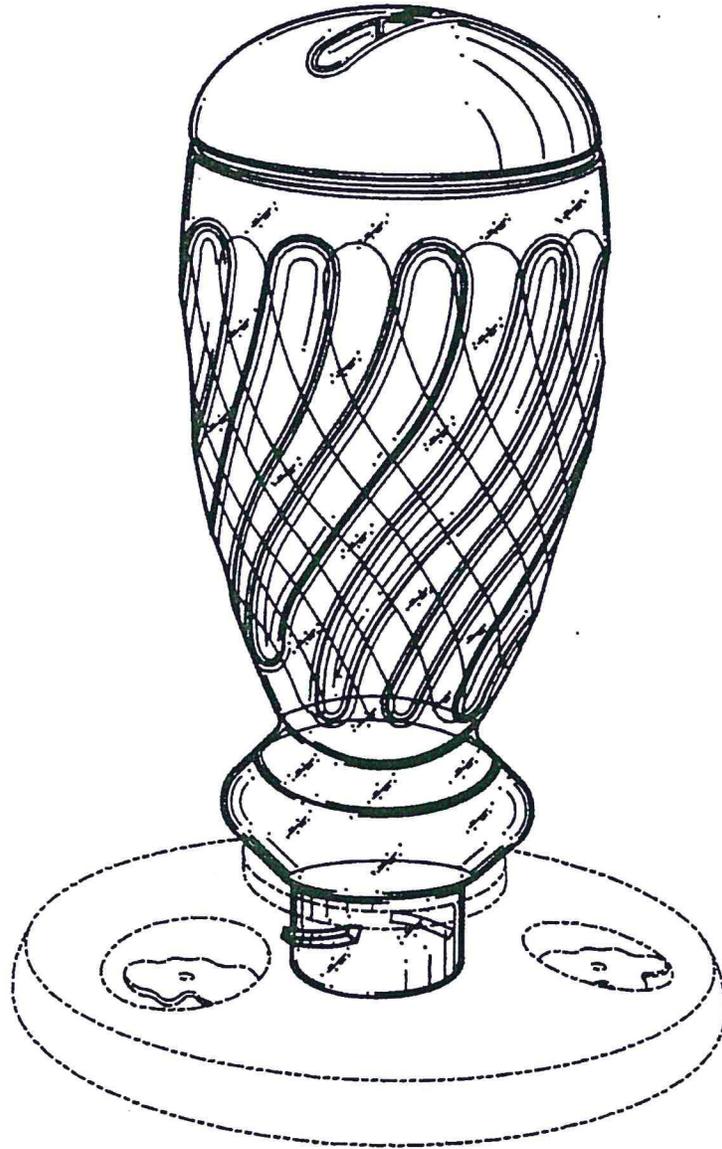


FIG. 1

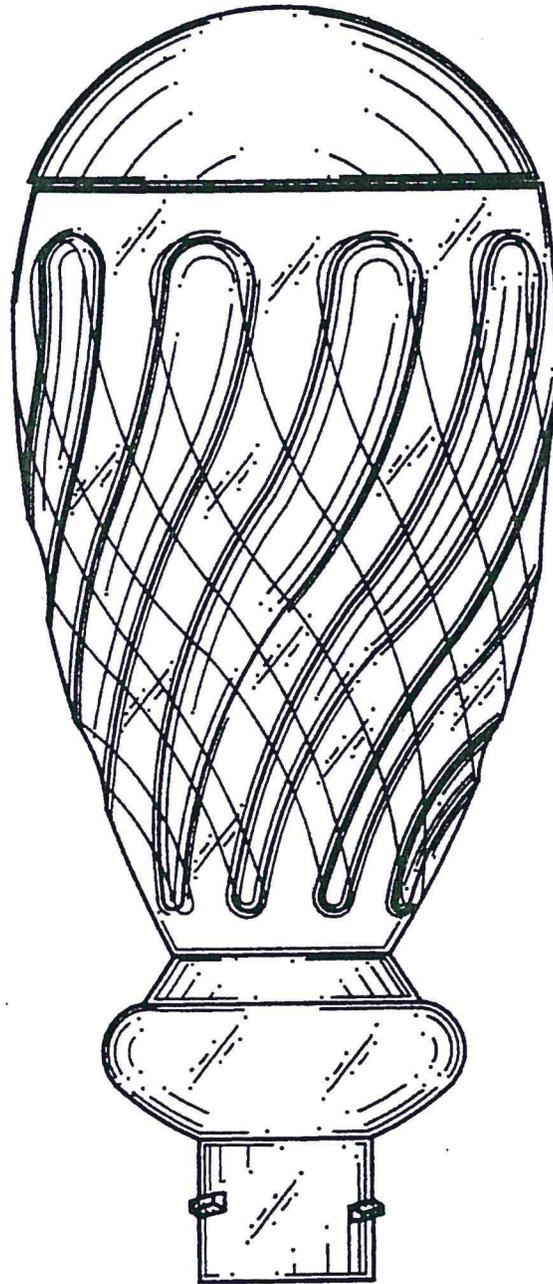


FIG. 2

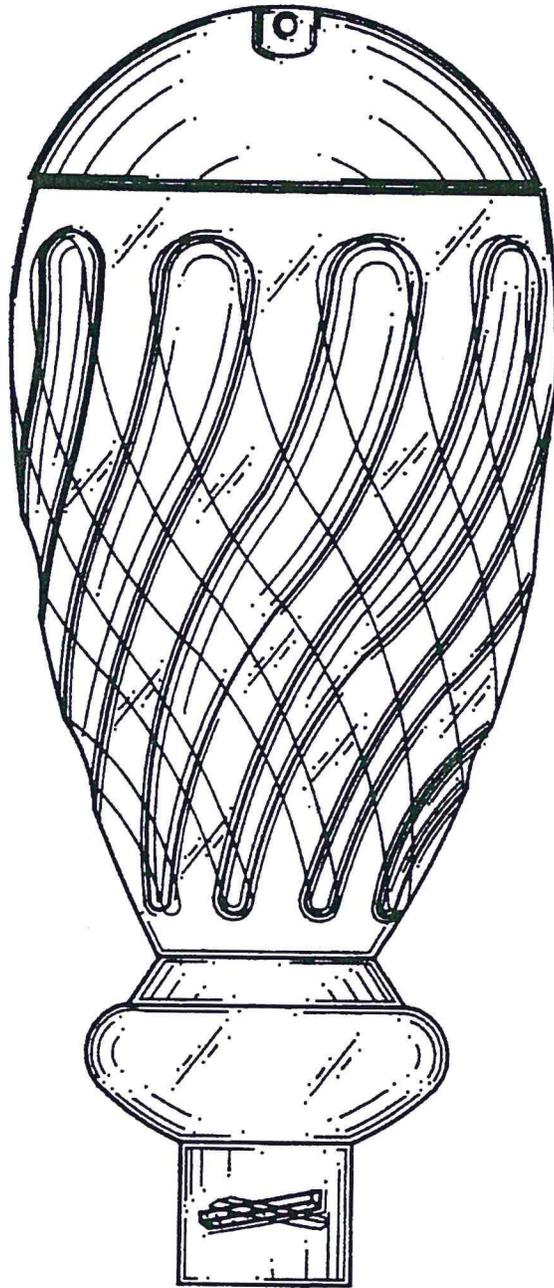


FIG. 3

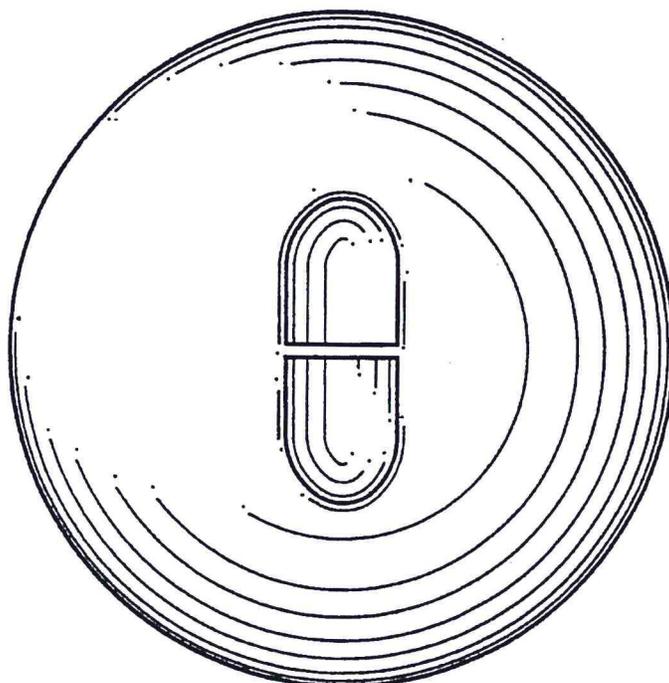


FIG. 4

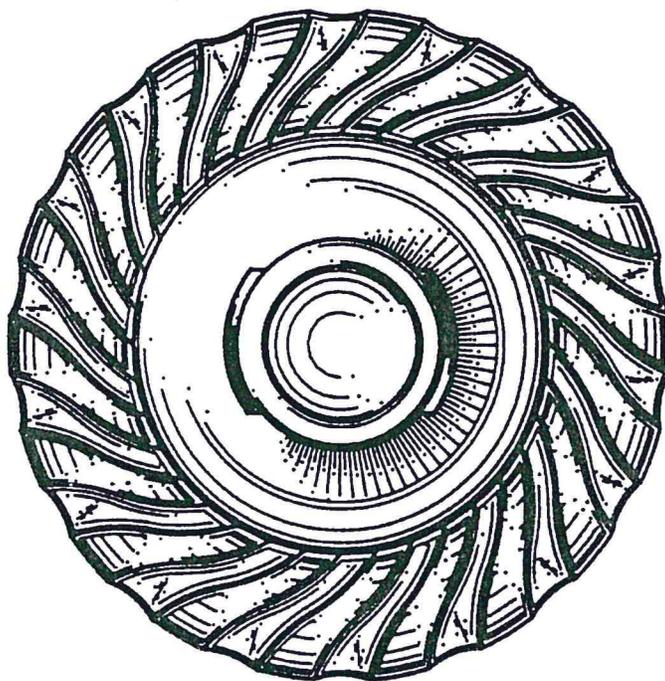


FIG. 5

# **EXHIBIT G**

178,917

**BOTTLE OR SIMILAR ARTICLE**

Alonzo H. England, St. Albans, and Clifford A. Riddle,  
New York, N. Y.

Application June 17, 1955, Serial No. 36,561

Term of patent 14 years

(Cl. D58—8)

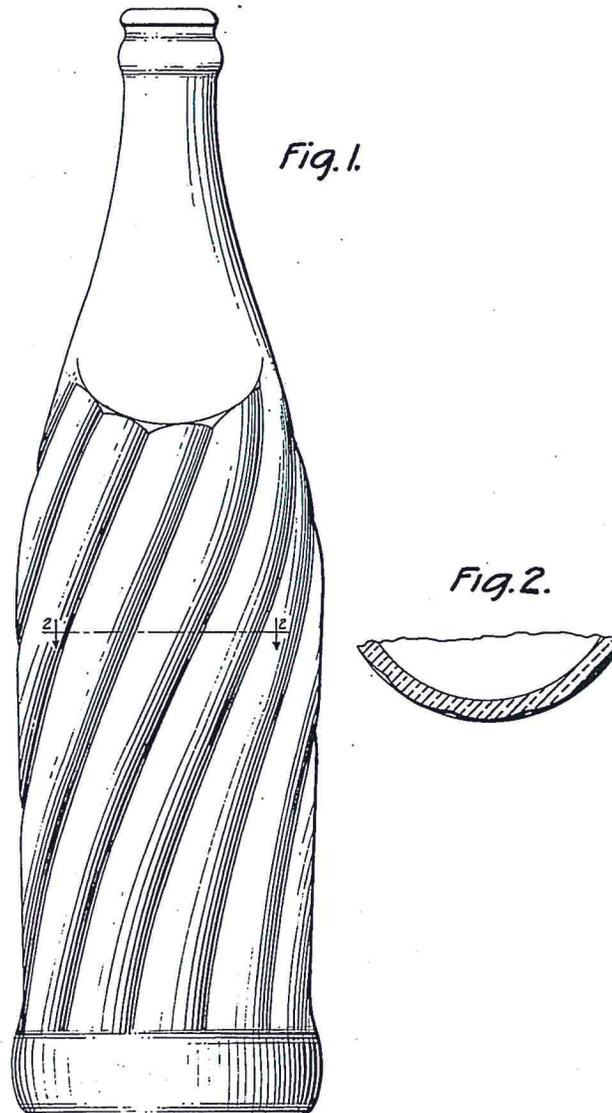


Fig. 1 is a front view of a bottle showing our new design the rear view being substantially the same as the front view; and

Fig. 2 is a sectional view taken along line 2—2 of Fig. 1.

We claim:

The ornamental design for a bottle or similar article, as shown.

**References Cited in the file of this patent**

**UNITED STATES PATENTS**

D. 69,462	Sears	Feb. 16, 1926
D. 111,411	D'Addario	Sept. 20, 1938

- [54] JAR OR SIMILAR ARTICLE
- [75] Inventor: **Floyd E. Pettengill**, Lancaster, Ohio
- [73] Assignee: **Anchor Hocking Corporation**, Lancaster, Ohio
- [\*\*] Term: **14 Years**
- [21] Appl. No.: **150,192**
- [22] Filed: **May 15, 1980**
- [51] Int. Cl. .... **D9-01**
- [52] U.S. Cl. .... **D9/385; D9/393; D9/410; D7/79**
- [58] Field of Search ..... **D9/384-386, D9/390, 392-399, 400-402, 406, 407, 409-412; 215/1 R, 1 C; D7/16, 17, 79, 28**
- [56] **References Cited**  
**U.S. PATENT DOCUMENTS**  
 D. 112,632 12/1938 Berkowitz ..... **D9/386**

D. 197,905	4/1964	Friedman	.....	D9/393	X
D. 249,998	10/1978	Gobleck, Jr.	.....	D7/79	
D. 258,566	3/1981	Potter	.....	D7/79	X
D. 258,570	3/1981	Pettengill	.....	D7/79	X

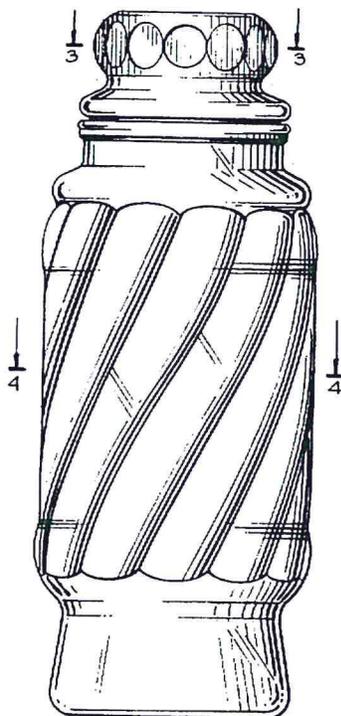
*Primary Examiner*—Robert C. Spangler  
*Attorney, Agent, or Firm*—Holland, Armstrong, Wilkie & Previto

[57] **CLAIM**

The ornamental design for a jar or similar article, substantially as shown and described.

**DESCRIPTION**

FIG. 1 is an elevational view of a jar or similar article showing my new design;  
 FIG. 2 is a top view thereof;  
 FIG. 3 is a sectional view taken along line 3—3 of FIG. 1;  
 FIG. 4 is a sectional view taken along line 4—4 of FIG. 1; and  
 FIG. 5 is a fragmentary exploded side elevational view thereof.



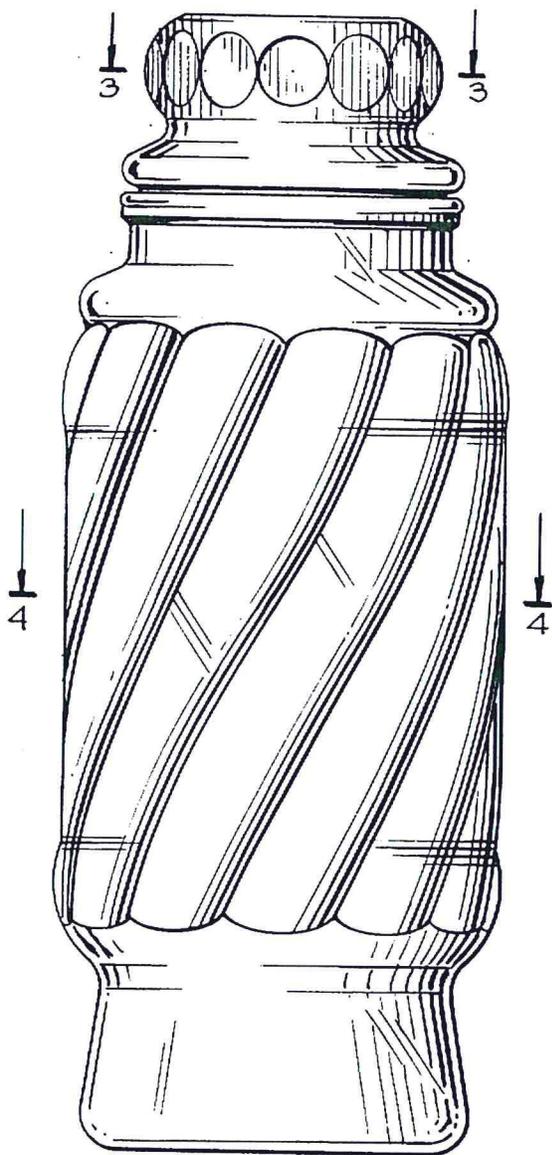


Fig. 1.

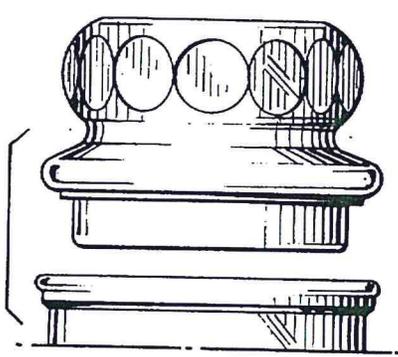


Fig. 5.

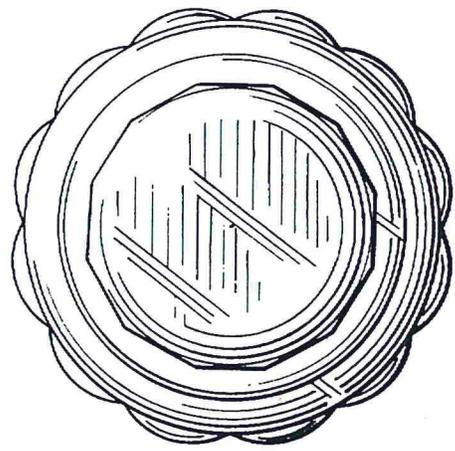


Fig. 2.

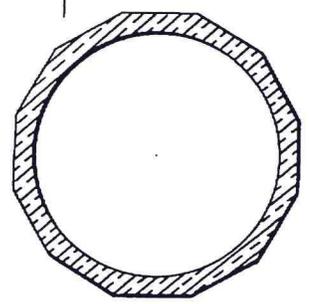
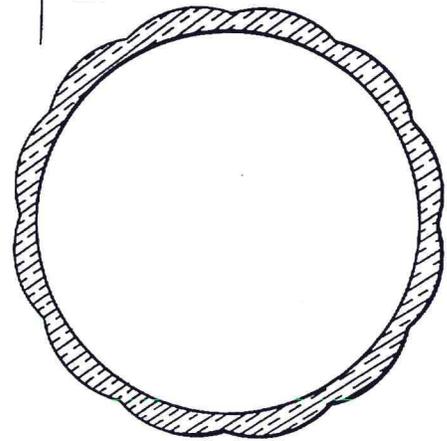


Fig. 3.

Fig. 4.





US00D376035S

# United States Patent [19]

[11] Patent Number: **Des. 376,035**

**Boucheron**

[45] Date of Patent: **\*\*Nov. 26, 1996**

[54] **CASE FOR A PERFUME SPRAY**

FOREIGN PATENT DOCUMENTS

[75] Inventor: **Alain Boucheron**, Paris, France

651582	4/1951	United Kingdom .....	401/78
DM/022389	3/1992	WIPO .....	9/1
DM/029316	4/1994	WIPO .....	28/3

[73] Assignee: **PCI Parfums et Cosmetiques International**, Paris, France

OTHER PUBLICATIONS

[\*\*] Term: **14 Years**

"Modern Packaging" Sep. 1975, p. 93: Containers on lower left.

[21] Appl. No.: **45,163**

Beauty Buy Book, p. 5: item C on left.

[22] Filed: **Oct. 11, 1995**

*Primary Examiner*—Ted Shooman

*Assistant Examiner*—C. Tuttle

*Attorney, Agent, or Firm*—Young & Thompson

[30] **Foreign Application Priority Data**

Apr. 11, 1995 [FR] France ..... 952115

[52] U.S. Cl. .... **D28/91.1; D9/552; D9/300**

[58] Field of Search ..... **D28/76, 77, 85-91.1; D9/300, 502-504, 513, 520, 529, 552, 554, 557, 565, 567; 206/581, 823, 385, 457; 132/317, 318; 401/88; 215/10, 12.1, 382, 386, 395; 220/915, 669, 610**

[57] **CLAIM**

The ornamental design for a case for a perfume spray, as shown and described.

[56] **References Cited**

**DESCRIPTION**

**U.S. PATENT DOCUMENTS**

D. 102,863	1/1937	Antonow .....	D9/513
D. 117,276	10/1939	Jung .....	D28/89
D. 135,569	4/1943	Buckingham .....	D9/544
D. 158,279	4/1950	Hefiler-Louiche .....	D9/529
D. 178,917	10/1956	England .....	D9/552 X
D. 328,027	7/1992	Boucheron .....	D9/552 X
1,632,765	6/1927	Noble .....	132/318 X

FIG. 1 is a top and front perspective view of a case for a perfume spray, showing my new design;

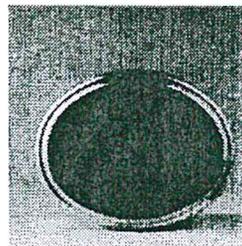
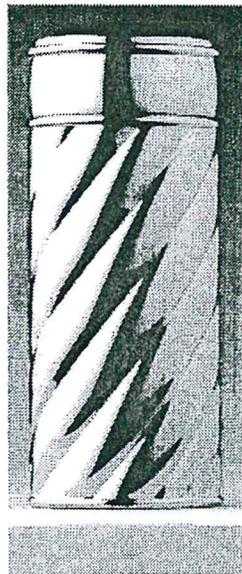
FIG. 2 is a front view thereof, the side opposite FIG. 2 being identical thereto;

FIG. 3 is a side view thereof rotated 90° from FIG. 2, the side opposite FIG. 3 being identical thereto;

FIG. 4 is a top view thereof; and,

FIG. 5 is a bottom and side perspective view thereof.

**1 Claim, 3 Drawing Sheets**



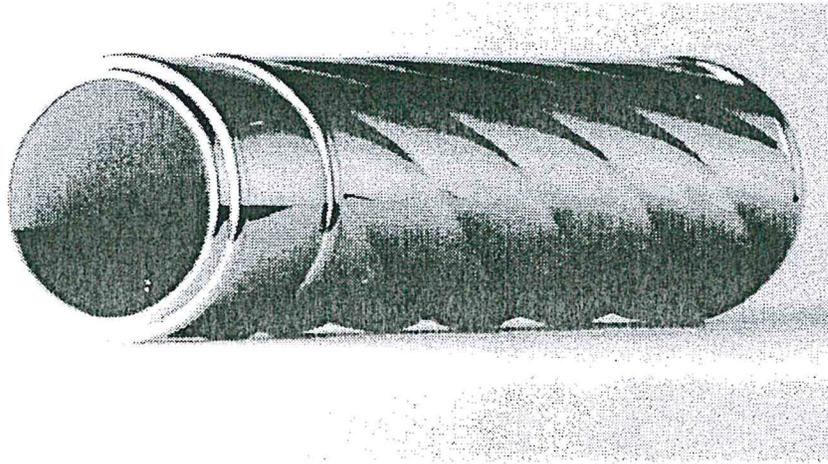


FIG. 1

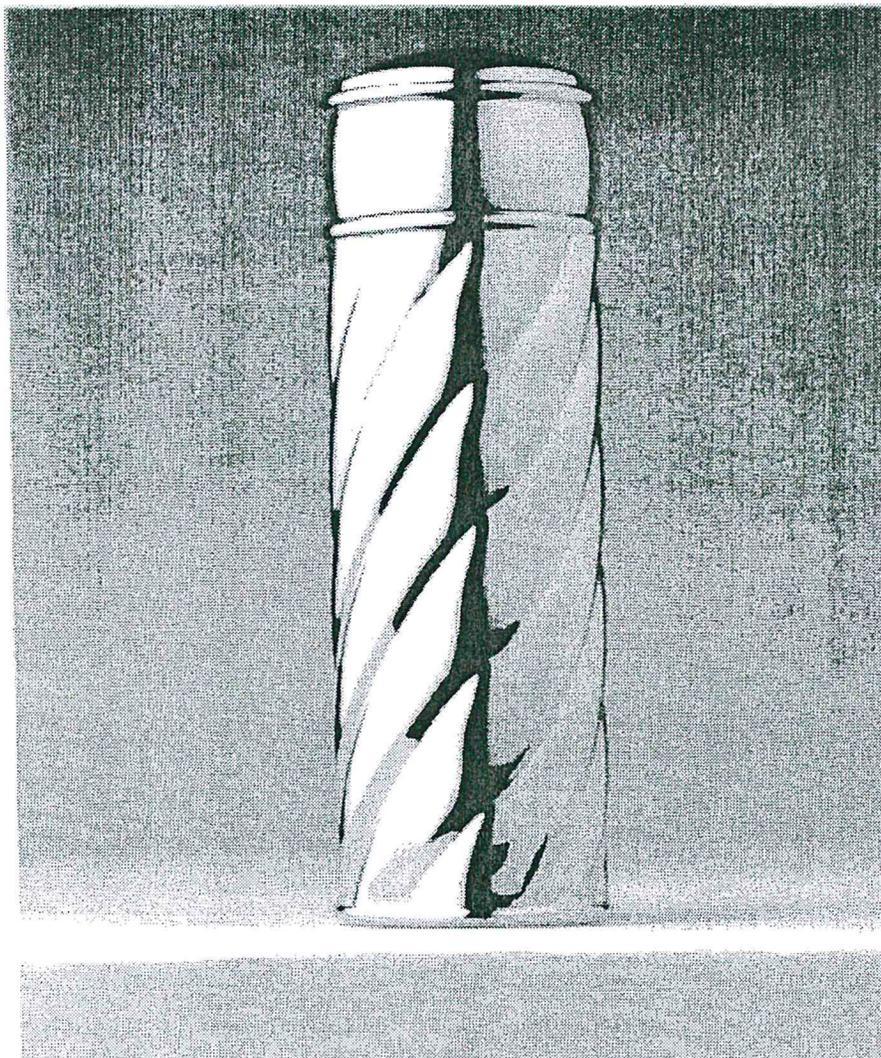


FIG. 2

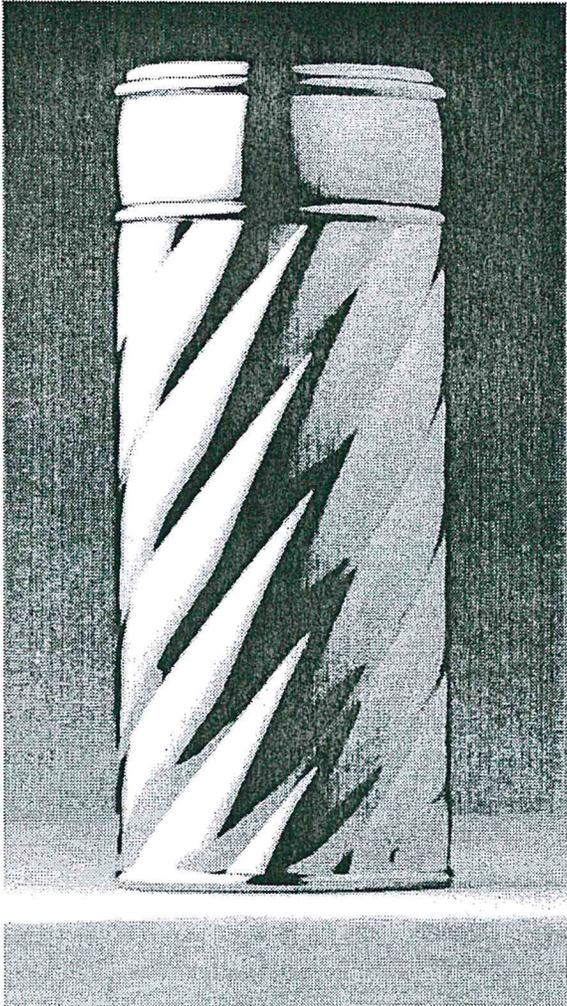


FIG. 3

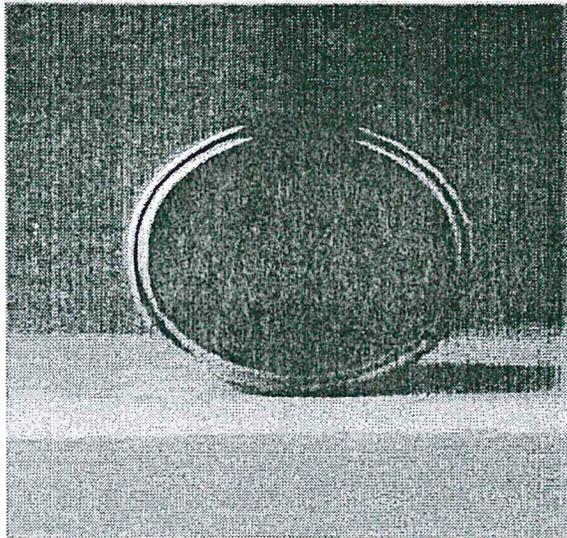


FIG. 4

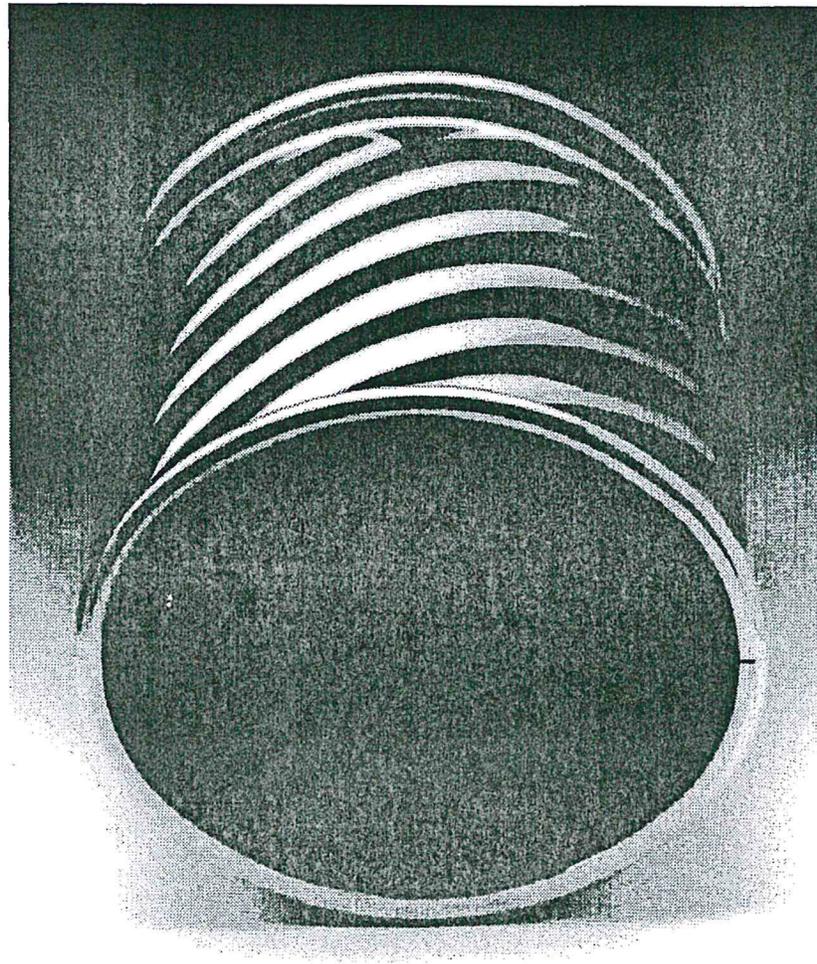


FIG. 5

# United States Patent Office

Des. 185,557  
Patented June 23, 1959

185,557

BOTTLE

George Nicholas Mas, Washington, D.C.,  
assignor to Frank du Mas

Application March 21, 1957, Serial No. 45,381

Term of patent 14 years

(Cl. D58—8)

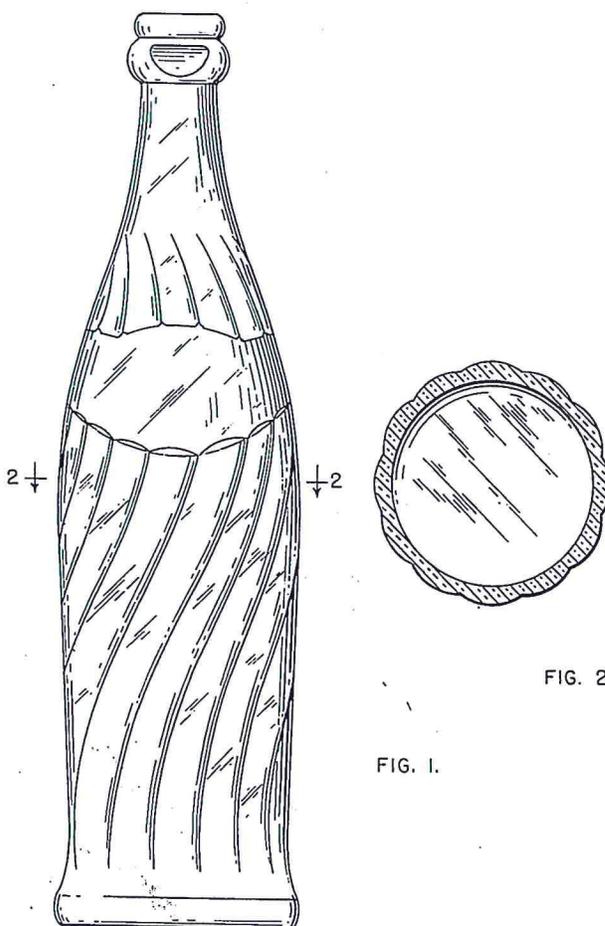


FIG. 1.

FIG. 2.

Fig. 1 is an elevational view showing my new bottle design.

Figure 2 is a cross sectional view of the bottle taken along the line 2—2 of Figure 1.

The side not shown is substantially the same as the side shown.

I claim:

The ornamental design for a bottle, as shown and described.

References Cited in the file of this patent

UNITED STATES PATENTS

D. 63,657      Root \_\_\_\_\_ Dec. 25, 1923  
D. 178,917      England \_\_\_\_\_ Oct. 9, 1956



US00D489940S

(12) **United States Design Patent** (10) **Patent No.:** **US D489,940 S**  
**Gluck** (45) **Date of Patent:** **\*\* May 18, 2004**

(54) **TUMBLER**

(75) **Inventor:** **Robert Gluck, Lynbrook, NY (US)**

(73) **Assignee:** **Gordon Industries, Ltd., Lynbrook, NY (US)**

(\*\*) **Term:** **14 Years**

(21) **Appl. No.:** **29/175,448**

(22) **Filed:** **Feb. 5, 2003**

(51) **LOC (7) Cl.** ..... **07-01**

(52) **U.S. Cl.** ..... **D7/523; D7/509; D7/532**

(58) **Field of Search** ..... **D7/503, 540, 536, D7/533, 509, 523, 510, 511, 532, 529; 215/387, 388, DIG. 7; 220/714, 705, 703, 710, 717, 670, 592.16, 592.17; 229/400; D99/25; D11/154**

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

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3,456,860 A	*	7/1969	Janninck	.....	229/400
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D365,248 S	*	12/1995	Falzarano	.....	D7/533
D369,277 S	*	4/1996	Lin	.....	D7/529
D372,168 S	*	7/1996	Seager	.....	D7/536
D376,731 S	*	12/1996	Lin	.....	D7/536
D383,942 S	*	9/1997	Rench et al.	.....	D7/529
D423,879 S	*	5/2000	Lin	.....	D7/529
D477,750 S	*	7/2003	Chuang	.....	D7/529
D480,270 S	*	10/2003	Hou	.....	D7/529

\* cited by examiner

*Primary Examiner*—M. N. Pandozzi

(74) *Attorney, Agent, or Firm*—Bernard Malina; Malina & Wolson

(57) **CLAIM**

The ornamental design for the tumbler, as shown and described.

**DESCRIPTION**

FIG. 1 is a top perspective view of a tumbler showing a new design;

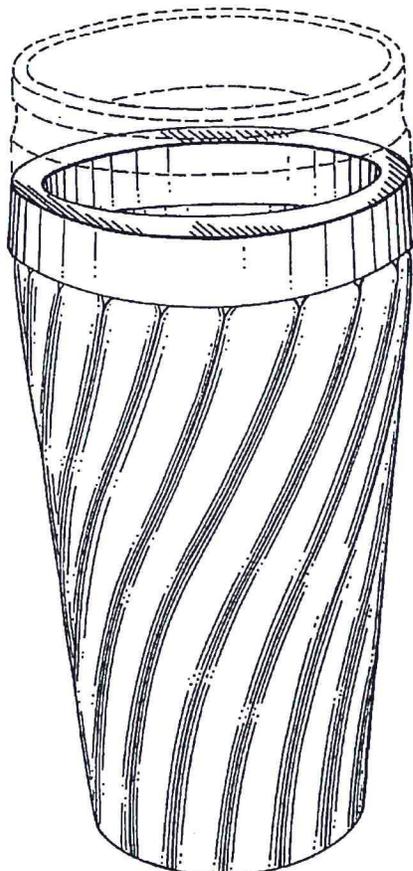
FIG. 2 is a top plan view thereof;

FIG. 3 is a front elevational view thereof; and,

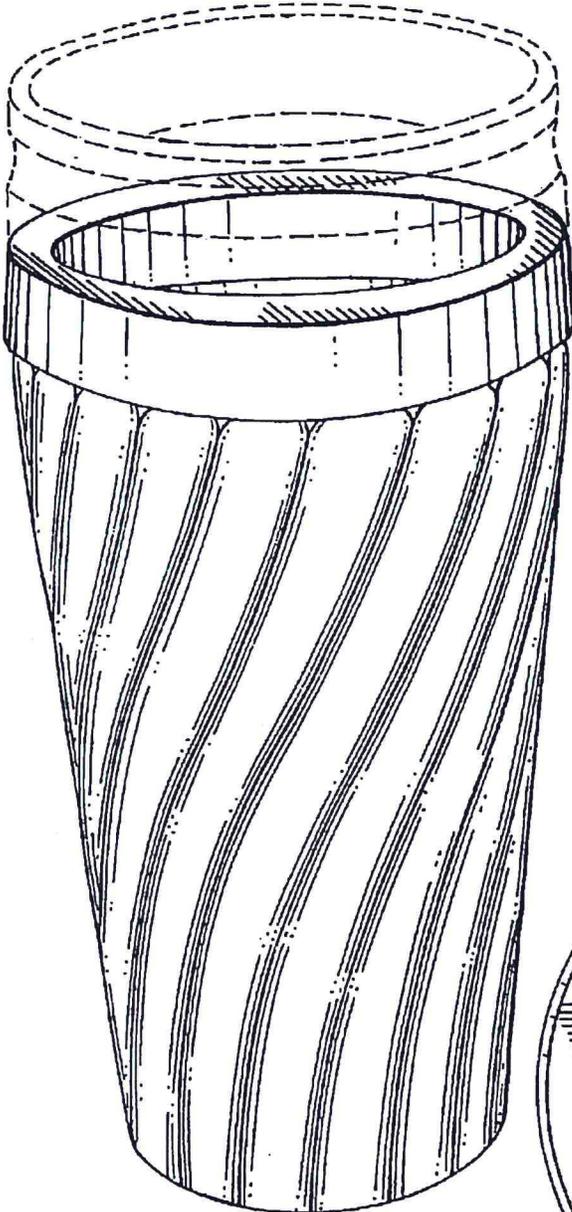
FIG. 4 is a bottom view thereof.

The broken lines in FIG. 1 are for illustrative purposes only and form no part of the claimed design.

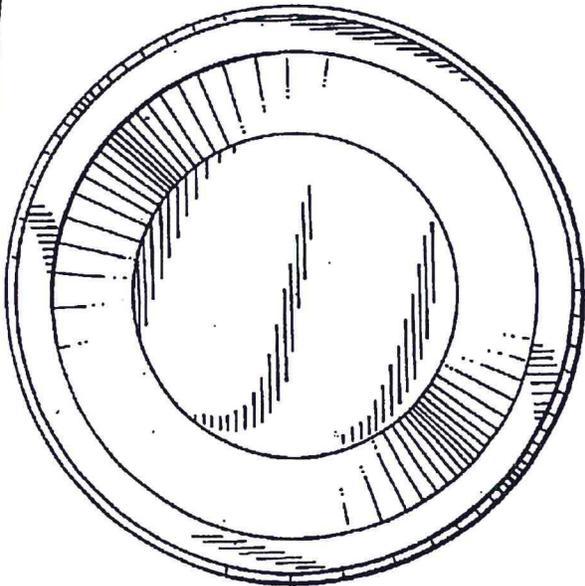
**1 Claim, 2 Drawing Sheets**



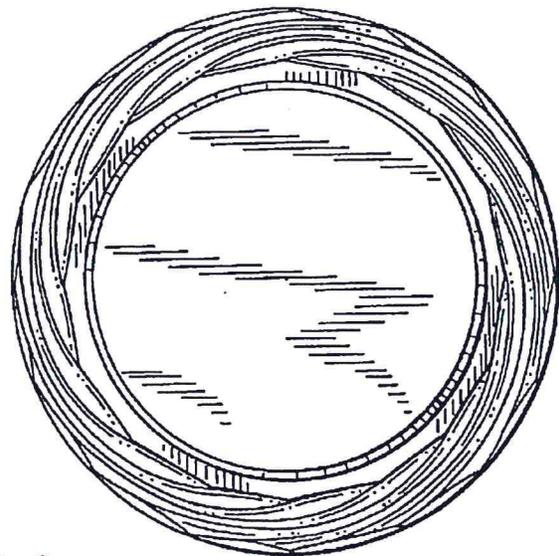
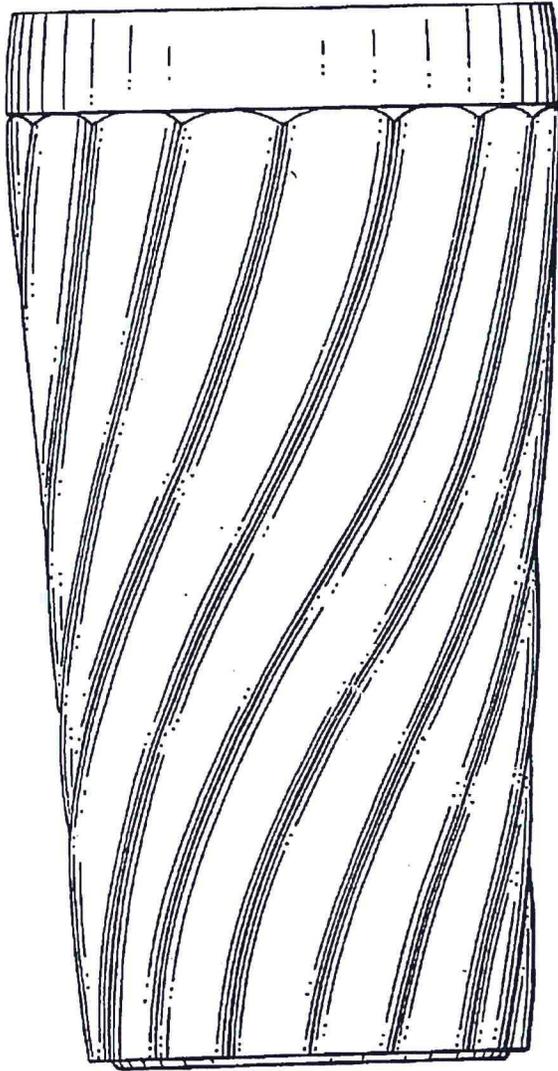
*FIG. 1*



*FIG. 2*



*FIG. 3*



*FIG. 4*

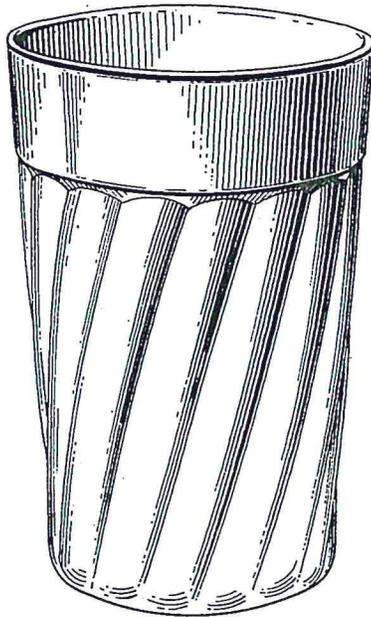
June 13, 1933.

J. N. McNASH

Des. 90,120

TUMBLER

Filed Feb. 17, 1933



Inventor  
*James Nelson McNash*

By

*Cocleston & Cocleston*  
Attorneys

Patented June 13, 1933

Des. 90,120

## UNITED STATES PATENT OFFICE

JAMES NELSON McNASH, OF WHEELING, WEST VIRGINIA, ASSIGNOR TO HAZEL-ATLAS  
GLASS COMPANY, OF WHEELING, WEST VIRGINIA, A CORPORATION OF WEST  
VIRGINIA

### DESIGN FOR A TUMBLER

Application filed February 17, 1933. Serial No. 47,246. Term of patent 7 years.

*To all whom it may concern:*

Be it known that I, JAMES NELSON McNASH, a citizen of the United States, residing at Wheeling, in the county of Ohio, and State of West Virginia, have invented a new, original, and ornamental Design for Tumblers, of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

The figure is a perspective view of a tumbler, showing my new design.

I claim:

The ornamental design for a tumbler, as shown.

JAMES NELSON McNASH.

Feb. 16, 1926.

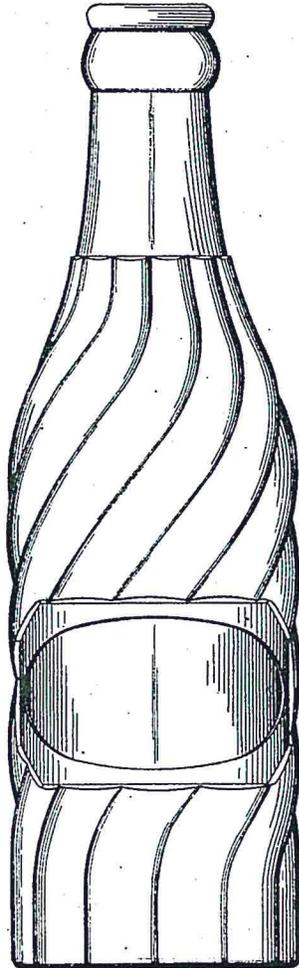
Des. 69,462

C. A. SEARS

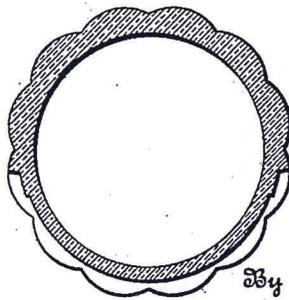
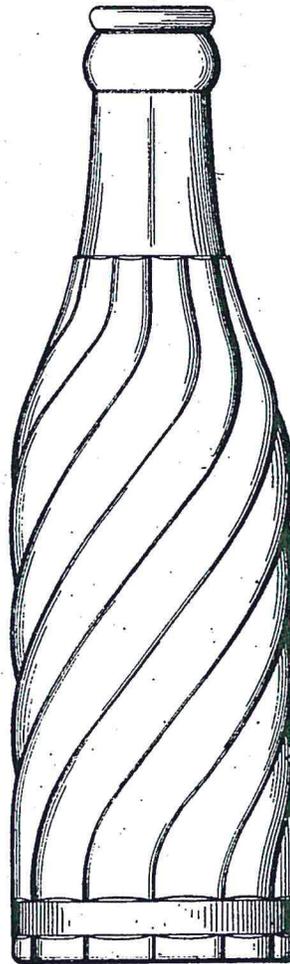
BOTTLE

Filed Sept. 25, 1922

*Fig. 1.*



*Fig. 2.*



*Fig. 3.*

Inventor

*C. A. Sears*

*Ch. Parkin*

Attorney

D9-552

DJ797

EX

OR D 20,059

**DESIGN.**

**G. M. IRWIN.**

**SURFACE ORNAMENTATION OF JARS.**

No. 20,059

Patented July 29, 1890.

FIG. 1.

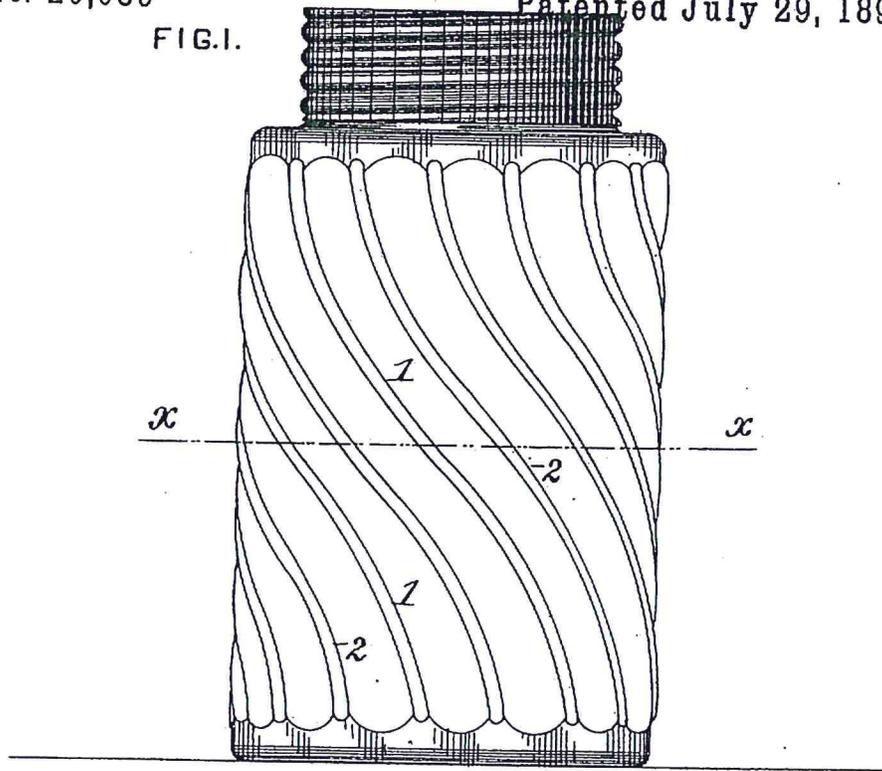
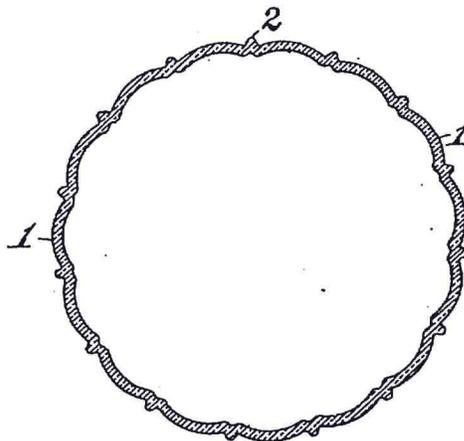


FIG. 2.



WITNESSES:

*Darius S. Wolcott*  
*F. C. Gaither.*

INVENTOR,

*George M. Irwin*  
 by *George N. Christy*  
 atty.

# UNITED STATES PATENT OFFICE.

GEORGE M. IRWIN, OF PITTSBURG, PENNSYLVANIA.

## DESIGN FOR THE SURFACE ORNAMENTATION OF JARS.

SPECIFICATION forming part of Design No. 20,059, dated July 29, 1890.

Application filed May 27, 1890. Serial No. 353,381. Term of patent  $3\frac{1}{2}$  years.

*To all whom it may concern:*

Be it known that I, GEORGE M. IRWIN, a citizen of the United States, residing at Pittsburg, in the county of Allegheny and State of Pennsylvania, have invented or discovered a certain new and original Design for Glass-ware, of which the following is a specification.

The invention described herein relates to a certain new and original design for glass jars.

In the accompanying drawings, forming a part of this specification, Figure 1 is a view in elevation of a jar embodying my design; and Fig. 2 is a transverse section of the jar on the line  $x x$ , Fig. 1.

The characteristic features of my design consist in a series of ribs and alternating

beads. The ribs 1 are convex on their outer surfaces, and the beads 2 alternating therewith are narrow as compared with the ribs. The ribs and alternating beads extend spirally around the jar from the lower to the upper end of the body portion thereof.

I claim herein as my invention—

The design for the surface ornamentation of glass jars, substantially as shown and described.

In testimony whereof I have hereunto set my hand.

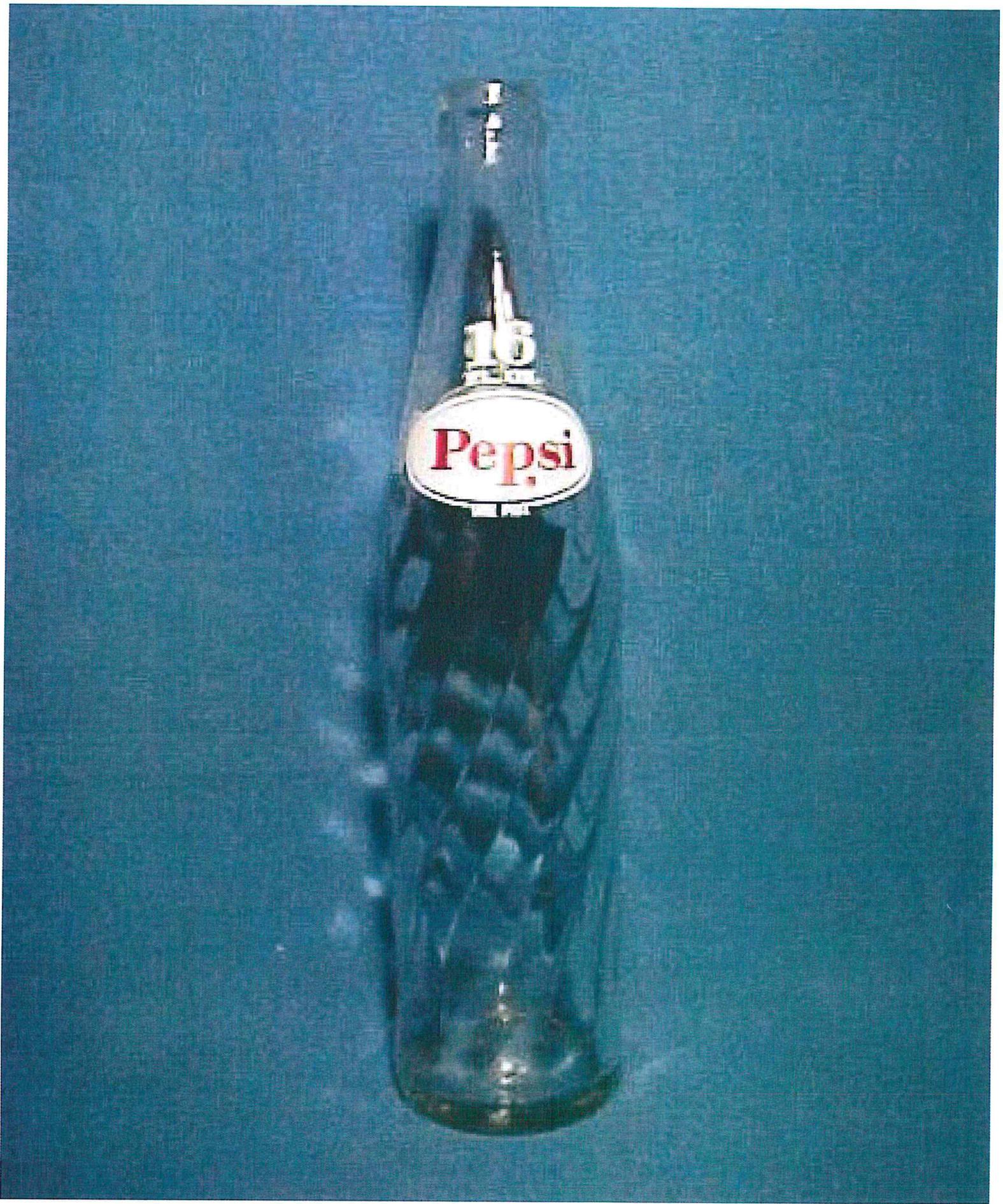
GEORGE M. IRWIN.

Witnesses:

R. H. WHITTLESEY,  
DARWIN S. WOLCOTT.



16  
oz  
**Pepsi**



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## Overall User Rating

from 1 review



## Features:

- ✓ Stylish swirl design
- ✓ Holds 3.25 oz. of salt, pepper or any of your favorite spices
- ✓ Its easy-to-clean, glass construction allows your staff to see when seasoning levels are getting low

20076440391224

New

## Shipping:

Usually Ships in 1 Business Day

When will I receive my item?

UPC Code:

Condition:



## SPECS

Height	3 3/8 Inches
Bottom Diameter	1 7/8 Inches
Maximum Diameter	1 5/8 Inches

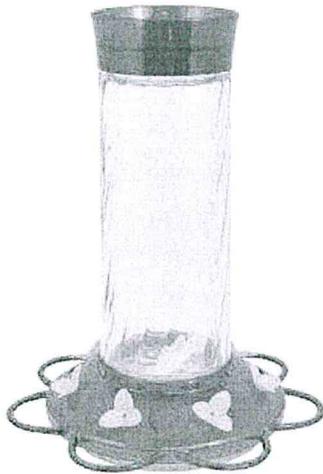
# **EXHIBIT H**



# Diamond

Bring more birds and more joy to your yard

Home / Products / Hummingbird Feeders



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## Diamond

Hummingbird Feeders  
30 oz. Capacity  
Model #37



### RELATED ITEMS



**3•in•1**  
6 oz. Capacity  
Model #30



**Red Vintage Hummingbird**  
20 oz. Capacity  
Model #60



**Big Gulp**  
40 oz. Capacity  
Model #41



**Hummingbird Elixir**  
13 oz. Capacity  
Model #38



**Oriole Vintage**  
20 oz. Capacity  
Model #61

Description Specifications

Featuring a glass bottle and built-in ant moat, the Diamond hummingbird feeder is an instant classic. The large 30 oz., wide mouth bottle is easy to fill and clean.

For best results, use More Bird™ Premium Nectar, which simulates natural nectar found in flowers.

#### Patents

US Patent D678,628

US Patent D682,481

CONNECT WITH US





# Diamond

Bring more birds and more joy to your yard

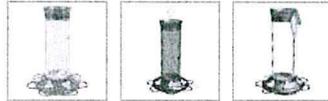
Home / Products / Hummingbird Feeders



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## Diamond

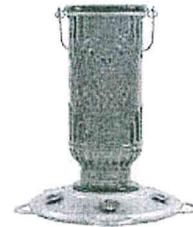
Hummingbird Feeders  
30 oz. Capacity  
Model #37



### RELATED ITEMS



**3•in•1**  
6 oz. Capacity  
Model #30



**Red Vintage Hummingbird**  
20 oz. Capacity  
Model #60



**Big Gulp**  
40 oz. Capacity  
Model #41



**Hummingbird Elixir**  
13 oz. Capacity  
Model #38



**Oriole Vintage**  
20 oz. Capacity  
Model #61

Description Specifications

- Holds 30 fluid ounces
- Glass bottle
- Built-in ant moat
- Decorative hanger included

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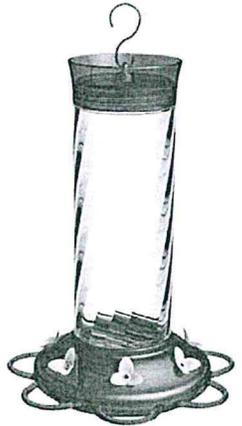
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Patio, Lawn & Garden > Outdoor Décor > Backyard Birding & Wildlife > Birds > Feeders



Click to open expanded view

### More Birds Diamond Glass Hummingbird Feeder with Seven Feeding Stations, 30 Fluid Ounce Capacity

by More Birds

113 customer reviews

6 answered questions

Note: This item is only available from third-party sellers (see all offers).

Available from these sellers.

- Holds 30 fluid ounces.
- Wide opening for easy filling and cleaning.
- Seven feeding stations.
- Glass bottle with plastic top and base.
- Decorative hanger included.

7 new from \$13.08

Report incorrect product information.

Share

7 new from \$13.08

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Add to List

#### Other Sellers on Amazon

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Add to Cart

+ \$5.99 shipping

Sold by: SeaWorld GardenWorld

\$16.99

Add to Cart

+ \$8.15 shipping

Sold by: Esbenshades Garden Center

\$27.66

Add to Cart

+ Free Shipping

Sold by: Winner Brown

Have one to sell?

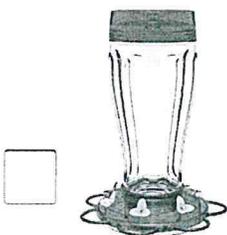
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#### Customers Who Bought This Item Also Bought

Page 1 of 9



More Birds 41 Classic Brands Big Gulp Hummingbird Feeder



Hummer Multi-Use Feeder Mini Nylon Brush, 3 Piece Set



More Birds Garnet Hummingbird Glass and Feeder Set

#### Creative Home Hand Carved Natural Stone Heavy Duty Pet Bowl



Creative Home 32656R Champagne Double Dish Stand with 1-Quart Sta...

3

\$45.00

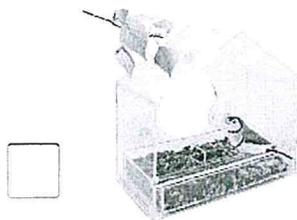
Ad feedback

Bird Feeder, 40 Fluid Ounce, Red/Clear 100

156

Plastic Feeder with 6 Feeding Stations, 20... 106

Sponsored Products Related To This Item (What's this?)

				
Large Clear Window Bird Feeder - Three Section Removable Multi-Purpose Slide Tray with Breathe...	Perky-Pet Ruby Starburst Vintage Glass Hummingbird Feeder	UPGRADED Window Bird Feeder, Sliding Feed Tray, Large, Crystal Clear, Weatherproof...	Joiedomi Ruby Vintage Glass 24 Ounces Hummingbird Feeder Including S Shape...	Songbird Essentials Dr JB's 16 oz Clean Feeder All Red Feeder w/ Yellow Flowers
127	41	95	14	158
\$14.95	\$16.69	\$19.90	\$12.99	\$20.34

Ad feedback

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- [Glass Hummingbird Feeders](#) Shop Our Unbeatable Selection. Free Shipping on Orders Over \$50! [www.wildbeaks.com/Hummingbird-Feeders](http://www.wildbeaks.com/Hummingbird-Feeders)
- [Humming Bird Feeders Sale](#) **Humming Bird Feeders** on Sale Now! Prices & Choice Not Found in Stores [www.hayneedle.com/Humming+Bird+Feeders](http://www.hayneedle.com/Humming+Bird+Feeders)
- [Glass Hummingbird Feeders](#) **Glass Hummingbird Feeders.** Find Results. Find Reference.com Related Content. [www.reference.com/Answers](http://www.reference.com/Answers)

Ad feedback

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- Thank you for being a Prime member. Get a **\$20.00 gift card instantly** upon approval for the **Amazon.com Store Card.** Apply now.

Technical Details

Item Dimensions	10.94 x 7.75 x 7.75 inches
Item Weight	1.5 pounds
Manufacturer Part Number	JEN-2298
Material Type	Glass
Model Number	37IN
Shipping Weight	2 pounds
UNSPSC Code	10121602

Product Description

Hummingbirds are the smallest bird in the world, but truly one of the most fascinating creatures on the planet. Hummingbirds are famous for their aerial display. They can fly up, down, forward, backward and sideways. And they can stop in mid-air! Because of their high metabolism, hummingbirds spend a great deal of energy flying so they must feed almost constantly. The Diamond Hummingbird Feeder features a tube-style clear glass bottle with a subtle pattern that will sparkle in the sun, and a colorful red top and base with seven feeding stations. The large 30-ounce capacity will provide enough nectar to keep your resident hummingbirds full, happy and coming back for more! For best results, use More Birds Premium Nectar, which simulates natural nectar found in flowers.

- 30 fluid ounce capacity.
- Wide mouth bottle is easy to fill and clean.
- Seven feeding stations.

- Built-in ant moat.

**Hanging Your Hummingbird Feeder**

Hummingbird feeders can be either hung from a strong branch/shepherd's hook or they can be pole or post mounted, but make sure your nectar feeders are at least 20 feet from your seed feeders. Hummingbirds are very territorial and may attempt to drive off your seed eating birds if they are too close to your nectar feeders. Also, to keep your nectar cooler and fresher longer, hang your hummingbird feeder where it receives minimal direct sunlight. **Tip: You can plant nectar producing flowers that will also help attract hummingbirds to your feeders.**

**Cleaning the Feeder**

You should clean your hummingbird feeder every three to four days. Use only warm or hot water and a soft brush to clean the feeder.

**More Birds Feeders by Classic Brands**

Classic Brands is a family-owned, company with over 100 years of management and design experience in the birding industry. We are also a company comprised of individuals passionate about birds. We took careful time and consideration to develop quality birding products to bring more birds and more joy into your yard. After talking with bird lovers all around the country, we took what they know and combined it with what we know to make feeders that are better for you and better for the birds. All our feeders are easy to fill, easy to clean and our Stay Full Port provides constant food at each perch. Our feeders serve any seed so you can select the favorite food your desired bird likes. Plus, with the adjustable perches, you can tailor the feeder for the birds you want, allowing you to truly Choose Your Birds!

**Product Information**

Product Dimensions	7.8 x 7.8 x 10.9 inches
Item Weight	1.5 pounds
Shipping Weight	2 pounds
Manufacturer	Arett Sales - LG
ASIN	B005F5NH6E
Domestic Shipping	This item is also available for shipping to select countries outside the U.S.
International Shipping	This item is not eligible for international shipping. <a href="#">Learn More</a>
Item model number	37IN
Customer Reviews	113 customer reviews 4.1 out of 5 stars
Best Sellers Rank	#47,364 in Patio, Lawn & Garden (See Top 100 in Patio, Lawn & Garden) #502 in Patio, Lawn & Garden > Outdoor Décor > Backyard Birding & Wildlife > Birds > Feeders
Discontinued by manufacturer	Yes

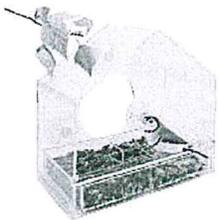
**Warranty & Support**

**Product Warranty:** For warranty information about this product, please click [here](#)

**Feedback**

Would you like to update product info or give feedback on images?  
Would you like to [tell us about a lower price?](#)

**Sponsored Products Related To This Item** (What's this?)

					
Multicolored Hand Blown Glass Globe Hummingbird Feeder - Predominantly Blue... \$29.00	Songbird Essentials Dr JB's 16 oz Clean Feeder All Red Feeder w/ Yellow Flowers 158 \$20.34	HUMMINGBIRD FEEDER with Perch --- Blown Glass   Autumn Impressions   Holds 28... 196 \$27.17	Perky-Pet Ruby Starburst Vintage Glass Hummingbird Feeder 8139-2 41 \$16.69	Large Clear Window Bird Feeder - Three Section Removable Multi-Purpose Slide Tray with Breathe... 127 \$14.95	L F T C \$

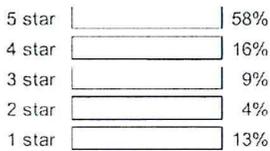
## Customer Questions & Answers

See questions and answers

## Customer Reviews

113

4.1 out of 5 stars



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### Top Customer Reviews

#### DIAMOND HUMMINGBIRD FEEDER

By Cookie Curci on May 15, 2012

Verified Purchase

this looked like a great feeder at first, but less than a year later the plastic on top rotted out and broke off and the feeder was shattered when it fell. if you own one of these feeders the best thing you can do is set up a strong wire through the hole on top, it will save your feeder .

2 comments 20 people found this helpful. Was this review helpful to you?   Report abuse

#### Feeder is a "10" but Amazon Packing is a "1"

By CA GA Peach on January 29, 2013

Verified Purchase

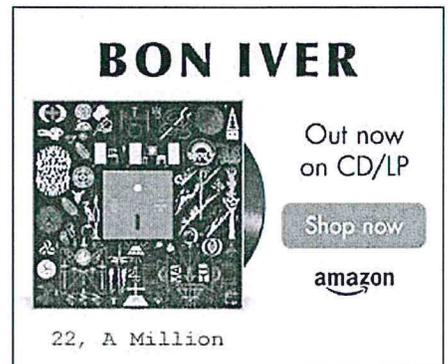
Absolutely the best hummer feeder I've ever had and a fantastic price. I have several of these and love to give it as a gift. It's wide mouth, easy to clean, base disassembles easily for cleaning, too. The only problem is with Amazon's packing. I've been sent 4 of these in the last week or so and 3 bases of the 4 were broken. I tried to return it for a replacement but received this from Amazon earlier today:

Hello,

I'm sorry to hear the replacement More Birds Diamond Hummingbird Feeder, Glass and Plastic Feeder with 6 Feeding Stations, 30-Ounce Capacity had the same problem as your first order. This usually doesn't happen. Since it's likely another replacement would arrive damaged, I won't trouble you with another replacement.

I've requested a full refund to your credit card in the amount of \$18.36. This refund will appear as a credit on your billing statement in the next 2-3 business days. Please go ahead and return the wrong item—we'll pay for return shipping.

Read more



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### Customer Images



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### Most Recent Customer Reviews

#### Five Stars

Lovely!

Published 6 days ago by Ana Aguilar

#### Our humming birds love this

Exactly as described and works as it should. Our humming birds love this feeder

Published 21 days ago by Gary M. Vale

#### Four Stars

Works well

Published 21 days ago by S.B.

#### Very nice feeder

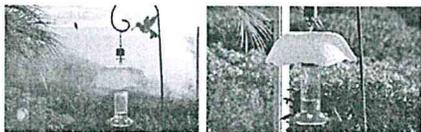
Love this feeder. We found our hummers are not only lazy but fussy little buggers.. They only like feeders where they can sit or stand on non wire foot stands.

Read more

Published 26 days ago by Misty

10/4/2016

Amazon.com : More Birds Diamond Glass Hummingbird Feeder with Seven Feeding Stations, 30 Fluid Ounce Capacity : Patio, Lawn & Garden



5 comments 11 people found this helpful. Was this review helpful to you?   Report abuse

### Hummingbird Oasis

By cm on July 8, 2012

Verified Purchase

It took about three days for the hummingbirds to start enjoying their new feeder and now there are several who make regular visits for a refreshing stop-over. I also notice that because of the several feeding stations on this one, which are well separated, they seem to share the feeder more willingly than with other feeders. It is also easy to clean and get right back out there so there is minimal disruption to their routine. Otherwise they seem to have a way of letting me know that they expect better attention to their needs! Betcha didn't know that hummingbirds can communicate with humans... Just observe and learn grasshopper.

Comment 6 people found this helpful. Was this review helpful to you?   Report abuse

### Waste of money!

By Connie on August 13, 2012

Verified Purchase

I liked the glass container because it was really easy to clean. However, two of the plastic landing rings were broken off when I received it. I had read a review that said that happened to them also so I wasn't too surprised when mine arrived damaged. I kept it because of the easy cleaning feature. Yesterday when I took it down to clean and refill, the plastic ring on the lid broke off. I had this less than two months and had to throw it away because I can't hang it up now. The cheapest plastic I have ever seen for any type of a bird feeder!

1 comment 7 people found this helpful. Was this review helpful to you?   Report abuse

### 6-Feeding Stations Diamond Hummingbird Feeder

By G on August 1, 2012

Verified Purchase

This hummingbird feeder is easy to clean and for some reason, it's the favorite feeder of the hummingbird population at our house. It holds more liquid than the other feeders we have, but it always goes dry first. I also like the fact that it's mainly made of glass, because plastic off-gases and poly-carbons leach out into liquids when sitting in the hot sun.

On the negative side, it was not packed very well and I'm amazed it wasn't broken. I can easily see why other reviews said that the feeder was broken when they received it. However, I'll be taking the chance and ordering more of these feeders soon because the feeder itself is great.

Comment 4 people found this helpful. Was this review helpful to you?   Report abuse

### Good large volume feeder (difficult to clean)

By Shawn B. on March 31, 2013

Verified Purchase

This feeder has a nice large capacity (which our ~8 hummingbirds - they're really hard to count!). It has seven feeder locations (description says 6, but there are 7) allowing for multiple simultaneous feedings (when they decide to play nice and not chase each other away). This feeder also comes with an 'ant trap' - we haven't needed to use it, but it's a nice addition.

The only issue is the bottom portion is made out of relatively fragile plastic (especially the resting places). The first feeder we bought was damaged (cracked plastic), but it was promptly replaced by Amazon and the new one arrived undamaged.

Edit after a few months use: I'm downgrading this to three stars due to the difficulty of cleaning the plastic flowers. Unlike other feeders I've used, this one seems to let mold grow quite quickly (even when changed every 2-3 days). The birds still like feeding from it, but it's an effort to keep it as clean as possible (something I haven't had to do with feeders with a metal base). Still a good purchase (good price, large volume), but it's takes a bit more work than I'd like.

Read more

### Four Stars

Good product, works as advertised

Published 26 days ago by RR

### Bad design

Bad design, leaks so cap sticks to jar and can't remove, after soaking it was broken

Published 26 days ago by Donna M. Nilsen

### Excellent feeder, it's my fourth

Excellent feeder, it's my fourth. It's the largest (~1 qt.) feeder I can find, so I only need to fill it once a day in summer. Read more

Published 1 month ago by Tea Man

### ... store several years ago and it is still working great. I live in the Bay Area in CA

I purchased this feeder at a hardware store several years ago and it is still working great. I live in the Bay Area in CA, so leave it up year-round. Read more

Published 1 month ago by tgilmer2

### it is easy to clean

My husband wanted a replacement for a broken feeder and found this identical one on Amazon. I has a moat on top to keep out ants and with diameter and both ends coming off, it is... Read more

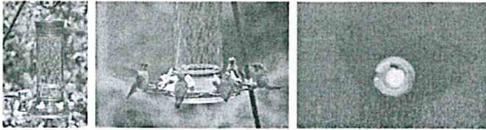
Published 1 month ago by Shirley P.

### THIS ONE DOES NOT LEAK!!! :)

This is one of the best hummingbird feeders on the market! This is my 3rd one of this model to purchase. Read more

Published 1 month ago by racegirl1000

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