

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

08-08-2001

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK



REC 101804385 T

TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New 08/01/01

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger Effective Date  
Month Day Year  
04 01 01

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

08/07/2001 MAHED1 00000106 1238546  
01 FC:581 40.00 DP

FOR OFFICE USE ONLY

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

FORM PTO-1618B  
Expires 06/30/99  
OMB 0651-2027

Page 2

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text" value="1,238,546"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes  No

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. Charges to deposit account are authorized, as indicated herein.

Joyce B. Klemmer

Name of Person Signing

*Joyce B. Klemmer*  
Signature

*Aug 1, 2001*  
Date Signed

**MASTER DEED**

(Schedules 1, 2 & 3 not included, pp. 13 -27)



Dated 18/6 1998

**ETC (HOLDINGS) LIMITED**

- and -

**EN-TOUT-CAS INTELLECTUAL PROPERTY BV**

- and -

**APT ACQUISITION CORPORATION**

---

**DEED**

for the sale and purchase of  
Trade Marks and Patents

---

**ASHURST MORRIS CRISP**

Broadwalk House  
5 Appold Street  
London EC2A 2HA  
Tel: 0171-638 1111  
Fax: 0171-972 7990

**NJA/E43100226/525370**

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THIS DEED is made on 18 / 6 / 1998

**BETWEEN:-**

- (1) ETC (HOLDINGS) LIMITED (No.2983765) whose registered office is at 10 Digby Drive, Melton Mowbray, Leicestershire LE13 ORQ ("Holdings");
- (2) EN-TOUT-CAS INTELLECTUAL PROPERTY BV of Amsterdam, Netherlands ("BV"); and
- (3) APT ACQUISITION CORPORATION (a Georgia corporation) of 109 Conica Lane, PO Box 160, Harmony PA 16047, USA (the "Purchaser").

**RECITALS**

- (A) The Vendors (as defined below) own a portfolio of Trade Marks (as defined below) which are used in relation to sports surfaces, and are the assignees of the Patents (as defined below).
- (B) Holdings is currently negotiating with the Purchaser, the Share Sale Agreement (as defined below) and conditional upon completion of the Share Sale Agreement the Vendors have agreed to sell, and the Purchaser has agreed to purchase, the Trade Marks and the Patents on the terms set out in this agreement.

**THE PARTIES AGREE AS FOLLOWS:-**

**1. INTERPRETATION**

- 1.1 In this agreement the following words and expressions and abbreviations have the following meanings, unless the context otherwise requires:-

"Business Day" means a day (excluding Saturdays) on which banks generally are open in London for the transaction of normal banking business;

"Conditions" means the conditions set out in clause 3.1;

"Company" means Balsam Pacific Pty Limited A.C.N. 066 046 231 whose registered office is at 1A Hill Road, Homebush Bay NSW 2127;

"Completion" means the completion of the sale and purchase of the Trade Marks and Patents in accordance with clause 4;

"Consideration" means the sums due to the Vendors on Completion as set out in clause 5;

"Completion Date" means the date on which Completion occurs;

**"Disclosures"** means the facts and matters set out or referred to in schedule 3;

**"Encumbrance"** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, trust, right of set off or other third party right or interest (legal or equitable) including any right of pre-emption, assignment by way of security, reservation of title or any other security interest;

**"Excluded Trade Marks"** means the REKORTAN and BALSAM PACIFIC trade marks in the U.S. and includes the registered trade mark which is set out in part 4 of schedule 1;

**"IP Assignment"** means an assignment in the form set out in schedule 4 and which is to be delivered to the Purchaser on Completion in accordance with clause 4.2;

**"Patents"** means the patents set out in schedule 2;

**"Purchaser's Group"** means the Purchaser, its holding companies and the subsidiary undertakings and associated companies from time to time of such holding companies, all of them and each of them as the context admits;

**"Purchaser's Attorneys"** means Smith, Gambrell & Russell LLP of Promenade II, Suite 3100, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309-3592, USA;

**"Registered Trade Marks"** means the trade mark registrations set out in part 2 of schedule 1 and the trade mark applications set out in part 3 of schedule 1;

**"Rekortan Assignment"** means the assignment of the Vendors' rights in and title to the REKORTAN trade mark in the U.S. in a form substantially similar to the Trade Mark Assignment;

**"Related Person"** means in relation to any party its holding companies and the subsidiary undertakings and associated companies from time to time of such holding company, all of them and each of them as the context admits;

**"Shares"** means all of the issued shares in the capital of the Company;

**"Share Sale Agreement"** means the agreement for the sale and purchase of the entire share capital of the Company between ETC (Overseas) Limited and APT Acquisition Corp dated today;

**"Trade Marks"** means the Unregistered Trade Marks and the Registered Trade Marks but excludes the Excluded Trade Marks;

**"Unregistered Trade Marks"** means the Unregistered Trade Marks set out in part 1 of schedule 1;

"Vendors Account" means the client account of the Vendors' Solicitors at National Westminster Bank plc, 15 Bishopsgate, London EC2P 2AP, Sort Code 50-00-00, Account no. 00404241;

"Vendors" means Holdings and BV;

"Vendors' Group" means the Vendors and their respective subsidiary undertakings, all of them and each of them as the context admits;

"Vendors' Solicitors" means Ashurst Morris Crisp of Broadwalk House, 5 Appold Street, London EC2A 2HA;

1.2 In this agreement unless otherwise specified, reference to:-

- (a) a "subsidiary undertaking" is to be construed in accordance with section 258 of the Companies Act 1985 and a "subsidiary" or "holding company" is to be construed in accordance with section 736 of that Act unless it is in the context of the Company in which case a "subsidiary" means a subsidiary of the Company within the meaning of section 46 of the Corporation Law in force in Australia;
- (b) a document in the "agreed terms" is a reference to that document in the form approved and for the purposes of identification signed by or on behalf of the Vendors and the Purchaser;
- (c) "includes" and "including" shall mean including without limitation;
- (d) a "party" means a party to this agreement and includes its permitted assignees (if any) and/or the successors in title to substantially the whole of its undertaking;
- (e) a "person" includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- (f) a "statute" or "statutory instrument" or "accounting standard" or any of their provisions is to be construed as a reference to that statute or statutory instrument or accounting standard or such provision as the same may have been amended or re-enacted before the date of this agreement;
- (g) "clauses", "paragraphs" or "schedules" are to clauses and paragraphs of and schedules to this agreement;
- (h) "writing" includes any methods of representing words in a legible form other than writing on an electronic or visual display screen or in other non-transitory form;
- (i) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;



(j) any statute, statutory instrument, regulation, by-law or other requirement of English law and to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, procedure, court, official or any legal concept or doctrine or other expression shall in respect of any jurisdiction other than England be deemed to include that which most nearly approximates in that jurisdiction to the English term;

(k) the time of day is reference to time in London, England.

1.3 The schedules form part of the operative provisions of this agreement and references to this agreement shall, unless the context otherwise requires, include references to the schedules.

1.4 The index to and the headings and the descriptive notes in brackets relating to provisions of taxation statutes in this agreement are for information only and are to be ignored in construing the same.

1.5 Any question of whether a person is connected with another shall be determined in accordance with section 839 of the TA (except that in construing section 839 "control" has the meaning given by section 840 or section 416 of the TA so that there is control whenever section 840 or 416 requires) which shall apply in relation to this agreement as it applies in relation to the TA.

## 2. SALE AND PURCHASE

Upon the terms and subject to the conditions of this agreement, the Vendors shall sell and the Purchaser shall purchase:-

(a) the Trade Marks with effect from Completion subject to the Disclosures but otherwise free from any Encumbrance; and

(b) the Patents with effect from Completion subject to the Disclosures.

## 3. CONDITIONS

3.1 Completion is conditional upon completion of the Share Sale Agreement in accordance with its terms.

3.2 If the Condition has not been fulfilled on or before 17 July 1998, this agreement shall terminate with effect from that date and no party shall have any claim against any other under this agreement.

## 4. COMPLETION

4.1 Completion shall take place at the offices of the Vendors' Solicitors immediately following completion of the Share Sale Agreement.

4.2 On Completion the Vendors shall deliver to the Purchaser assignments in respect of the Trade Marks and the Patents in the form of the IP Assignment, confirmation duly executed by the Company that it accepts the payment in clause 5.1(c) in full and final satisfaction of all amounts owed to it by the Vendors and the Consideration, a release of the charge over the Poligras trade marks, and a release of the security which has been taken by ISFC.

4.3 The Vendors hereby undertake at the Purchaser's request and the Purchaser's expense to promptly do all such acts and execute all such documents as may be necessary for the vesting in the Purchaser of all the rights in the Trade Marks and the Patents that the Vendors purport to give under this Agreement.

## 5. CONSIDERATION

5.1 On Completion the Purchaser shall deliver the following to the Vendors:

- (a) a payment of £144,785 by way of transfer to Holdings of all amounts due to members of the Purchaser's Group by members of the Vendors' Group; and
- (b) a release in a form approved by the Vendor releasing each member of the Vendors' Group from all liabilities owned by them to any member of the Vendors' Group as at Completion.

5.2 The Vendors acknowledge that Holdings will receive the Consideration for and on behalf of the Vendors.

## 6. INDEMNITY

6.1 The Purchaser shall indemnify and keep the Vendors and any member of the Vendors' Group or any of their sub-contractors indemnified from and against all liabilities, obligations, costs, claims and demands of any nature whatsoever against the Vendors or any member of the Vendors' Group or any of their sub-contractors arising out of:-

- (a) the use by any member of the Purchaser's Group or its licensees of the Trade Marks on or after the Completion Date; or
- (b) the manufacture and/or sale of products bearing the Trade Marks on or after the Completion Date; or
- (c) any act done by an attorney appointed pursuant to clause 13.1.

6.2 The Vendors shall indemnify and keep the Purchaser and any member of the Purchaser's Group or any of its sub-contractors indemnified from and against all liabilities, obligations, costs, claims and demands of any nature whatsoever against the Purchaser or any member of the Purchaser's Group or any of its sub-contractors arising out of:-

- (a) the use by any member of the Vendors' Group or its licensees of the Trade Marks prior to the Completion Date; or

- (b) the manufacture and/or sale of products bearing the Trade Marks prior to the Completion Date.

## 7. THE EXCLUDED MARKS

7.1 Subject to clause 7.2, the Purchaser acknowledges that it has no right in or title to the Excluded Trade Marks and undertakes not to, and to procure that its Group Companies do not, use the Excluded Trade Marks in the US.

7.2 On Completion, Holdings shall execute (but not date or legally deliver) the Rekortan Assignment to the Vendors' Solicitors to be held in escrow until such time as Holdings releases the document in accordance with Clauses 7.3 and 7.4.

7.3 On the earlier of:

- (a) 1 April 2001; and
- (b) the Purchaser producing to the Vendors reasonable evidence to show that the licence may be released earlier with the authority of the owner of the property rights referred to in the Rekortan Assignment,

Holdings shall, subject to clause 7.4, release the Rekortan Assignment from escrow, authorise the Vendors' Solicitors to date and deliver it to the Purchaser.

7.4 If Holdings is restricted for any reason from releasing the Rekortan Assignment it shall pay to the Purchaser, until such time as it is able to release the Rekortan Assignment, the sum of US\$40,000 per annum, the first instalment being payable on 1 April 2002 and the subsequent instalments being payable on the annual anniversary of that date.

7.5 Holdings shall not renew any licence which it has granted in respect of the Excluded Trade Marks.

7.6 The parties to this agreement undertake not to, and to procure that their group companies do not, use the BALSAM Trade Mark anywhere in the world at any time after the date of this agreement.

## 8. WARRANTIES

8.1

(a) The Vendors warrant to the Purchaser that they are the sole and absolute legal and beneficial owner of those Registered Trade Marks which are set out against their respective names in schedule 1 and that the Registered Trade Marks are subsisting and that all fees and charges (including renewal fees) payable in respect of the Registered Trade Marks prior to Completion have been paid;

(b) So far as the Vendors are aware:

- (i) there have been and are no claims threatened that the use or existence of any of Trade Marks infringes the rights of any third party;
- (ii) no third party has infringed or is infringing any of the Trade Marks;
- (c) The Vendors warrant that they have no knowledge that any of the Registered Trade Marks are invalid;
- (d) The Vendors warrant that insofar as they are the proprietors of any registrations or applications for registration in respect of any of the Trade Marks in any part of the world then such applications or registrations (as the case may be) shall be deemed to be included in the sale and purchase set out in clause 2.

8.2 The warranties in clause 8.1 are given subject to the Disclosures.

8.3 Other than the warranties in clause 8.1, the Vendors do not give any express or implied warranties in respect of the Trade Marks or the Patents.

## 9. UNDERTAKINGS

9.1 Save as permitted under the Trade Mark Licence the Vendors will not and will procure that no member of the Vendors' Group will anywhere in the world either solely or jointly with any other person:-

- (a) use or cause the use of any name, logo, word or trading style in its or their names, logos, trade marks and/or trading styles which is the same as or confusingly similar to the Trade Marks; and
- (b) use or cause the use of any trade name, trade mark, logo, get-up or trading style, any of which includes the Trade Marks or any other trade mark or trade name intended or likely to be confused with the Trade Marks.

## 10. ANNOUNCEMENTS

10.1 No party shall disclose the making of this agreement nor its terms (except those matters set out in the press release in the agreed terms) and each party shall procure that each of its Related Persons and its professional advisers shall not make any such disclosure without the prior consent of the other party unless disclosure is:-

- (a) to its professional advisers; or
- (b) required by law or other regulatory body and disclosure shall then only be made by that party:-
  - (i) after it has taken all such steps as may be reasonable in the circumstances to agree the contents of such announcement with the other party before making

such announcement and provided that any such announcement shall be made only after notice to the other party/parties; and

- (ii) to the person or persons and in the manner required by law or as otherwise agreed between the parties,

provided that this clause 10.1 does not apply to announcements, communications or circulars made or sent by the Purchaser after Completion to customers, clients or suppliers of the Purchaser to the extent that it informs them of the Purchaser's acquisition of the Trade Marks.

- 10.2 Without prejudice to the generality of clause 10.1, neither party shall be entitled to disclose the price which the Purchase has paid for the Trade Marks.
- 10.3 The restrictions contained in clause 10.1 and 10.2 shall apply without limit of time and whether or not this agreement is terminated.

#### 11. COSTS

Unless expressly otherwise provided in this agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the sale and purchase of the Trade Marks and the Patents.

#### 12. EFFECT OF COMPLETION

- 12.1 The terms of this agreement (insofar as not performed at Completion and subject as specifically otherwise provided in this agreement) shall continue in force after and notwithstanding Completion.
- 12.2 The remedies of the Purchaser in respect of any breach of the warranty in clause 8.1 shall continue to subsist notwithstanding Completion.

#### 13. POWER OF ATTORNEY

- 13.1 The Vendors each appoint any director for the time being of the Purchaser to be their attorney for the purpose of vesting in the Purchaser the full legal and beneficial title to the Trade Marks, and for that purpose and in taking such steps as are necessary to sign or execute in their names and or their behalf any documents as are necessary.

#### 14. ENTIRE AGREEMENT

- 14.1 Each party on behalf of itself and as agent for each of its Related Persons acknowledges and agrees with the other party (each such party acting on behalf of itself and as agent for each of its Related Persons) that:-
- (a) this agreement together with any other documents referred to in this agreement (together the "Transaction Documents") constitutes the entire and only agreement between the parties and their respective Related Persons relating to the subject matter

of the Transaction Documents;

- (b) neither it nor any of its Related Persons have been induced to enter into any Transaction Document in reliance upon, nor have they been given, any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in the Transaction Documents and, to the extent that any of them have been, it (acting on behalf of itself and as agent on behalf of each of its Related Persons) unconditionally and irrevocably waives any claims, rights or remedies which any of them might otherwise have had in relation thereto;

PROVIDED THAT the provisions of this clause 14 shall not exclude any liability which any of the parties or, where appropriate, their Related Persons would otherwise have to any other party or, where appropriate, to any other party's Related Persons or any right which any of them may have in respect of any statements made fraudulently by any of them prior to the execution of this agreement or any rights which any of them may have in respect of fraudulent concealment by any of them.

#### 15. VARIATIONS

This agreement may be varied only by a document signed by each of the Vendors and the Purchaser.

#### 16. WAIVER

16.1 A waiver of any term, provision or condition of, or consent granted under, this agreement shall be effective only if given in writing and signed by the waiving or consenting party and then only in the instance and for the purpose for which it is given.

16.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16.3 No breach of any provision of this agreement shall be waived or discharged except with the express written consent of the Vendors and the Purchaser.

16.4 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

#### 17. INVALIDITY

If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction:-

- (a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and

- (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way.

## 18. NOTICES

- 18.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or sent by fax or prepaid first class post (air mail if posted to or from a place outside the United Kingdom):-

*In the case of the Purchaser to:-*

APT Acquisition Corporation  
109 Conica Lane  
PO Box 160  
Harmony PA 16037  
USA  
Fax: (412) 452-1703  
Attention: President

*copy to:*

Smith, Gambrell & Russell, LLP  
Promenade II  
Suite 3100  
1230 Peachtree Street N.E.  
Atlanta  
Georgia 30309-3592  
USA  
Fax: (404) 815-3509  
Attention: Hans-Micheal Kraus

*In the case of the Vendors to:-*

10 Digby Drive,  
Melton Mowbray  
Leicestershire LE13 0RQ  
Fax: 01644 481290  
Attention: The Finance Director

and shall be deemed to have been duly given or made as follows:-

- (a) if personally delivered, upon delivery at the address of the relevant party;
- (b) if sent by first class post, two Business Days after the date of posting;
- (c) if sent by air mail, 5 Business Days after the date of posting; and

- (d) if sent by fax, upon receipt by the sender of a transmission report indicating that the fax has been sent in its entirety to the correct number

provided that if, in accordance with the above provisions, any such notice, demand or other communication would otherwise be deemed to be given or made outside 9.00 a.m. - 5.00 p.m. on a Business Day such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

- 18.2 A party may notify the other party to this agreement of a change to its name, relevant addressee, address or fax number for the purposes of clause 18.1 provided that such notification shall only be effective on:-

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

## 19. COUNTERPARTS

This agreement may be executed in any number of counterparts which together shall constitute one agreement. Any party may enter into this agreement by executing a counterpart and this agreement shall not take effect until it has been executed by all parties.

## 20. GOVERNING LAW AND JURISDICTION

- 20.1 Subject to clause 20.3, this agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation) shall be governed by and construed in accordance with English law.
- 20.2 Subject to clause 20.3, each of the parties to this agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this agreement (respectively, "Proceedings" and "Disputes") and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.
- 20.3 Any dispute relating to the validity or existence of any of the Trade Marks or Patents shall be brought before the appropriate competent courts of the jurisdiction in which the relevant Trade Marks or Patents exist, are claimed or are disputed.
- 20.4 Without prejudice to any other permitted mode of service the parties agree that service of any writ, notice or other document ("Documents") for the purpose of any Proceedings begun in England shall be duly served upon it if delivered personally or sent by registered post, in the case of:-



- (a) the Vendors to 10 Digby Drive, Melton Mowbray, Leicestershire LE13 0RQ (marked for the attention of The Finance Director); and
- (b) the Purchaser to Wragge & Co, 55 Colmore Row, Birmingham B3 2AS (marked for the attention of Julian Henwood or Andrew B Smith) with a copy to APT Acquisition Corporation, 109 Conica Lane, PO Box 160, Harmony PA 16037 (marked for the attention of the President);

or such other person and address in England and/or Wales as the Vendors shall notify the Purchaser in writing or vice versa from time to time.

**IN WITNESS** whereof this Deed has been executed on the date first above written.

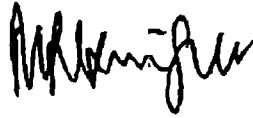
Trade Mark	Country	Number	Class	Owner
	Thailand	311836	19	Holdings
	U.A.E.	17417	19	Holdings
SUPERGRASSE	Hong Kong	6974/96	27	Holdings
	Korea (South)	1996 - 15730	Kor.33	Holdings
	New Zealand	265869	27	Holdings

## Part 4 - Excluded Trade Marks

Trade Mark	Country	Number	Class	Owner
REKORTAN	USA	1,238,546	27	Holdings

Signed as a Deed by  
for and on behalf of  
**ETC (HOLDINGS) LIMITED**  
in the presence of:-

)  
)  
)



Director

Director/Secretary

Signed as a Deed by  
for and on behalf of  
**EN-TOUT-CAS INTELLECTUAL  
PROPERTY BV**  
in the presence of:-

)  
)  
)



Director

Director/Secretary

Signed as a Deed by  
for and on behalf of  
**APT ACQUISITION  
CORPORATION**  
in the presence of :-

)  
)  
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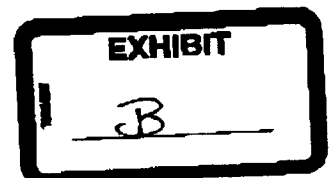


Director

  
Director/Secretary

**TM ASSIGNMENT – REKORTAN**

(See ¶ 7 of MASTER DEED)



03-APR-2001 16:30

ASHURST MORRIS CRISP

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Dated 12 August 1997

ETC (HOLDINGS) LIMITED

- and -

APT ACQUISITION CORPORATION

---

TRADE MARK ASSIGNMENT

---

ASHURST MORRIS CRISP  
Broadwalk House  
5 Appold Street  
London EC2A 2HA

Tel: 0171-638 1111  
Fax: 0171-972 7990

Ref: NJA/E43100242/666831

03-APR-2001 16:30

MURST MORRIS CRISP

'9 69 97265220 S.04/06

**THIS ASSIGNMENT** is made on

**BETWEEN**

- (1) **ETC (HOLDINGS) LIMITED** (No. 2983765) whose registered office is at 10 Digby Drive, Melton Mowbray, Leicestershire LE13 0RQ (the "Assignor"); and
- (2) **APT ACQUISITION CORPORATION** (a Georgia corporation) of 109 Conica Lane, PO Box 160, Harmony PA 16037, USA (the "Assignee").

**RECITALS**

By an agreement made between ETC (Holdings) Limited and En-Tout-Cas Intellectual Property BV and APT Acquisition Corporation on 18 June 1998 the Assignor agreed to assign on the terms set out therein and to execute this assignment of the registered trade mark set out in the schedule (the "Trade Mark").

**THE PARTIES AGREE AS FOLLOWS:-**

1. In pursuance of the said agreement and for the consideration set out therein the Assignor does **HEREBY ASSIGN** all its right title and interest in the Trade Mark, including all its statutory and common law rights attaching thereto and its right to sue for past infringements and to retain any damages obtained as a result of such action, to the Assignee.
2. The Assignor confirms that this assignment is made with the goodwill attaching to the Trade Mark.
3. This assignment shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction in respect of it subject to the jurisdiction of any appropriate competent court in the jurisdiction in which the Trade Mark is registered, claimed or disputed in respect of the validity or existence of it.

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**SCHEDULE**

**Registered Trade Mark**

<b>Mark</b>	<b>Territory</b>	<b>No.</b>	<b>Class</b>
REKORTAN	USA	1238546	27

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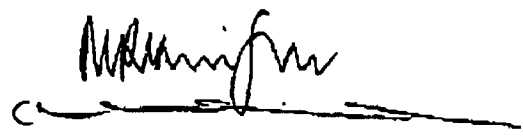
49 69 97205220

S.06/06

IN WITNESS whereof this assignment has been executed on the date first above written.

Signed by  
for and on behalf of  
**ETC (HOLDINGS) LIMITED**  
in the presence of:-

)  
)  
)  
)  
)



Signed by  
for and on behalf of  
**APT ACQUISITION CORPORATION**  
in the presence of:-

)  
)  
)  
)  
)



**LICENSE between ETC and SOUTHWEST**

(See ¶ 3.1 and ¶ 1.1 Renewal term ended March 31, 2001)



ASHURST MORRIS CRISP 24-03-1997 17:12

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DATED 1997

(1) ETC (HOLDINGS) LIMITED

- and -

(2) SOUTHWEST RECREATIONAL INDUSTRIES, INC.

LICENCE AGREEMENT

ASHURST MORRIS CRISP  
Broadwalk House  
5 Appold Street  
London EC2A 2HA

Tel: 0171-638-1111  
Fax: 0171-972-7990

110024 March 1997 (SEP) 110001-1

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 1997

BETWEEN :-

- (1) ETC (HOLDINGS) LIMITED of 10 Digby Drive, Melton Mowbray, Leicestershire, LE13 0RQ, UK, Fax no: UK (1664) 481 290 (the "Licensor"); and
- (2) SOUTHWEST RECREATIONAL INDUSTRIES, INC. of 701 Leander Drive, P.O. Box 589, Leander, Texas 78646-0589, USA, Fax no: USA (512) 259 3404 (the "Licensee")

WHEREAS:-

The Licensor, who is the owner of the Intellectual Property (defined below), wishes to permit the Licensee to use this Intellectual Property in respect of the manufacture, marketing, sale and installation of the Product (defined below) in the Territory (as defined below) on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. Definitions and Interpretation

1.1 In this Agreement, the following terms have the following meanings:-

- "Commencement Date" April  
means 1-March 1997;
- "Group Company" means any company or corporation which is from time to time (a) a subsidiary or holding company of the Licensor or the Licensee (as the case may be) or any subsidiary or holding company thereof or (b) directly or indirectly controlled by the Licensor or the Licensee (as the case may be). For the avoidance of doubt, ETC's Group Companies include (but are not limited to) Balam Pacific Pty Ltd and SW's Group Companies include (but are not limited to) American Sports Products Group, Inc., Balam Corporation, Reberton Corporation, Aswotul Industries Inc and Reberton Inc;
- "Licensed Trade Mark" means the Licensor's rights in the REKORTAN Mark;
- "Nominated Manufacturer" means the manufacturer(s) nominated by the Licensor to manufacture the Raw Materials as notified to the Licensee from time to time by the Licensor in writing or as deemed approved pursuant to Clause 4.4;
- "Product" means full post synthetic sports surfaces produced

- 1 -

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of or produced with the Raw Materials or sold under the REKORTAN name. For the avoidance of doubt, Product does not include any such sports surfaces which are of a sandwich type.

"Renewal Term"

*MA*  
means the period from 1 ~~March~~ <sup>April</sup> 2000 until 31 ~~March~~ <sup>February</sup> 2001 for which this Agreement is renewed if the Licensee exercises its option to renew pursuant to Clause 7.2;

"REKORTAN Mark"

means the trade mark REKORTAN including US trade mark registration no 1238546;

"Raw Materials"

means Part A and Part B polyurethane and rubber granules manufactured only by a Nominated Manufacturer in accordance with the Licensor's specifications for REKORTAN sports surfaces; and

"Territory"

means the USA;

1.2 References in this Agreement to Schedule 1 are to Schedule 1 of this Agreement and references to Clauses are to Clauses of this Agreement.

1.3 In this Agreement, references to the manufacture of the Product mean the mixing of the Raw Materials to form the Product and "manufactured" shall be construed accordingly.

1.4 The headings are inserted in this Agreement for convenience only and shall not affect its interpretation.

2. Grant

2.1 In consideration of the fees payable in accordance with Clause 3, the Licensor grants the Licensee an exclusive license to use the Licensed Trade Mark on the Product in the Territory and in relation to the manufacture, marketing, sale and installation of the Product in the Territory, subject to the terms and conditions of this Agreement. For the avoidance of doubt, the location of a project to install Product (and not the location of a customer or a potential customer) determines whether or not the manufacture, marketing, sale or installation of Product is within the Territory.

2.2 During this Agreement, the Licensor undertakes not to, and to procure that (a) its Group Companies, (b) agents, (c) representatives and (d) other organisations (such as joint ventures) in which the Licensor holds an interest, do not, market or sell the Product directly to end purchasers in the Territory or to other organisations in the Territory.

2.3 During this Agreement, the Licensor agrees promptly to pass on to the Licensee all enquiries and sales leads (including tender offers) which the Licensor receives relating to the Product in the Territory, together with all such information which the Licensor

has in its possession relating thereto.

2.4 This Agreement is personal to the Licensee and does not include any right to grant sub-licences, but shall permit the Licensee to have the Product manufactured by third parties under the Licensee's supervision and in accordance with this Agreement.

3. Fees

3.1 In consideration of the rights granted by the Licensor to the Licensee in this Agreement, the Licensee shall pay to the Licensor:

(a) a royalty fee of USD0.50 per square meter of Product sold or installed after the Commencement Date by the Licensee or under its supervision;

(ii) a non-refundable advance on the royalty fee in US Dollars of US\$40,000 (the "Advance") payable on signature of this Agreement. The Advance shall be credited against the royalty fees payable under Clause 3.1(a) in respect of the first year of the Agreement from 1 March 1997 to 31 March 1998. If the royalty fees payable under Clause 3.1(a) in respect of such first year exceed the amount of the Advance, the Licensee shall on or before 31 March 1998 pay any additional royalty fees due. For the avoidance of doubt, if the royalty fees payable under Clause 3.1(a) in respect of such first year are less than the amount of the Advance, the Licensor shall be entitled to retain the entire Advance;

(c) a minimum royalty fee of US\$40,000 for each subsequent year of the Agreement and for the Renewal Term (if any) as a minimum guarantee ("Minimum Guarantee") against royalty fees payable under Clause 3.1(a) during each subsequent year and (if this Agreement is renewed in accordance with Clause 7.2) the Renewal Term;

Year	Minimum Guarantee
1 April 1997 - 31 March 1998	US\$40,000
1 April 1998 - 31 March 1999	US\$40,000
Renewal Term 1 April - 31 March	US\$40,000

The Minimum Guarantee shall be paid in advance on 1 March during each subsequent year of the Agreement and the Renewal Term (if any) and shall be credited against the royalty fees payable under Clause 3.1(a) in respect of the year of the Agreement to which it relates or the Renewal Term (if any). If the royalty fees payable under Clause 3.1(a) in respect of any such year or the Renewal Term (if any) exceed the amount of the Minimum Guarantee, the Licensee shall pay on or before 31 March in such year or on the 30 March after the end of the Renewal Term any additional royalty fees due. For the avoidance of doubt, if the royalty fees payable under Clause 3.1(a) in respect of each year or the Renewal Term (if any) are less than the amount of the Minimum Guarantee for the year in question or the Renewal Term, the Licensor shall in each such year or the Renewal Term be entitled to retain the entire Minimum Guarantee.

3.2 The Licensee shall on the 30 January in each year during this Agreement (including on 30 January 1998) deliver to the Licensor a statement in relation to the Product for each of the periods since the Commencement Date or the last statement (as the case may be) showing:

(a) the number of orders for Product placed on the Licensee, the number of Product installations completed by the Licensee or under its supervision, the surface area in square metres of Product installed by the Licensee or under its supervision and to be installed by the Licensee or under its supervision under firm orders for the Product placed on the Licensee and the number of the Licensee's customers for Product installed by the Licensee or under its supervision; and

(b) the aggregate surface area in square metres of Product offered for installation under any bids for installation of the Product made by the Licensee or under its supervision.

3.3 Notwithstanding Clause 3.2, the Licensee shall, if so requested by the Licensor for the purposes of protecting and/or enforcing the Licensor's rights in the Licensed Trade Mark, provide to the Licensor such information about the Licensee's use of the Licensed Trade Mark as the Licensor may from time to time reasonably require.

3.4 All fees payable by the Licensee hereunder are exclusive of value added tax (if any). The Licensee shall be responsible for all taxes in the Territory levied in respect of its manufacture, marketing, sale or installation of the Product in the Territory.

#### 4. Conformity to specification and quality

4.1 All Product manufactured by the Licensee or under its supervision and sold under the Licensed Trade Mark shall comply with any specifications and standards of quality in relation to its manufacture, Raw Materials, workmanship, design and storage which may be set by the Licensor from time to time and shall be manufactured in a professional and workmanlike manner.

4.2 The Licensor shall be entitled to inspect the manufacture and/or installation of the Product during normal business hours on reasonable notice to determine whether the manufacture and/or installation (as the case may be) of the Product complies with Clause 4.1. To enable the Licensor so to inspect, the Licensee shall upon at least 14 days written notice give the Licensor its current installation schedule and that relating to installations under its supervision including the planned start dates of manufacture and/or installation of Product track manufactured and/or installed pursuant to this Agreement and of each such track location. If the Licensee reasonably considers that the manufacture and/or installation of Product does not comply with Clause 4.1, it shall notify the Licensor who shall at its own cost comply with the Licensor's reasonable requests to rectify (or procure the rectification of) the manufacture and/or installation of the Product so as to comply with Clause 4.1.

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- 4.3 The Licensee shall obtain the Raw Materials for the Product from a Nominated Manufacturer. Until further written notice from the Licensor to the Licensee, (a) the Licensor's Nominated Manufacturer for Part A and Part B polyurethane rod coating and sealing materials is Advanced Polymer Technology of 109 Conica Lane, PO Box 160, Harmony, Pennsylvania 10637, USA and (b) the Licensor's Nominated Manufacturer for rubber granules is Melos of Carlbosch GmbH & Co ("Melos"), Oldendorferstrasse 9, 49303 Melle Germany. The Licensee may obtain rubber granules from Melos via a Melos authorized distributor in the Territory (which for the time being is Advanced Polymer Technology).
- 4.4 If the Licensee proposes to purchase part A or part B polyurethane and/or rubber granules from suppliers who have not been designated a Nominated Manufacturer, the Licensee shall send the Licensor written notice to that effect together with sample quantities of the raw materials in question by courier in accordance with Clause 16.1. A proposed new supplier shall be considered approved as a Nominated Manufacturer unless the Licensor has specifically disapproved of the supplier within 30 days of receipt of such notice and sample. The Licensor's approval of new suppliers as Nominated Manufacturers shall not be retroactively withheld.

#### 5. Duties of the Licensor

The Licensor shall at its own cost promptly on request by the Licensee supply the Licensee with a reasonable quantity of the Licensor's promotional material and catalogue for the Product.

#### 6. Duties of the Licensee

##### 6.1 The Licensee agrees:-

- 6.1.1 to carry out its obligations under this Agreement and to act in relation to the Product in a manner consistent with the repute of each of the Product and the Licensed Trade Mark;
- 6.1.2 to maintain appropriate promotion for the Product in the Territory;
- 6.1.3 subject to Clause 5, to bear the cost of such promotion;
- 6.1.4 to maintain an appropriate sales organization for the Product in the Territory;
- 6.1.5 to advise the Licensor as soon as reasonably practicable in writing should the Licensee at any time become aware of any adverse matters affecting the use, manufacture, installation of the Product in the Territory;
- 6.1.6 to ensure that the manufacture, marketing, sale and installation of the Product in the Territory complies with all governmental regulations and statutory requirements from time to time in existence in the Territory (and, in particular, with all safety and labelling regulations) of which the Licensee is aware;

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- 6.1.7 that it will in all dealings relating directly or indirectly to the manufacture, marketing, sale or installation of the Product in the Territory clearly indicate that it is acting as principal and at no time shall the Licensee have any power or authority to bind the Licensor or assume any obligation of any kind implied or express on behalf of the Licensor;
- 6.1.8 that it will not at any time in the Territory hold itself out as, or represent that it is, the owner of the Licensed Trade Mark;
- 6.1.9 that it will not at any time in the Territory represent that any other product is the same as the Product and that it will use all reasonable endeavours to differentiate the Product from other products which it sells and/or offers for sale;
- 6.1.10 that it will not use any of its advertising or promotional material for the Product at any trade fairs, shows or exhibitions or otherwise outside the Territory;
- 6.1.11 that it will not, without the Licensor's prior written consent, use the Licensed Trade Mark to promote or induce the sale or offer for sale of products other than the Product; and
- 6.1.12 to use all reasonable care in the manufacture, marketing, sale and installation of the Product in the Territory and to procure that any manufacture or installation of the Product in the Territory carried out under its supervision is carried out with all reasonable care and in accordance with this Agreement.

## 7. Term

- 7.1 This Agreement shall commence on the Commencement Date and shall (subject to Clauses 8 and 17) continue for an initial period ending on 28 February 2000 (the "Initial Term").
- 7.2 This Agreement shall continue in force for the Renewal Term at the Licensee's option provided that the Licensee has notified the Licensor of its intent to exercise this renewal option at least ninety (90) days prior to the expiry of the Initial Term. The terms and conditions of this Agreement shall apply to the Renewal Term and (for the avoidance of doubt) the Licensee shall be required to make Minimum Guarantee payments of US\$40,000 for the Renewal Term as provided in Clause 3.1(c).
- 7.3 Any further renewal of this Agreement shall be subject to the agreement of both parties.

## 8. Termination

- 8.1 The Licensor shall have the right to terminate this Agreement immediately by notice in writing if the Licensee fails to make any payment due to the Licensor under this Agreement within 14 days after written demand has been made to the Licensee (it

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being understood that written demand will not be made until at least 28 days after payment is due).

8.2 Either party shall have the right to terminate this Agreement immediately by notice in writing if the other:

- (a) materially breaches this Agreement and does not (i) remedy the breach (if it is capable of remedy) within 30 days of written notice of the breach or (ii) commence remedying the breach (if it is capable of remedy) within 30 days of written notice of the breach and thereafter diligently proceed to remedy the breach; or
- (b) becomes insolvent or is otherwise unable or unwilling to pay its debts or threatens to do any of the foregoing; or
- (c) breaches this Agreement in the same manner on more than 3 single occasions (whether or not such breaches have been remedied).

8.3 The termination of this Agreement for any reason shall be without prejudice to the rights and obligations of the parties accruing up to and including the date of such termination.

8.4 On termination of this Agreement whether by expiry of the terms or otherwise the Licensee shall forthwith pay to the Licensor the balance of any monies owing to the Licensor hereunder accrued up to the date of termination.

8.5 On termination of this Agreement whether by expiry of the terms or otherwise the Licensee shall:

8.5.1 discontinue all use of the Licensed Trade Mark in the Territory except for the purpose of:

- (a) completing any outstanding order(s) for the Product which it accepted before termination, which order(s) shall be completed in accordance with this Agreement without delay; and
- (b) completing any outstanding order(s) for the Product which it accepted after termination where it has received the Licensor's written consent to complete the order(s) subsequent to termination, which orders shall be completed in accordance with this Agreement without delay; and

8.5.2 return to the Licensor all material supplied by the Licensor pursuant to Clause 5.

8.6 All provisions of this Agreement which in order to give effect to their meaning need to survive its termination and, in particular Clauses 1, 8, 9.4, 9.5, 9.6, 9.8, 9.9, 11, 13, 14, 15, 16 and 18, shall remain in full force and effect hereafter.

8.7 If this Agreement is terminated prior to the <sup>31 March</sup> anniversary in any calendar year, the Licensee shall pay any sums due to the Licensor pursuant to Clause 3.1 on that

than 1 month after termination.

## 9. Trade marks

9.1 The Licensee shall not use the Licensed Trade Mark in any manner which detracts from the goodwill and reputation of, or is an improper use of, the Licensed Trade Mark.

9.2 The Licensee shall:

- (a) ensure that, whenever the Licensed Trade Mark is used on or in relation to the Product in the Territory, the Licensed Trade Mark is always accompanied by the following wording, which shall be reasonably prominent:

"REKORTAN is a trade mark owned by ETC (Holdings) Ltd and used under licence by Southwest Recreational Industries, Inc."

The ETC logo in Schedule 1 shall also be included next to such wording; and

- (b) not in the Territory use the Licensed Trade Mark in relation to or affix it to any goods or services other than the Product.
- 9.3 The Licensee shall not in the Territory alter or add to the Licensed Trade Mark in relation to the Product and shall not in the Territory use the Licensed Trade Mark as part of its name or the name of any entity associated with it without the prior written consent of the Licensor.
- 9.4 The Licensee shall not in the Territory use any new mark or name that is a colourable imitation of or confusingly similar to the Licensed Trade Mark in respect of any goods or services. Nothing in this Clause shall prevent the Licensee from using the name EUKOTAN in the Territory.
- 9.5 The Licensee shall not during the subsistence of this Agreement or at any future time register or use the Licensed Trade Mark in the Territory in its own name as proprietor.
- 9.6 The Licensee acknowledges the Licensor's exclusive right, title and interest in the Licensed Trade Mark and corresponding goodwill in the Territory and agrees not to challenge such right, title or interest. All goodwill attaching to the Licensed Trade Mark generated by the Licensee's operations under this Agreement shall inure to the benefit of the Licensor. To the extent that the Licensee obtains any interest in such goodwill, it shall only be as trustee for the Licensor and the Licensee shall on request by the Licensor and at the Licensor's cost, execute all relevant documents for the transfer of any such goodwill to the Licensor.
- 9.7 The Licensee acknowledges that, save as provided herein, this Agreement shall not operate to vest any right, title or interest in the Licensed Trade Mark in the

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**Territory in the Licensee.**

- 9.8 The Licensee shall not except with the prior written consent of the Licensor make use of the name of the Licensor in any connection otherwise than is expressly permitted by this Agreement.
- 9.9 The Licensee shall on request by the Licensor and at the Licensor's cost use all reasonable endeavours to supply to the Licensor or the Licensor's authorised representative information as to the Licensee's use of the Licensed Trade Mark in the Territory which the Licensor is required by law in the Territory to furnish to any relevant Trade Mark Registry in order to protect the Licensed Trade Mark.

**10. Infringements**

- 10.1 The Licensee shall promptly call to the attention of the Licensor any use or proposed use of the Licensed Trade Mark by any third party.
- 10.2 The Licensee shall promptly call to the attention of the Licensor any allegation that the Licensed Trade Mark is invalid or that use of the Licensed Trade Mark infringes any rights of another party or that the Licensed Trade Mark is otherwise attacked or attackable. The Licensee shall promptly give the Licensor full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.
- 10.3 The Licensor shall have sole right to conduct and control all proceedings relating to the Licensed Trade Mark and shall in its sole discretion decide what action if any to take in respect of any infringement, or alleged infringement, passing off or alleged passing off of the Licensed Trade Mark in the Territory.
- 10.4 The Licensee shall at the request of the Licensor give full co-operation to the Licensor in any claim or proceedings infringement or passing off action, brought or threatened in respect of the Licensed Trade Mark in the Territory provided that the Licensee's reasonable expenses incurred in doing so are borne by the Licensor.

**11. Indemnity**

- 11.1 Subject to Clause 11.2, the Licensee shall be liable for and will indemnify the Licensor (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Licensor arising out of any complaint, dispute or contractual, tortious or other claims or proceedings brought against the Licensor by a third party claiming relief against the Licensor by reason of the manufacture, marketing, sale or installation of the Product by the Licensee or under its supervision unless such liability, loss, damages, costs or expenses arise out of a breach by the Licensor of its obligations under this Agreement.
- 11.2 The Licensor shall indemnify the Licensee (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Licensee arising out of any complaint, dispute or contractual, tortious or other claims or

- 9 -

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proceedings brought against the Licensee by a third party claiming relief against the Licensee by reason of any breach by the Licensee of its obligations under this Agreement.

11.3 Subject to Clauses 11.1 and 11.2, in no event will either party be liable to the other party for indirect, incidental, special, punitive, exemplary or consequential damages of any kind even if such party has been advised of the possibility of such damages.

12. Assignment

Neither party shall assign, transfer or sub-license the benefit and/or burden of this Agreement without the prior written consent of the other.

13. Entire Agreement/No Waiver

13.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements between them relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly contained in this Agreement and no change may be made to it except in writing signed by duly authorized representatives of both parties.

13.2 No failure or delay on the part of either of the parties to operate any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

14. Illegality

In the event that any term or provision of this Agreement is declared or becomes illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement provided always that if such deletion substantially affects or alters the commercial basis of this Agreement, the parties shall negotiate in good faith to amend and modify the terms and provisions of this Agreement to carry out the commercial purpose of this Agreement.

15. Confidentiality

15.1 Each party shall during the full term of this Agreement and thereafter keep secret and confidential (a) all information disclosed to it pursuant to Clause 3, (b) all other information disclosed to it pursuant to this Agreement by the other party that is of a confidential nature and (c) the terms of this Agreement and shall not disclose the same to any person save as expressly authorized in writing to be disclosed by the other party. Each party shall procure that its agents and employees are similarly bound.

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15.2 The obligation of confidentiality contained in Clause 15.1 shall not apply or (as the case may be) shall cease to apply to information which:

- 15.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- 15.2.2 is already known to the receiving party (as evidenced by written records) at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence;
- 15.2.3 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of obligation owed by that third party to the other party to this Agreement not being the receiving party; or
- 15.2.4 is required to be disclosed by applicable law or order of a court of competent jurisdiction or government department or agency, provided that prior to such disclosure the receiving party shall advise the disclosing party of the proposed form of the disclosure.

## 16. Notices

- 16.1 Any notice or other communication given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by registered airmail post or by facsimile or other electronic media to a party at the address or facsimile number set out above for such party or such other address as one party may from time to time designate by written notice to the other and (in the case of the Licensee) marked for the attention of C. Clapham, with a copy to M. Knight and (in the case of the Licensee) marked for the attention of R. Scam.
- 16.2 Any such notice or other communication shall be deemed to have been received by the addressee seven working days following the date of dispatch if sent via registered airmail post or simultaneously with delivery or transmission if sent by hand or facsimile or other electronic means (provided, in the case of transmission by fax or other electronic means, a successful transmission report is received and a confirmation copy is sent by airmail post).

## 17. Force Majeure

- 17.1 If either party is hindered, prevented or delayed from or in performing any of its obligations under this Agreement by any event beyond its reasonable control, then its obligations shall be suspended for as long as the event continues, provided written notification of the event is immediately given to the other party and it uses all reasonable effort to mitigate the effects of the event on performance of its obligations under this Agreement.
- 17.2 If the event continues for more than three months, either party may terminate this

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Agreement by giving the other not less than 30 days written notice.

18. Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the law of the District of Columbia, USA and the parties submit to the exclusive jurisdiction of the Courts of such District in relation to any dispute arising out of or in connection with this Agreement.

SIGNED by  
ETC (HOLDINGS) LIMITED  
in the presence of:

*[Handwritten signature]* )  
*[Handwritten signature]* )

SIGNED BY  
SOUTHWEST RECREATIONAL  
INDUSTRIES, INC.  
in the presence of:

*[Handwritten signature]* )  
*[Handwritten signature]* )  
*[Handwritten signature]* )

**SCHEDULE 1**

**ETC Logo**

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**SMITH, GAMBRELL & RUSSELL, LLP****WASHINGTON, D.C. OFFICE**

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April 3, 2001

**VIA FACSIMILE ONLY**

Nick Angel, Esq.  
Ashurst Morris Crisp  
Frankfurt, Germany

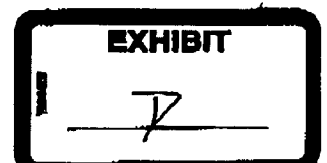
Re: ETC (Holdings), Ltd./REKORTAN Assignment in the United States

Dear Nick:

Thank you for your copy of your April 2, 2001 letter to Claire Morris. I assume that she is somehow involved in the liquidation of ETC Holdings, Ltd.

As you know, the Purchase Agreement between ETC Holdings, Ltd. and APT Acquisition Corp. occurred on or about June 18, 1998, before ETC Holdings, Ltd. went into liquidation. Pursuant to the Deed for the sale and purchase of trademarks and patents, ETC Holdings was to release the REKORTAN Assignment from escrow and authorize its solicitors to date and deliver it to the purchaser, APT Acquisition Corp.

There does not appear to be any valid reason why ETC Holdings is restricted from releasing the REKORTAN Assignment. If there are any valid reasons, we need to know those reasons. This is not an asset of ETC Holdings Ltd., the trademark has already been purchased by APT Acquisition Corp. At this juncture, all that is required is the documentation of the Assignment so that we may record it in the U.S. PTO.



TRADEMARK  
REEL: 002343 FRAME: 0525

Nick Angel, Esq.  
Ashurst Morris Crisp  
April 3, 2001  
Page 2

By copy of this letter to Claire Morris, I am requesting that the Assignment be released immediately.

With best regards.

Sincerely,



Joyce B. Klemmer

JBK/clc

Attachments

cc: Claire Morris, Esq. - via Federal Express  
Mr. Michael Beyer  
Hans Michael Kraus, Esq.

**DECLARATION OF MICHAEL BEYER**

COMES NOW Michael Beyer who declares as follows in regard to the trademark REKORTAN, which is the subject of U.S. Registration No. 1,238,546:

1. I am the President of APT Acquisition Corporation, a Georgia corporation, with its principal place of business at 109 Conica Lane, P.O. Box 160, Harmony, Pennsylvania 16047, USA.

2. On June 18, 1998, ETC (Holdings) Ltd. and APT Acquisition Corporation executed a Deed for the sale and purchase of certain trademarks and patents (hereinafter "Deed"). A true and accurate copy of the relevant portions of the Deed are attached hereto as Exhibit A.

3. Pursuant to Paragraph 7.2 of the Deed, on August 18, 1998 ETC (Holdings) Ltd. executed an assignment for the trademark REKORTAN and its U.S. Registration No. 1,238,546. A true and accurate copy of the trademark assignment is attached hereto as Exhibit B.

4. Pursuant to Paragraph 7.3 of the Deed, ETC (Holdings) Ltd. was to inter alia deliver the REKORTAN assignment upon the expiration of a License Agreement between ETC (Holdings) Ltd. and Southwest Recreational Industries, Inc.

5. The License expired on March 31, 2001, the expiration date of the renewal term. A true and accurate copy of the License Agreement is attached hereto as Exhibit C.

6. On December 15, 1998, ETC (Holdings) Ltd. went into liquidation in the United Kingdom, and Peter Yelden of Smith & Williamson, Chartered Accountants, No. 1 Riding House Street, London, United Kingdom W1A 3AS was appointed liquidator.

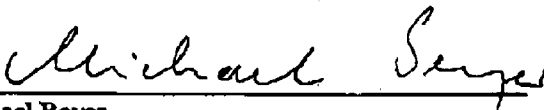
7. Despite a written demand to Nick Angel, attorney for ETC, and Ms. Claire Morris of the liquidator's office on April 3, 2001 for the delivery of the executed assignment, Mr. Yelden

has not delivered to APT Acquisition Corp. the original signed Assignment for the REKORTAN trademark and its U.S. Registration No. 1,238,586 (Exhibit D).

8. As of April 1, 2001, at the latest, the day after the expiration of the License between ETC (Holdings) Ltd. and Southwest Recreational Industries, Inc., APT Acquisition Corp. was the owner of the trademark REKORTAN and its U.S. Registration No. 1,238,586.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 2<sup>nd</sup> day of August 2001

  
\_\_\_\_\_  
Michael Beyer  
President  
APT Acquisition Corporation