

11-27-2002

FORM PTO-159+  
1-31-92



102294717

SHEET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

11-18-02

BOX ASSIGNMENTS, Commissioner of Patents and Trademarks, Washington, D.C. 20231  
Please record and index the attached original documents or copy thereof.

1. Name of conveying party(ies): **Openfirst Holdings, LLC**  
State of Delaware Limited Liability Company

2. Name and address of receiving party(ies):  
Name: **Associated Bank, National Association**  
Address: 401 East Kilbourn Avenue  
City: Milwaukee State: WI Zip: 53202  
Type of Company: A Nationally Chartered Bank  
  
If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
  
(Designation must be a separate document from Assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of Conveyance: Security Agreement  
  
Execution Date: **November 6, 2002**

4. A. Trademark Application No.(s) See attached

B. Trademark Registration No.(s) See attached

Additional numbers attached?  Yes  No **2624887**

5. Name and address of party to whom correspondence concerning document should be mailed:  
  
Dyann L. Kostello  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-4108

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41):.....\$ 100.00  
 Enclosed  
 Deficiencies in fee charged to deposit account

8. Deposit account number: 13-3080

11/26/2002 LMUELLER 00000185 2624887

01 FC:8521  
02 FC:8522

40.00 OP  
150.00 OP

DO NOT USE THIS SPACE

9. Statement and signature.  
  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*  
  
Dyann L. Kostello  
Name of Person Signing  
  
  
Signature  
  
November 18, 2002  
Date  
  
Total number of pages including cover sheet, attachments, and document: 11

OMB No. 0651-0011 (exp. 4/94)TFORMTMASSIGN

Attorney File 13425/0019

United States Postal Service Express Mail Mailing Label No. EV139484571US

cc: Docketing

TRADEMARK  
REEL: 002623 FRAME: 0949

**TRADEMARK REGISTRATIONS**  
**OPENFIRST HOLDINGS, LLC**

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
POWERTRAK	2,624,887	09/24/02
POWERDRIVE	2,628,258	10/01/02
POWERPLAN	2,624,886	09/24/02
OPENFIRST	2,624,885	09/24/02
POWERSUITE	2,624,882	09/24/02

**TRADEMARK APPLICATIONS**  
**OPENFIRST HOLDINGS, LLC**

<u>Trademark Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
POWERMARKETING	76/356,681	01/09/02
POWERMAIL	76/356,680	01/09/02

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Security Agreement") made as of this 6<sup>th</sup> day of November, 2002, by OPENFIRST HOLDINGS, LLC, a Delaware limited liability company with a place of business at 300 N. Jefferson Street, Milwaukee, WI ("Debtor") in favor of ASSOCIATED BANK, NATIONAL ASSOCIATION ("Secured Party"):

### RECITALS

WHEREAS, Debtor and Secured Party have entered into a Credit Agreement dated the date hereof and Related Documents (collectively, with the Credit Agreement, and as each may be amended or otherwise modified from time to time, the "Financing Agreements");

WHEREAS, Debtor is the owner of certain trademarks; and

WHEREAS, it is a condition to the Credit Agreement that Debtor grant to Secured Party a security interest in certain of Debtor's assets, including, without limitation, its trademarks and trademark applications.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Debtor agrees as follows:

1. Incorporation of the Financing Agreements. The Financing Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings assigned to them in the Credit Agreement.

2. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Trademark" shall have the set forth in Section 4.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of Wisconsin.

"USPTO" shall mean the United States Patent and Trademark Office.

3. Construction. In this Security Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Security Agreement authorizes any sale, transfer, or other disposition of any Trademarks by Debtor; (ii) "includes" and "including" are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Credit Agreement shall also be applicable to this Security Agreement and are incorporated herein by this reference.

4. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Obligations, Debtor hereby grants to

Secured Party, and hereby reaffirms its prior grant pursuant to the Financing Agreements of, a continuing first priority security interest in Debtor's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) in connection therewith, including, without limitation, the trademarks and applications listed on Schedule A and Schedule B, respectively, which are attached hereto and made a part hereof and the trademarks, and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); all rights corresponding to any of the foregoing throughout the world and the goodwill of the Debtor's business connected with the use of and symbolized by the Trademarks.

5. Supplement to Credit Agreement. This Security Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Credit Agreement or other security documents referred to therein. The rights and remedies of Secured Party with respect to the security interests granted herein are without prejudice to, and are in addition to those set forth in the Credit Agreement or any other security documents referred to therein, all terms and provisions of which are incorporated herein by reference.

6. Debtor Representations and Warranties. Debtor represents and warrants to Secured Party that:

(i) A true and correct list of all of Debtor's United States registered Trademarks and Trademark registrations is set forth in Schedule A;

(ii) A true and correct list of all of Debtor's United States applications for Trademark registrations is set forth in Schedule B (other than "intent to use" applications until a verified statement of use is filed with respect to such applications);

(iii) No Trademark has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

(iv) Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens, charges and encumbrances, including without limitation, shop rights and covenants by Debtor not to sue third persons, except for Permitted Liens;

(v) Debtor has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

(vi) Debtor has the unqualified right to execute and deliver this Security Agreement and perform its terms.

7. Further Acts. On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Security Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Security Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Trademarks, including any documents for filing with the USPTO or any applicable state office. Secured Party may record this Security Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Trademarks with the USPTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Trademarks in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the Trademarks, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof.

8. Restrictions on Future Agreements. Debtor agrees that until its Obligations shall have been satisfied in full and the Financing Agreements shall have been terminated, Debtor shall not, without the prior written consent of Secured Party, sell or assign its interest in any Trademark or enter into any other agreement with respect to any Trademark which would affect the validity or enforcement of the rights transferred to Secured Party under this Security Agreement, in each case excluding sales or assignments of Trademarks permitted in accordance with the terms of any Financing Agreements.

9. New Trademarks. If, before Debtor's Obligations shall have been satisfied in full or before the Financing Agreements have been terminated, Debtor shall (i) become aware of any existing Trademarks of which Debtor has not previously informed Secured Party, (ii) initiate any federal applications for registration of new Trademarks, or (iii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, the provisions of this Security Agreement shall automatically apply thereto and Debtor shall give to Secured Party prompt written notice thereof. Debtor hereby authorizes Secured Party to modify this Security Agreement by amending Schedule A or Schedule B, as the case may be, to include any such Trademarks or federal applications for registration of Trademarks. Notwithstanding the foregoing, no failure to so modify this Security Agreement or amend Schedule A or Schedule B shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule A or Schedule B.

10. Royalties. Debtor agrees that upon the occurrence and during the continuance of an Event of Default, the use by Secured Party of all Trademarks shall be without any liability for royalties or other related charges from Secured Party to Debtor.

11. Product Quality. Debtor agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices. Upon the occurrence and during the continuance of an Event of

Default, Debtor agrees that Secured Party, or a conservator appointed by Secured Party, shall have the right to establish such additional product quality controls as Secured Party, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Debtor under the Trademarks.

12. Release of Security Agreement. This Security Agreement is made for collateral purposes only. This Security Agreement, the security interests created or granted hereby, and all obligations of Debtor hereunder shall terminate when the Obligations shall have been fully paid and satisfied and the Financing Agreements shall have been terminated. Secured Party shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Agreements, including, without limitation, terminating any such security interests in any Trademarks sold or assigned in accordance with the provisions of any Financing Agreement.

13. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Debtor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Secured Party in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid by Debtor and until paid shall constitute Obligations.

14. Debtor Duties. Debtor shall have the duty (i) to file and prosecute diligently any trademark applications pending as of the date hereof or hereafter until Debtor's Obligations shall have been paid in full and the Financing Agreements have been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable, in each case except for Trademarks and applications for Trademarks that Debtor reasonably determines are no longer material to its business. Any expenses incurred in connection with Debtor's Obligations under this Section 14 shall be borne by Debtor.

15. Rights Upon Default. After an Event of Default and during the continuance thereof, Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Secured Party shall commence any such suit, Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement and Debtor shall promptly, upon demand, reimburse and indemnify Secured Party for all costs and expenses incurred by Secured Party in the exercise of its rights under this Section 15.

16. No Waiver; Amendments. Secured Party shall not, by any act, course of dealing, delay, omission or otherwise, be deemed to have waived any of its rights, powers, privileges or remedies hereunder. A waiver or partial waiver of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Assignee would otherwise have had on any future occasion. No amendment, modification, alteration, or waiver of the terms of this Security Agreement or consent required under the terms of this Security

Agreement shall be effective unless made as specifically provided in Section 9 hereof or by a writing signed by the parties hereto. Any such amendment, modification, alteration, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

17. Appointment of Attorney-In-Fact. Debtor hereby irrevocably authorizes Secured Party upon the occurrence of an Event of Default, to constitute and appoint any officer or agent of Secured Party as Secured Party may select, in its sole discretion, with full power of substitution, as Debtor's true and lawful attorney-in-fact, with full irrevocable power and authority (i) to endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for Secured Party in the use of the Trademarks or (ii) to take any other actions with respect to the Trademarks as Secured Party deems to be in its best interest, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone, in each case to the extent an Event of Default is then in existence. Debtor hereby ratifies, to the extent permitted by law, all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable until Debtor's Obligations shall have been paid in full and the Financing Agreements have been terminated.

18. Remedies; Effect on Financing Agreements. All of Secured Party's rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Debtor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Secured Party under the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Secured Party shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Financing Agreements, all rights and remedies allowed by law and the rights and remedies of a secured party under the UCC.

19. Binding Effect; Benefits. The provisions of this Security Agreement shall inure to the benefit of Secured Party, its successors, nominees and assigns, and be binding upon Debtor and its permitted successors and assigns.

20. Governing Law. This Security Agreement shall be governed by the internal laws of the State of Wisconsin. The parties hereto acknowledge that this Security Agreement was negotiated with the assistance of their respective counsel and, accordingly, such laws shall be applied without reference to any rules of construction regarding the draftsman hereof.

21. Counterparts; Headings. This Security Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. The descriptive headings in this Security Agreement are inserted for convenience of reference only and shall not affect the construction of this Security Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

22. Survival of Representations. All agreements, covenants, representations and warranties made herein shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Financing Agreements.

23. No Inconsistent Requirements. Debtor acknowledges that this Security Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Debtor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms. To the extent that any provision of this Security Agreement conflicts with any provision of the Credit Agreement, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Security Agreement is to add to, and not detract from, the rights granted to Security Party under the Credit Agreement.

24. Severability. Whenever possible, each provision of this Security Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement to the fullest extent permitted by applicable law.

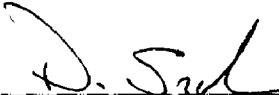
25. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Credit Agreement.

**[SIGNATURE PAGE FOLLOWS]**



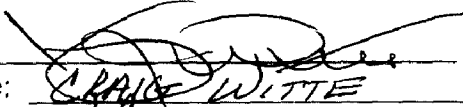
IN WITNESS WHEREOF, Debtor has executed this Security Agreement as of the date first above written.

OPENFIRST HOLDINGS, LLC

By:   
Name: Darren M. Snyder  
Its: President and CEO

Agreed and Accepted  
As of the Date First Written Above

ASSOCIATED BANK, NATIONAL  
ASSOCIATION

By:   
Name: CRAG WITTE  
Its: V.P.

**SCHEDULE A**

**TRADEMARK REGISTRATIONS**  
**OPENFIRST HOLDINGS, LLC**

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
POWERTRAK	2,624,887	09/24/02
POWERDRIVE	2,628,258	10/01/02
POWERPLAN	2,624,886	09/24/02
OPENFIRST	2,624,885	09/24/02
POWERSUITE	2,624,882	09/24/02

**SCHEDULE B**

**TRADEMARK APPLICATIONS**  
**OPENFIRST HOLDINGS, LLC**

<u>Trademark Application</u> <u>Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
POWERMARKETING	76/356,681	01/09/02
POWERMAIL	76/356,680	01/09/02