

12-24-2002

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office



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

1. Name of conveying party(ies):

Build-To-Order, Inc.
(2-part simultaneous transaction)

12-24-02

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

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: 08/12/2002 EFFECTUATED BY WIRE TRANSFER

2. Name and address of receiving party(ies)

Name: Matthew Ospeck

Internal Address: _____
Address: _____

Street Address: 681 Dunhill Drive

City: Danville State: CA Zip: 94506

- Individual(s) citizenship United States
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

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

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

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) 1044774

Additional number(s) attached Yes No

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

Name: Matthew Ospeck

Internal Address: _____

Street Address: 681 Dunhill Drive

City: Danville State: CA Zip: 94506

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41).....\$ 40

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Matthew Ospeck
Name of Person Signing

Signature

12-22-02
Date

Total number of pages including cover sheet, attachments, and document: 18

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

12/24/2002 6TON11 00000204 1044774

01 FC:8521

40.00 DP

TRADEMARK
REEL: 002638 FRAME: 0503

ORIGINAL

**INTELLECTUAL PROPERTY
PURCHASE AGREEMENT**

by and between

MATTHEW OSPECK

and

BUILD-TO-ORDER, INC.

Dated as of July 29, 2002

INSTRUMENT OF ASSIGNMENT

Assignment. Build-To-Order, Inc., a Delaware corporation ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with and subject to the terms and provisions of that certain Intellectual Property Purchase Agreement, dated as of July 29, 2002 (the "Purchase Agreement"), by and among Seller and Matthew Ospeck, an individual ("Buyer"), hereby sells, assigns, transfers, conveys and delivers to Buyer, its successors and assigns, all of Seller's rights, title and interest in and to all of the Intellectual Property Assets (as such term is defined in the Purchase Agreement), free and clear of all Liens (as such term is defined in the Purchase Agreement).

No Liabilities. Seller hereby expressly acknowledges and agrees that Buyer does not assume any debts, liabilities or obligations of any kind whatsoever, whether known or unknown, absolute, contingent or otherwise, and any and all of such debts, liabilities and obligations shall remain the sole responsibility of Seller.

IN WITNESS WHEREOF, Seller has executed this Instrument of Assignment as of the 29 day of July, 2002.

Build-To-Order, Inc.,
a Delaware corporation

By: 

Name: _____

Title: Chairman

Attest:

By: 

Name: _____

Title: C.O.O. V.P. BUS. DEV.

Trademarks and Trade Applications

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
✓ AUBURN	1044774	7/27/76
Flying Lady Design	2492678	9/25/01

<u>Trademark / Domain</u>	<u>Serial No.</u>	<u>Filing Date</u>
Auburn Cord / AburnCord.com	78073492	7/12/01
Auburn Cord Duesenberg	78073491	7/12/01
Cord	78075260	7/23/01
Duesenberg	78073489	7/12/01
Pierce Arrow	78073500	7/12/01
Flying Lady Design	76175889	11/28/00

INTELLECTUAL PROPERTY PURCHASE AGREEMENT

This INTELLECTUAL PROPERTY PURCHASE AGREEMENT (this "Agreement"), dated as of July 29, 2002, is by and among BUILD-TO-ORDER, INC. , a Delaware corporation (" Seller") and Matthew Ospeck, an individual (the "Buyer").

RECITALS

WHEREAS, Seller is, among other things, engaged in, or intends to engage in, the business of designing, manufacturing, distributing and selling automobiles and is the owner of certain trademarks and other forms of intellectual property arising from or related to such trademarks;

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, such trademarks and other forms of intellectual property arising from or related to such trademarks of Seller on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "Applications" shall mean any trademark applications for registration, renewal or any other purpose, relating to the Intellectual Property.

1.2 "Auburn Trademarks" shall mean all of Seller's rights, title and interest in, to and under the trademark "Auburn", including the trademarks as set forth on Schedule 1.2; provided, however, that Auburn Trademarks shall not include the Excluded Trademark, as defined in Section 1.12.

1.3 "Buyer" shall have the meaning set forth in the Preamble hereto.

1.4 "Buyer Indemnified Party" shall have the meaning set forth in Section 11.1.

1.5 "Buyer's Limited Use Grant" shall have the meaning set forth in Section 2.4.

1.6 "Claims Notice" shall have the meaning set forth in Section 11.2(b)(i).

1.7 “Closing” shall mean the transfer of the Intellectual Property Assets from Seller to Buyer and the payment by Buyer to Auburn-Cord-Duesenberg Co. on behalf of Seller of the Purchase Price.

1.8 “Closing Date” shall mean the date when the Closing occurs, which date shall be August 1, 2002, or such later date, as mutually agreed upon in writing between Buyer and Seller.

1.9 “Code” shall mean the Internal Revenue Code of 1986, as amended, and any successor thereto.

1.10 “Contracts” shall mean contracts, leases, agreements, understandings, mortgages, indentures, commitments and all other arrangements, whether or not legally binding, whether oral or written, express or implied, to which Seller is a party.

1.11 “Copyrights” shall mean United States and foreign copyrights, whether registered or unregistered, and pending applications to register the same.

1.12 “Deed of Trademark Assignment” shall mean the Deed of Trademark Assignment, executed and delivered by Seller to Buyer as of the Closing Date, in the form attached hereto as Exhibit “A.”

1.13 “Excluded Trademark” shall mean the trademark filed with the United States Patent and Trademark Office, with the Registration Number 2317862, for the mark “Auburn” for use in connection with toy cars that resemble or are fanciful or artistic derivations of American made automobiles manufactured and sold under the name Auburn, in International Class 28. Auburn-Cord-Duesenberg Co. has the rights, title and interest in the Excluded Trademark.

1.14 “Expenses” shall mean any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or Proceeding incident to any matter indemnified against hereunder (including, without limitation, court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

1.15 “Governmental Body” shall mean any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, or any subdivision, branch or department of any of the foregoing.

1.16 “Indebtedness” shall mean, as to any Person:

(a) all debt for borrowed money or for the deferred purchase price of property or services;

(b) all obligations evidenced by a note, bond, debenture or similar instrument;

(c) all obligations of other Persons that such Person has guaranteed or for which such Person may otherwise become responsible;

(d) all obligations, whether of such Person or of other Persons, the performance of which is secured or collateralized by a Lien on any property or assets of such Person; and

(e) all reimbursement obligations in connection with letters of credit or letter of credit guaranties issued for the account of such Person.

1.17 “Instrument of Assignment” shall mean the Instrument of Assignment, dated as of the Closing Date, by and between Buyer and Seller, in the form attached hereto as Exhibit “B.”

1.18 “Intellectual Property” shall mean all of the Seller’s rights, title and interest in and to the Auburn Trademarks, any and all related inventions (whether patentable or not), United States and foreign Patents, Patent applications, technology and know-how, United States and foreign trademarks, trade dress, trademark applications, service marks, service mark applications, trade names, Trade Secrets, copyrights, copyrightable subject matter, copyright registrations and applications, licenses, agency and distribution agreements, domain names, works and all other intellectual property.

1.19 “Intellectual Property Assets” shall have the meaning set forth in Section 2.1.

1.20 “License Agreement” shall mean the license agreement between Seller and Auburn-Cord-Duesenberg Co. dated April 30, 2002, which is an exclusive, royalty-free, perpetual, worldwide license to use the Excluded Trademark for the purpose of selling toy and model replicas of contemporary automobiles that are not vintage, historical or classic renditions in overall form and style to automobiles that were originally manufactured and sold under the Excluded Trademark by the original manufacturer of such automobiles.

1.21 “Lien” shall mean any mortgage, hypothecation, pledge, lien, security interest, claim, encumbrance, exception, variance, reservation, charge, restriction or limitation of any kind or nature.

1.22 “Losses” shall mean any and all losses (including, without limitation, loss of value), costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges, but shall not include Expenses.

1.23 “Material Adverse Effect” shall mean any change, event, violation, inaccuracy, circumstance or effect that is (i) materially adverse to the Intellectual Property Assets, taken as a whole or considered individually, or (ii) likely to have a material adverse affect on the ability of Seller to consummate the transactions contemplated hereby. Material Adverse Effect shall include, without limitation, changes in the registrability or validity of any of the Intellectual Property Assets.

1.24 “Patents” means any and all United States and foreign patents and patent applications owned by Seller and all reexaminations, reissues, continuations, divisions and counterparts thereof throughout the world.

1.25 “Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, trust or other entity or

organization, whether or not a legal entity and whether foreign or domestic, or any Governmental Body.

1.26 "Proceeding" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

1.27 "Purchase Price" shall have the meaning set forth in Section 2.2.

1.28 "Re-Purchase Agreement" shall have the meaning set forth in Section 3.1.

1.29 "Seller" shall have the meaning set forth in the Preamble hereto.

1.30 "Seller's Limited Use Grant Claims" shall include and be limited to the following or similar language: (1) Seller intends to launch its portfolio under the Auburn Brand and (2) Seller has taken the steps necessary to secure the Auburn Brand. Seller's Limited Use Grant Claims are for six (6) months from the Closing Date, which period may be extended by written agreement of Buyer and Seller.

1.31 "Seller Representations" shall have the meaning set forth in ARTICLE 5.

1.32 "Taxes" shall mean all taxes, charges, or other assessments of any nature imposed by any Federal, state, local or foreign taxing authority or Governmental Body.

1.33 "Tax Returns" shall mean any return, report, information return or other document (including any related or supporting information) required to be filed by any Federal, state, local or foreign taxing authority or Governmental Body with respect to Taxes.

1.34 "Third Party Claim" shall have the meaning set forth in Section 11.2(b)(i).

1.35 "Trade Secret" shall have the broadest meaning assigned to such term in the Uniform Trade Secrets Act, Cal. Civ. Code §3426.1, and shall be deemed to include, without limitation, any and all of the Seller's confidential ideas, trade secrets, know-how, concepts, methods, processes, formulae, reports, data, notebooks, documents, reports or records, or services produced or due, supplier lists and records (including all information relating to current negotiations and quotations from such suppliers), customer and client lists and records, mailing lists, marketing information and literature, the results of marketing research, business plans schematics, engineering records, drawings, plans for current and future product models, pricing models and information, and any and all other confidential or proprietary information of the Company, whether tangible or intangible.

ARTICLE 2

PURCHASE AND SALE

2.1 Intellectual Property Assets. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, assign, transfer, convey and

deliver to Buyer, and Buyer shall purchase and acquire from Seller, the following assets (the "Intellectual Property Assets"), free and clear of all Liens:

(a) the Intellectual Property;

(b) all of Seller's rights, claims or causes of action against third parties (including all damages related thereto), whenever arising, whether choate or inchoate, known or unknown, contingent or non-contingent, relating to any of the Intellectual Property; and

(c) all agreements, Contracts, licenses, sublicenses, assignments and indemnities relating to the Intellectual Property, but excluding the interest of Auburn-Cord-Duesenberg Co. in that certain License Agreement, dated November 1, 2001, with Rick Herron, DBA "Classic Auto Renderings" and that certain License Agreement, dated April 2001, with Stephen Jelf, individually, DBA Signpast.com.

(d) to the extent that Seller has any rights, title and interest in and to the following trademarks, the rights, title and interest in the following: Auburn Cord, AuburnCord.com, Auburn Cord Duesenberg, Cord, Duesenberg, Flying Lady Design, and Pierce Arrow and any and all related inventions (whether patentable or not), United States and foreign Patents, Patent applications, technology and know-how, United States and foreign trademarks, trade dress, trademark applications, service marks, service mark applications, trade names, Trade Secrets, copyrights, copyrightable subject matter, copyright registrations and applications, licenses, agency and distribution agreements, domain names, works and all other intellectual property. In no way shall this Section 2.1(d) be interpreted as any inference that Seller has such right, title and interest in and to the trademarks listed herein.

2.2 Purchase Price. On the Closing Date, Buyer shall pay to Auburn-Cord-Duesenberg Co, by wire transfer, the amount (the "Purchase Price"), which shall be payable for the Intellectual Property Assets.

2.3 Transfer of Intellectual Property. Concurrent with the delivery of the Purchase Price, Seller shall transfer and assign all of the Intellectual Property Assets, as evidenced by the Deed of Trademark Assignment and the Instrument of Assignment.

2.4 Buyer's Limited Use Grant. Buyer grants to Seller as of the Closing the limited right to use the Auburn Trademark internally for the purpose of investigating and accomplishing the necessary due diligence to launch the brand and can make the claims identified in Section 1.30. This grant shall terminate six (6) months from the Closing Date, with the possibility of an extension subject to written agreement of Buyer and Seller. During such six month period, Buyer agrees not to grant permission to use or license the Intellectual Property Assets to any other party.

2.5 Seller Enforcement Obligations. Seller is obligated to and will take the necessary steps to protect the Intellectual Property Assets, which shall include but not be limited to enforcement of any infringement, any renewal fees or documents to be filed with the Patent and Trademark Office until Seller re-purchases the assets.

party understands that it will bear its own attorneys', expert, witness and other fees associated with the arbitration unless a party is ordered to pay costs and expenses. In the event it is necessary, any court of competent jurisdiction shall grant a motion to compel a party to participate in arbitration and shall award to the prevailing party all costs, fees and expenses, including attorneys' fees, to be paid by the party who is compelled by the court to participate in arbitration.

The arbitrator shall be required to follow applicable law, and the arbitrator may not modify or change this Agreement in any way, unless any term, condition or provision is found to be unenforceable, in which case the arbitrator may sever or narrow such term. Any award issued as a result of such arbitration shall be final and binding between the parties thereto and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought. The parties shall cause the arbitrator to reduce its findings of fact and conclusions of law to writing with sufficient explanation to allow for such meaningful judicial review as may be permitted by law.

12.13 Entire Agreement; Benefits of Agreement. This Agreement (including agreements incorporated herein) and the Schedules and Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the parties other than those set forth or referred to herein. This Agreement is not intended to confer upon any Person not a party hereto (and their successors and assigns permitted by Section 12.18) any rights or remedies hereunder.

12.14 Notices. All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally, delivered by United States mail, return receipt requested (to the extent such receipt is returned) or documented overnight delivery service to the appropriate address or number as set forth below, and shall be effective upon such delivery. Notices to each party shall be addressed as follows, or to such other address and to the attention of such other Person as such party may designate by written notice to the other parties hereto:

Notices to Seller:

With a copy to:

Build-To-Order, Inc.
3003 Exposition Boulevard
Santa Monica, California 90404
Attn: Chief Executive Officer

Notices to Buyer:

With a copy to:

Build-To-Order, Incorporated
3003 Exposition Boulevard
Santa Monica, California 90404
Attn: Matthew Ospeck

Matthew Ospeck
681 Dunhill Dr.
Danville, CA 94506

Attn: Matthew Ospeck

12.15 Successors and Assigns. Subject to Section 12.18, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12.16 Headings; Definitions. The section and article headings contained in this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement. All references to Sections or Articles contained herein mean Sections or Articles of this Agreement unless otherwise stated. All capitalized terms defined herein are equally applicable to both the singular and plural forms of such terms.

12.17 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive satisfaction of a condition or compliance by any other party hereto with any term or provision of this Agreement on the part of such other party hereto to be performed or complied with. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

12.18 Assignment. No party may assign, transfer, pledge, hypothecate, sell or otherwise dispose of its interest in this Agreement (voluntarily or by operation of law, directly or indirectly, in whole or in part) without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

12.19 Further Assurances. Following the Closing, Seller (and after the re-purchase of the Intellectual Property Assets by Seller, Buyer shall provide the identical further assurances) shall (i) deliver to Buyer such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer and its counsel, as Buyer may reasonably request or as may be otherwise reasonably necessary to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Intellectual Property Assets and to complete all other transfers and assumptions as are contemplated hereby, (ii) take all steps as may be reasonably necessary to put Buyer in actual possession and control of all the Intellectual Property Assets as provided for herein and (iii) give such further written assurances, as may be reasonably requested by Buyer to better evidence and reflect the transactions described herein and to carry into effect the intents and purposes of this Agreement.

12.20 Publicity. Except for Seller's Limited Use Grant, the parties hereby agree that upon the execution and delivery of this Agreement, neither Seller nor Buyer will issue any publicity or make any public announcements with respect to this Agreement, which specifically includes any publicity relating to the Intellectual Property Assets unless and until both parties have reviewed and expressly approved, in writing, such publicity or announcements.

IN WITNESS WHEREOF, this Intellectual Property Purchase Agreement has been signed by or on behalf of each of the parties as of the day first above written.

SELLER: BUILD-TO-ORDER, INC.,
a Delaware corporation

By: 

Name: ~~William Santana Li~~
Title: ~~Chief Executive Officer~~

*Scott Painter
Chairman*

BUYER: MATTHEW OSPECK,
an individual

By: 

Name: Matthew Ospeck

7/24/02

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