

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
------------------	----------------

NATURE OF CONVEYANCE:	Asset Purchase Agreement
-----------------------	--------------------------

CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Tecmark Services, Inc.		06/30/1999	CORPORATION: MINNESOTA

RECEIVING PARTY DATA	
Name:	Tecmark, LLC
Street Address:	2060 Centre Pointe Boulevard
Internal Address:	Suite 7
City:	St. Paul
State/Country:	MINNESOTA
Postal Code:	55120
Entity Type:	CORPORATION: MINNESOTA

PROPERTY NUMBERS Total: 1		
Property Type	Number	Word Mark
Registration Number:	2203114	TECMARK

CORRESPONDENCE DATA	
Fax Number:	(612)340-8856
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	612-492-6861
Email:	ip.docket@dorsey.com
Correspondent Name:	Daniel P. Sink
Address Line 1:	50 South Sixth Street
Address Line 2:	Suite 1500
Address Line 4:	Minneapolis, MINNESOTA 55402-1498

ATTORNEY DOCKET NUMBER:	12,553
-------------------------	--------

NAME OF SUBMITTER:	Patricia Ngong
--------------------	----------------

Total Attachments: 10
 source=12553 Asset Purchase Agreement_01#page1.tif
 source=12553 Asset Purchase Agreement_02#page1.tif

CH \$40.00 2203114

source=12553 Asset Purchase Agreement_03#page1.tif
source=12553 Asset Purchase Agreement_04#page1.tif
source=12553 Asset Purchase Agreement_05#page1.tif
source=12553 Asset Purchase Agreement_06#page1.tif
source=12553 Asset Purchase Agreement_07#page1.tif
source=12553 Asset Purchase Agreement_08#page1.tif
source=12553 Asset Purchase Agreement_09#page1.tif
source=12553 Asset Purchase Agreement_10#page1.tif

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into this 30th day of June 1999 by and between Tecmark Services, Inc., a Minnesota corporation ("Seller"), and Tecmark, LLC, a Minnesota limited liability company ("Purchaser").

RECITALS:

- A. Seller operates a loyalty marketing program and products business ("Business"), among others.
- B. Seller owns certain assets which are used in the Business, including, but not limited to, equipment owned by Seller as identified and set forth in Exhibit A-1; accounts receivable identified in Exhibit A-2; intellectual property rights owned by Seller as identified and set forth in Exhibit A-3; all customer contracts as identified and set forth in Exhibit A-4 ("Customer Contracts"); all deposits made by Seller for the Business as identified and set forth in Exhibit A-5 and all leasehold improvements located at the Premises (as that term is defined in Section 1.2 below) as identified and set forth in Exhibit A-6. Exhibits A-1 through A-6 shall hereinafter be referred to collectively as "Exhibit A" and the assets described in such Exhibit A shall be referred to as the "Owned Assets".
- C. Seller leases certain assets used in the Business, including but not limited to, those described and listed in Exhibit "B" ("Leased Assets").
- D. Seller wishes to sell and transfer and Purchaser wishes to purchase and acquire the right to use the Owned Assets and the Leased Assets, respectively (collectively hereinafter referred to as the "Business Assets").

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements of the parties herein contained, and intending to be legally bound, the parties hereby mutually agree as follows:

1. Purchase and Sale of Business Assets. Seller hereby agrees to sell, convey and transfer all of its right, title and interest, constituting good and marketable title, in and to the Owned Assets, and to assign all of its right, title and interest in the Leased Assets, to Purchaser for the consideration set forth herein. Seller agrees to sell and transfer the Owned Assets and all of Seller's interest in the Leased Assets to Purchaser on the Closing Date and to deliver to Purchaser:

- 1.1. all bills of sale, assignments and other good and sufficient legal instruments, reasonably satisfactory to Purchaser's legal counsel, necessary to transfer good and marketable title to the Owned Assets free and clear of all liabilities, claims and encumbrances and all assignments necessary to transfer Seller's interest in the Leased Assets;
- 1.2. all of Seller's customer lists, inventory records and other data relating to the Business;
- 1.3. an assignment of lease ("Minnesota Real Estate Lease") to the location ("Premises") where the Business is located attached as Exhibit "C" and
- 1.4. all right, title and interest in the Leased Assets including, but not limited to, the right, if any, to purchase such assets upon the termination of each Lease related thereto.

2. **Assumption of Liabilities.** The Purchaser agrees to assume and pay or perform on a timely basis all liabilities specifically identified in Exhibits "C" and "D". In addition, the Purchaser agrees to assume all unknown liabilities specifically associated with the Business (i.e., not reflected on Seller's financial statements or disclosed by the principals of Seller to Seller's Board of Directors) including, but not limited to, all liabilities and obligations associated with fulfillment of Customer Contracts, employee relationships, and any other unknown liabilities of the Seller which arose or were created by the Business. This assumption of liabilities specifically excludes any liability for known liabilities, except for those listed on Exhibits "C" and "D" which are being assumed by Purchaser. It is understood that liabilities retained by Seller include, but are not limited to, all accounts payable, all accrued expenses, all debt of Seller, and all equipment lease obligations of Seller.

2.1. **Obligation to pay leases.** Seller acknowledges that it will remain liable for all payments required under the leases for the Leased Assets ("Lease Payments"). If Seller fails to timely make the Lease Payments, Purchaser shall have the right to indemnification from Seller for the entire amount of the missed Lease Payment(s) including any charges or penalties resulting therefrom.

2.2. **Obligation to pay off leases.** Seller agrees not to enter into any transaction that would constitute or lead to a change in control of Seller unless Seller first pays in full all lease payments (existing and future) with respect to the Leased Assets.

3. **Purchase Price.** The purchase price for the Business Assets shall be Five Hundred Thousand and no/100 dollars (\$500,000.00) (the "Base Purchase Price"), increased or decreased in accordance with the adjustments set forth in this Agreement ("Purchase Price"). The Base Purchase Price, shall be payable by Purchaser transferring Three Hundred Three Thousand Thirty (303,030) shares of Seller's common stock to Seller ("Seller Stock").

4. **Adjustments to Purchase Price.** Notwithstanding anything in this Agreement, or the agreements related to the transactions contemplated hereunder, the obligations of Purchaser hereunder shall be limited to the amounts due paid, as follows:

4.1. **Accounts Receivable Adjustment.** The accounts receivable described in Exhibit A-2 have been valued at Seventy-Three Thousand Seven Hundred ~~Thirty-Two~~ and 20/100 Dollars (~~\$73,732.20~~) for the purposes of calculating the Purchase Price. The parties agree that one hundred twenty (120) days from the Closing Date, the parties will account for all proceeds actually received from the accounts receivable and will balance that number with the value allocated to the accounts receivable on Exhibit "E". If the proceeds from the collection of accounts receivable exceeds the allocated value, Purchaser will pay the difference to Seller, and if the proceeds are less than the allocated value, Seller shall pay the difference to Purchaser in cash within ten (10) days after the end of such one hundred twenty (120)-day period.

4.2. **Post Closing Adjustment.** The Base Purchase Price is based on a price of One and 65/100 Dollars (\$1.65) per share of Seller's stock. If the shareholders of Seller sell all of the stock in the Seller within eighteen (18) months of the Closing Date ("Sale of Seller"), Purchaser and Seller agree to an adjustment to the Purchase Price. As security of the adjustment referenced in this section, the Shareholders of the Purchaser agree to place the following described shares of Seller's stock in escrow to be held by Seller until the earlier of (a) a sale of Seller or (b) December 21, 1000: Brent Harms ("Harms"), eighteen thousand one hundred eighty-two (18,182) shares and John Bergstrom ("Bergstrom"), twelve thousand

one hundred twenty-one (12,121) shares (collectively referred to as the "Escrow Stock"). The distribution of the Escrow Stock upon the termination date of such escrow shall be as follows:

- 4.2.1 if the share price for common stock realized in the Sale of Seller ("Share Price") is One and 65/100 Dollars (\$1.65) or more or if no Sale of Seller occurs by December 31, 2000, all of the Escrow Stock will be immediately released back to Harms and Bergstrom.
- 4.2.2 if the Share Price is One and 50/100 Dollars (\$1.50) or less, all of the Escrow Stock will be retained by Seller and canceled.
- 4.2.3 if the Share Price is between One and 50/100 Dollars (\$1.50) and One and 65/100 Dollars (\$1.65), the fraction $(1.65-x) \div (0.15)$ (with "x" equaling the Share Price) of the Escrow Stock will be retained by Seller as additional redeemed stock and the balance will be released back to Harms and Bergstrom.

5. **Allocation of Purchase Price.** It is agreed that the Purchase Price reflects the fair market value of the Business Assets, and that the Purchase Price shall be allocated to the Business Assets by and between Purchaser and Seller for all business and tax purposes as set forth in Exhibit "E" attached hereto and incorporated by reference.

6. **Representations, Warranties and Covenants of Seller.** Seller represents, warrants and covenants to Purchaser, as follows:

- 6.1. **Authorization and Authority.** The execution, delivery and performance by Seller of this Agreement and all other agreements contemplated hereby has been duly and validly authorized and approved by all necessary actions. Seller has the legal power and authority to enter into and perform this Agreement and all other agreements contemplated hereby.
- 6.2. **Removal of Liens.** As soon as practicable under the circumstances, it will procure the removal of all liens on the Owned Assets, including but not limited to, the liens described on Exhibit "F".
- 6.3. **Organization and Standing of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Minnesota, and has all necessary corporate powers to own its properties and to carry on its business as now owned and operated by it. Seller is duly licensed and qualified and in good standing as a foreign corporation in all states where the character of the properties owned by Seller or the nature of the business transacted by Seller make such license or qualification necessary.
- 6.4. **Valid and Binding Agreement.** This Agreement and all other agreements contemplated hereby are and will be valid and binding agreements of Seller, enforceable in accordance with their respective terms.
- 6.5. **Possession of Business Assets.** Seller shall use commercially reasonable efforts to provide Purchaser with actual possession and operating control of all Business Assets including, but not limited to, payment of all lease payments and charges relating to the Leased Assets through the end of the term of such leases.

- 6.6. **Laws and Government Order.** Neither the execution nor delivery by Seller of this Agreement or any other agreements contemplated hereby will violate any applicable state or federal law or regulation. Seller is not a party to or subject to or bound by any law, judgment, order, writ, injunction, ruling or decree of any jurisdiction, court or governmental body that is likely to materially and adversely affect in any manner the performance of Seller of this Agreement or any other agreements contemplated hereby.
- 6.7. **Turnover of Accounts Receivable.** In the event Seller collects an account receivable owned by Purchaser, Seller shall to immediately turn over the proceeds from such account receivable to Purchaser.
- 6.8. **No Breach of Articles, Bylaws or Other Company Document.** The execution, delivery and performance of this Agreement by Seller does not conflict with, result in a breach of, or constitute a default under the Articles of Incorporation, Bylaws or any other corporate document of Seller.
- 6.9. **Change of Seller's Name.** Seller shall cease using the name "Tecmark" in any form within ninety (90) days of the Closing Date. This covenant shall survive the Closing Date.
7. **Representations, Warranties and Covenants of Purchaser.** Purchaser represents, warrants and covenants to Seller that as of Closing Date:
- 7.1. **Authorization and Authority.** The execution, delivery and performance by Purchaser of this Agreement and all other agreements contemplated hereby shall have been duly and validly authorized and approved by all necessary actions. Purchaser shall, on the Closing Date, have the legal power and authority to enter into and perform this Agreement and all other agreements contemplated hereby.
- 7.2. **Organization and Standing of Purchaser.** Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota, and has all necessary powers to own its properties and to carry on its business as now owned and operated by it.
- 7.3. **No Breach of Articles, Bylaws or Other Company Document.** The execution, delivery and performance of this Agreement does not conflict with, result in a breach of, or constitute a default under the Articles of Organization or any other corporate documents of Purchaser.
- 7.4. **Laws and Governmental Orders.** This Agreement and all other agreements contemplated hereby will be valid and binding agreements of Purchaser enforceable in accordance with their respective terms. Neither the execution nor delivery by Purchaser of this Agreement or any other agreements contemplated hereby will violate any applicable state or federal law or regulation. The Purchaser is not a party to or subject to or bound by any law, judgment, order, writ, injunction, ruling or decree of any jurisdiction, court or governmental body that is likely to materially and adversely affect in any manner the net worth or performance of Purchaser of this Agreement or any other agreements contemplated hereby.
- 7.5. **Turnover of Accounts Receivable.** T In the event Purchaser collects an account receivable owned by Seller, Purchaser agrees to immediately turn over the proceeds from such account receivable to Purchaser. his provision shall apply and be in full force and effect prior to and

after the Closing Date.

7.6. **Valid and Binding Agreement.** This Agreement and all other agreements contemplated hereby are and will be valid and binding agreements of Purchaser, enforceable in accordance with their respective terms.

BA JB

8. **Allocation of Expenses.** Except as otherwise contemplated by this Agreement, all expenses ~~and~~ relating to the operation of the Business shall be prorated as of the Closing Date, subject to the following:

8.1. **Employees.** Seller has given all employees who are employed by the Business other than Brent Harms, notice of termination and, other than Purchaser's agreement to assume all accrued vacation of employees that Purchaser hires. Purchaser shall not be bound by any agreements or conditions of employment, including any liability for qualified retirement plans, fringe benefits, salaries, severance pay or other benefits, or under any collective bargaining agreement. Purchaser shall not be obligated to hire any employee of Seller.

8.2. **Revenues.** All revenues from sales or services performed in connection with the operation of the Business on or after the Closing Date hereof shall belong to Purchaser and all revenues from sales or services performed prior to the Closing Date hereof shall belong to Seller.

9. **Closing Date.** The sale and assignment of the Owned Assets and assignment of all rights to Leased Assets shall occur on June 30, 1999, and the closing of such transaction shall take place at 1:30 o'clock P.M. at the offices of Dorsey & Whitney, unless otherwise agreed to in writing by the parties.

10. **Delivery of Documents at Closing.**

10.1 On the Closing Date, Seller shall deliver or cause to be delivered to Purchaser, the following:

10.1.1. a copy of any necessary resolutions authorizing the execution, delivery and performance of this Agreement and all other agreements contemplated hereby;

10.1.2. itemized bills of sale for the Owned Assets, and such other documents of title, instruments of conveyance and further assurances as Purchaser or Purchaser's counsel may reasonably request to perfect in Purchaser title to the Owned Assets, including, but not limited to, assignments, in recordable form, of all trademarks, service marks, patent rights, patent applications, patents, trade names, know how, technology, registered names and/or marks, and other trade secrets; simultaneous with such delivery, Seller shall do all things as may be required to put Purchaser into actual possession and operating control of the Business Assets.

10.1.3. Assignment of Intellectual Property Rights, attached hereto as Exhibit "G";

10.1.4. all of Seller's customer lists, inventory and sales records, and other data relating to the operation of the Business and Business Assets;

10.1.5. certificates dated within fifteen (15) days of the Closing Date approved for the use under the Uniform Commercial Code and by filing officers of the county in which the premises are located and the Secretary of State of Minnesota or other evidence reasonably satisfactory to Purchaser's counsel indicating that there are no security

interests, judgments or other liens outstanding against the Business Assets, or other intangibles except as disclosed and approved by Purchaser on Exhibit "F" attached hereto and incorporated herein by reference and

10.1.6. such other instruments and documents as may be required by any provision of this Agreement or reasonably necessary, in the reasonable opinion of Purchaser or Purchaser's counsel, to reflect the performance of this Agreement and all other agreements contemplated hereunder.

10.2. On the Closing Date, Purchaser shall deliver or cause to be delivered to Seller, the following:

10.2.1. a copy of any necessary resolutions authorizing the execution, delivery and performance of this Agreement and all other agreements contemplated hereby, duly certified;

10.2.2. certificates evidencing the Seller Stock and the Escrow Stock, which have been properly endorsed by the required owner and

10.2.3. such other instruments and documents as may be required by any other provision of this Agreement or reasonably necessary, in the opinion of Seller or Seller's counsel, for the performance of this Agreement and all other agreements contemplated hereby.

10.3. All documents and instruments to be delivered on the Closing Date shall be regarded as having been delivered simultaneously, and no document or instrument shall be regarded as having been delivered until all have been delivered.

11. Obligations After Closing.

11.1. **Seller's Indemnification of Purchaser.** Seller hereby agrees to indemnify Purchaser and hold it harmless from and against any and all losses, costs, damages, assessments, fines and other expenses, including reasonable attorney's fees and court costs arising out of or resulting from any liabilities or obligations retained by Seller; any material breach by Seller of any covenant, warranty or representation contained in this Agreement, the exhibits hereto or any agreement contemplated hereunder.

11.2. **Purchaser's Indemnification of Seller.** Purchaser hereby agrees to indemnify Seller and hold it harmless from and against any and all losses, costs, assessments, fines and expenses, including reasonable attorney's fees and court costs, arising out of or resulting from any material breach by Purchaser of any covenant, warranty or representation contained in this Agreement, the exhibits hereto or any agreement contemplated hereunder and from any and all liabilities or obligations of every kind and nature and whatsoever originating and existing arising out of any and all of the Business prior to or subsequent to the Closing Date, except for such liabilities that are related to the Business or that are specifically retained by Seller.

11.3. **Defense of Indemnification Claims.** If any party shall claim indemnification pursuant to the provisions of this Section, the party seeking indemnification shall promptly notify the party from whom indemnification is sought in writing of the basis for such claim or demand, setting forth the nature of the claim or demand in detail. The party against whom indemnification is sought shall have the right to compromise or, if appropriate, defend at its own cost and through counsel of its own choosing, any claim or demand of any third

party giving rise to such claim for indemnification. Such notice and opportunity to compromise or, if applicable, to defend shall be conditions precedent to any payment by way of indemnification to the party claiming indemnification pursuant to this Section. In the event the party against whom indemnification is sought undertakes to compromise or defend any such claim or demand, it shall promptly notify the other party in writing of its intention to do so and shall give the other party such security as the party claiming indemnification reasonably may request. The party claiming indemnification shall reasonably cooperate with the other party and its counsel in the defense or compromise of such claim or demand. The party seeking indemnification shall at all times also have the right to fully participate in the defense at its own expense. If the indemnifying party shall, within a reasonable time after this notice, fail to defend such claim, the party seeking indemnification shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment) the claim or other matter on behalf, for the account, and at the risk, of the indemnifying party.

12. **Expenses.** Each of the parties shall pay all costs and expenses incurred by it in the negotiation and preparation of this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

13. **Miscellaneous.**

13.1 **Further Assurances.** The parties agree that after the Closing Date they will from time to time, upon the reasonable request of the other, execute, acknowledge and deliver in proper form any instruments of conveyance or further assurance necessary or reasonably desirable to meet its obligations, liabilities and agreements contemplated hereunder.

13.2 **Entire Agreement.** Except the Management Agreement dated June 30, 1999 and except as supplemented in a writing signed by the party against whom enforcement is sought, this Agreement and the exhibits and documents referred to herein contain all of the terms and conditions agreed upon by the parties with respect to the subject matter of this Agreement, and no other promises, agreements or understandings, written or oral, regarding the subject matter of this Agreement, shall be of any force or effect.

13.3 **Modifications.** No change, modification or waiver of any provision of this Agreement shall be valid or binding unless it is in writing, dated subsequent to the date hereof and signed by the parties intended to be bound. No waiver of any breach, term or condition of this Agreement by any party shall constitute a subsequent waiver of the same or any other breach, term or condition.

13.4 **Notices.** All notices, requests, demands or other communications required or permitted by this Agreement shall be in writing, and delivery shall be deemed to be sufficient if delivered personally or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Purchaser: Tecmark, LLC
2060 Centre Pointe Boulevard, Suite 7
Saint Paul, Minnesota 55120
Attention: Brent Harms

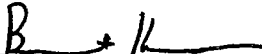
Date.

- 13.12. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota without giving effect to such State's choice of law rules.
- 13.13. **Consent to Jurisdiction.** The parties hereto consent to the exclusive jurisdiction of the courts of the State of Minnesota in any and all actions and proceedings between the parties hereto arising under or growing out of this Agreement and irrevocably agree to service of process by any means authorized under Minnesota law.
- 13.14. **Nondisclosure.** If this Agreement is terminated for failure of either the Purchaser or Seller to meet any of the obligations as set forth in this Agreement, Purchaser and Seller hereby covenant that they will not disclose to any person other than Purchaser or Seller any proprietary information about the other party or any information about the transaction contemplated herein, except as may be necessary to enforce that party's rights under this Agreement.
- 13.15. **Specific Performance.** The parties acknowledge that the Business Assets are unique and that either party would not have an adequate remedy at law if the either party shall fail to perform any of its obligations hereunder. In such event, the non-defaulting party shall have the right, in addition to any other rights it may have, to specific performance of this Agreement.
- 13.16 **Binding Agreement.** Except as otherwise provided herein, this Agreement and the terms, conditions and covenants contained herein and transactions contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and their representative successors, representatives and permitted assigns.

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

PURCHASER:

Tecmark, L.L.C.
a Minnesota limited liability company

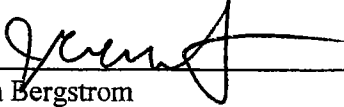

By: Brent Harms
Its: Chief Manager

HARMS

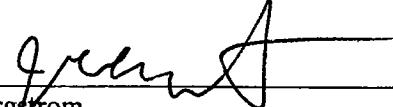

Brent Harms

SELLER:

Tecmark Services, Inc.
a Minnesota corporation


By: John Bergstrom
Its: Chairman

BERGSTROM


John Bergstrom

G:\CLIENT\TAC\tecmark purchase\documents\asset purch agreement clean copy 6-29-99.wpd

EXHIBITS

- A List of Owned Assets
 - A-1 List of Equipment
 - A-2 List of Accounts Receivable
 - A-3 Intellectual Property
 - A-4 List of Customer Contracts
 - A-5 Deposits
 - A-6 Leasehold Improvements
- B List of Leased Assets
- C Assignment of Real Estate Lease
- D List of Debts, Contracts and Obligations Assumed by Purchaser
- E Purchase Price Allocation
- F Business Asset liens to be removed by Seller
- G Assignment of Intellectual Property Rights

INTELLECTUAL PROPERTY

Tecmark – A U.S. service mark registration No. 2,203,114

Tecmark Services, Inc. – A U.S. service mark registration No. 74,567,849

Tecmark Reward System – A U.S. service mark registration No. 74,621,929

“One Card” – Customer Identification and Marketing Analysis System – U.S.
Patent Application Serial No. 08/627,527 filed July 2, 1996

Internet Domain Names

tecmarkinc.com
loyaltymarketing.com
frequentshopper.com
frequentdiner.com
frequentbuyer.com
parsleysage.com

All other related uses of the above names in the ongoing operation of the loyalty division of Tecmark Services, Inc.