

07-22-2004

7.7004

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



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

102796821

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

1. Name of conveying party(ies):

Epiphany Software, Inc.

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

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

2. Name and address of receiving party(ies)

Name: Wordsearch Corp., L.L.C.

Internal Address: \_\_\_\_\_

Street Address: 9201-B Metric Blvd.

City: Austin State: TX Zip: 78758

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State \_\_\_\_\_
- Other Delaware Limited Liability Co.

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

3. Nature of conveyance:

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

Execution Date: June 11, 2003

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2079904

Additional number(s) attached  Yes  No

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

Name: Rob Hargrove

Internal Address: 8911 N. Capital of TX Hwy.  
Suite 2120

Street Address: Mission

City: Austin State: TX Zip: 78759

6. Total number of applications and registrations involved: \_\_\_\_\_

7. Total fee (37 CFR 3.41).....\$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

(Attach duplicate copy of this page if paying by deposit account)

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.

Rob Hargrove  
Name of Person Signing

[Signature]  
Signature

7/15/04  
Date

Total number of pages including cover sheet, attachments, and document: 14

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

07/21/2004 MGETACHE 00000017 2079904

01 FC:8521

40.00 DP

TRADEMARK  
REEL: 003010 FRAME: 0676

# **ASSET PURCHASE AGREEMENT**

JUNE 11, 2003

AMONG

**U. S. SPORTING INTERESTS, L.L.C.,  
d.b.a. WORDSEARCH CORP.**

and

**EPIPHANY SOFTWARE, INC.**

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Merger.....	3
2. Definitions .....	3-4
3. Sale and Purchase of Assets .....	4
4. Seller Representations and Warranties.....	5-6
5. Buyer Representations and Warranties .....	6
6. Buyer Conditions to Closing.....	6-7
7. Seller Conditions to Closing.....	7-8
8. Certain Affirmative Covenants.....	8-9
9. Certain Negative Covenants .....	9-10
10. Indemnification By Seller .....	10
11. Indemnification By Buyer .....	10-11
12. Risk of Loss .....	11
13. Miscellaneous Provisions .....	11-12
Exhibit A: Inventory; Licenses and Contracts	
Exhibit B: Accounts Receivable and Equipment	
Exhibit C: Excluded Equipment	
Exhibit D: Included Liabilities	
Exhibit E: Non-Compete & Employment Agreement of Andy Cogan	
Exhibit F: Non-Compete & Employment Agreement of Frank Hannon	
Exhibit G: Promissory Note - Holder Frank Hannon	
Exhibit H: Promissory Note - Holder Andrew Cogan	

# ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of June 11, 2003, is by, between and among EIPHANY SOFTWARE, INC., a California Corporation (the "Seller"); and U. S. SPORTING INTERESTS, L.L.C., a Delaware limited liability company doing business as WORDSEARCH CORP. (the "Buyer").

## RECITALS:

The Seller and Buyer have reached an understanding with respect to the Seller's sale of all assets and the business of the Seller as a going concern and with respect to the Buyer's purchase of such assets and business. A meeting of the Directors and Shareholders of the Seller was held on June 11, 2003 and at such meeting a quorum of Directors and Shareholders approved such sale.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the Seller and Buyer agree as follows:

1. Merger. Although legally structured as a sale of assets by the Seller and a purchase of assets by Buyer, parties to this Agreement will refer to this transaction as a merger wherever practicable.
2. Definitions. As used in this Agreement, the following terms shall have the meanings indicated below:
  - (a) "Closing" shall mean the closing of the sale and purchase contemplated herein, which shall take place at the offices of Buyer, 9201-B Metric Blvd., Austin, Texas 78758-5993, at 10:00 a.m. on or before June 12, 2003, or other venue as the Buyer and Seller may jointly decide.
  - (b) "Code" shall mean the Uniform Commercial Code as in effect in the State of Texas on the date of this Agreement.
  - (c) "Inventory" shall mean all inventory, merchandise, licenses, contracts and work in progress of the Seller on the date of Closing, including that listed on Exhibit A hereto.
  - (d) "Equipment" shall mean all of the equipment and fixtures of the Seller on the date of Closing, including that listed in Exhibit B hereto, save and except those excluded in Exhibit C hereto.
  - (e) "Assets" shall mean all cash on hand and Accounts Receivable (including those listed on Exhibit B); the Equipment; the Inventory; all of the Seller's rights; title and interest in all intangible and intellectual property and any variant thereof; all licenses and contracts; all company records, both hard copy and electronic versions, including customer contact lists and sales histories; and all of the

business of the Seller as a going concern and good will;

3. Sale and Purchase of Assets.

(a) Sale and Purchase of Assets; Purchase Price. At the Closing, subject to the terms and conditions of this Agreement and in reliance on the representations and warranties of the Seller, Buyer shall purchase all Assets of the Seller, and the Seller shall sell all Assets to Buyer. In full consideration for such purchase and sale, the Buyer shall deliver to the Seller membership in Buyer representing a thirty-five percent (35%) ownership interest (Purchase Price) in Buyer represented by 350,000 shares of a total of 1,000,000 shares that will be outstanding upon the Closing of this asset purchase agreement. After Closing, Buyer will have the 350,000 shares representing the purchase price reissued in specified names upon appropriate instructions from Seller and upon Seller surrendering the 350,000 shares issued in the name of Seller.

The purchase price of the Assets shall be as follows:

(The following Classes are as defined by Asset Acquisition Statement, IRS form 8594.)

Class I	\$ 4,453
Class IV	\$12,457
Class V	\$ 1,000
Class VI	\$16,000
Class VII	\$16,000

The total Assets purchase price is \$49,910.

Each of the parties agrees to report this transaction for federal tax purposes in accordance with this allocation of the purchase price.

(b) Closing. At the Closing, the following shall occur:

(i) The Seller shall deliver to the Buyer the certified copies of Directors and Shareholders resolutions referred to in Section 4(b) hereof; such instruments of conveyance with general warranty as shall be necessary to vest in the Buyer good and marketable title to the Assets, free and clear of liabilities, security interests, liens, charges and encumbrances except as allowed under the terms of this agreement; and such business records of the Seller as the Buyer may reasonably request; and

(ii) Buyer shall deliver to the Seller the Purchase Price.

(c) General Liabilities. The Buyer shall assume only those liabilities of the Seller listed in Schedule D.

4. Seller Representations and Warranties. The Seller and Seller's Directors and Shareholders jointly and severally represent and warrant to the Buyer that:

(a) Organization and Standing. The Seller is a California Corporation duly organized, validly existing and in good standing under the laws of the State of California.

(b) Organizational Approval. All necessary organizational action has been taken, or prior to the Closing will be taken, to authorize this Agreement and the transactions contemplated herein. The Seller will deliver to the Buyer, at or prior to the Closing, copies of the Directors and Shareholders resolutions (certified by the Seller's Secretary) granting such authorization.

(c) Title to Properties; Liens and Encumbrances. The Seller has good and marketable title to all of the Assets, subject to no mortgage, deed of trust, pledge, lien, security interest, conditional sale agreement, encumbrance or charge except for minor imperfections of title and encumbrances, if any, which are not substantial in amount, do not materially detract from the value of the Assets, do not impair the operations of the Seller and have arisen only in the ordinary course of business.

(d) Insurance. The Seller maintained through June 30, 2003, adequate insurance on its inventory which are of a character usually insured against loss or damage.

(e) Brokers and Finders. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Seller and the Buyer without the intervention of any person acting on behalf of the Seller in such a manner as to give rise to any valid claim for brokerage commission, finder's fee or other like payment.

(f) Inventories. All Inventory reflected in Exhibit A and that acquired in the ordinary course of the Seller's business, is in good, merchantable and usable condition.

- (g) Software. Seller affirms that it has licensed the Crossbooks Internet library software to LifeWay Christian Resources. Otherwise it has not licensed or assigned software rights to any third party.
- (h) Licenses. Seller affirms that it has licenses for all copyrighted material published in its products and that licenses are transferable to Buyer subject to the terms and conditions of each individual license.
5. Buyer's Representations and Warranties. The Buyer represents and warrants to the Seller that:
- (a) Organization and Standing. The Buyer is a Delaware Limited Liability Company doing business as WORDsearch Corp duly organized, validly existing and in good standing under the laws of the State of Texas.
- (b) Organizational Approval. All necessary organizational action has been taken, or prior to Closing will be taken, to authorize this Agreement and the transactions contemplated herein. The Buyer will deliver to the Seller, at or prior to Closing, copies of the Managers and Members resolutions (certified by the Buyer's Secretary) granting such authorization.
- (c) Brokers and Finders. All negotiations relative to this Agreement and the transactions contemplated herein have been carried on by the Buyer and the Seller without the intervention of any person acting on behalf of Buyer in such a manner to give rise to any valid claim for brokerage commission, finder's fee or other like payment.
- (d) Members Right to Purchase New Issues. Buyer will amend its by-laws to specify that if any shares of stock are offered for sale each shareholder will be given the right for a 30 day period, after notification, to purchase enough shares so as to retain that shareholder's proportional ownership in Company.
6. Buyer's Conditions to Closing. The Buyer's obligation to purchase contained in Section 3 hereof is subject to the fulfillment prior to or at the Closing of each of the following conditions:
- (a) Assets to be Purchased. The assets to be purchased hereunder shall be free and clear of all liabilities, obligations, liens, charges, and encumbrances subject to the exclusions as provided in this agreement.

(b) Conveyance or Transfer. The Seller will deliver to the Buyer such bills of sale, with full covenants of warranty, endorsements, assignments and other good and sufficient evidence of transfer and conveyance as shall be effective to vest in the Buyer good and marketable title to the assets and business sold to the Buyer. From time to time, at the Buyer's request (whether at or after the Closing), the Seller, at Buyer's expense, will execute and deliver such further instruments of conveyance or transfer and take such other actions as the Buyer may reasonably require in order to convey and transfer to the Buyer any of the properties sold hereunder and will assist the Buyer in collection or reduction of possession of such property.

(c) Representations and Warranties. The representations and warranties of the Seller and of its Directors and Shareholders contained herein shall be true at and as of the time of Closing as though such representations and warranties were made at and as of such time.

(d) Performance. The Seller shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or on the Closing date.

7. Seller's Conditions to Closing. The Seller's obligation to sell contained in Section 3 hereof is subject to the fulfillment prior to or at the Closing of each of the following conditions:

(a) Designation of Managers The Buyer will adopt a Managers and Members Resolution that lists Jack Tompkins, Randy Beck and Andrew Cogan as Managers of the Company

(b) Manager Authority The Buyer will adopt a Managers and Members Resolution that requires a Super Majority of Managers to sell greater than 50% of the combined assets of the Company, Merge with other Companies if the Company is not the surviving entity, or Dissolve the Company. Seventy (70%) of the Managers shall constitute a Super Majority of Managers

(c) Distributions The Buyer will adopt a Managers and Members Resolution that defines a mechanism that will provide that excess cash is not withheld.



(d) Promissory Notes The Buyer agrees to the terms and conditions as specified in Exhibits G and H.

(e) The representations and warranties of the Buyer contained herein shall be true at and as of the time of Closing as though such representations and warranties were made at and as of such time

(f) The Buyer shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or on the Closing date.

8. Certain Affirmative Covenants. Pending the Closing, the Seller shall:

(a) Access. Give to the Buyer and to its counsel, accountants and other representatives full access during normal business hours to all of its properties, books and records, and furnish the Buyer with all such information concerning the Seller's operations as the Buyer may reasonably request.

(b) Continuation of Business. Except as otherwise requested by the Buyer, use its best efforts to preserve the Seller's business organization intact; to keep available to the Buyer the services of its present employees; to preserve for the Buyer the goodwill of the Seller's suppliers, customers and others having business relations with it; and to maintain in force all insurance coverage, on property or person, currently held by Seller and maintained in the normal course of its business.

(c) Other Laws. Comply with any other applicable laws as may be required for the valid and effective consummation of the transactions contemplated by this Agreement.

Following the Closing the Seller shall:

(a) Sales and Transfer Taxes. Pay when due all sales and transfer taxes, if any, payable in connection with this Agreement and the conveyances assignments, transfers and deliveries to be made to the Buyer hereunder.

(b) Discontinuance of Trade Style Use. Promptly after the Closing cause the Seller to discontinue its use of the trade style "EPIPHANY SOFTWARE, INC." and file such statements in the appropriate records to reflect such transfer to Buyer.

(c) Transfer of Licenses. Seller shall make its best efforts to secure and complete the transfer of all publishing licenses in a timely manner.

9. Certain Negative Covenants. Unless written approval by the Buyer be first obtained, pending the Closing the Seller shall not:

(a) Organizational Documents. Make any change in the Seller's Articles of Incorporation or organizational documents.

(b) Commitments. Enter into any contract or commitment except in the normal course of business.

(c) Indebtedness. Create or incur any indebtedness except for unsecured current liabilities incurred in the ordinary course of business.

(d) Encumbrances. Create, assume or permit to exist any mortgage, deed of trust, pledge, security interest, or other lien or encumbrance upon any of the Assets whether now owned or hereafter acquired.

(e) Disposition of Property. Sell, assign, lease, release copies to any third party, or otherwise transfer or dispose of any of the Assets except in the normal course of business.

(f) Acquisition of Property. Purchase any real or personal property, except in the ordinary course of business.

(g) Merger. Merge or consolidate with or into any other entity.

(h) Conduct of Business. Conduct its business other than in the ordinary course of business.

(i) Employee Benefit Plans. Establish any deferred compensation plan, pension plan, profit sharing plan or any other employee benefit plan, excluding any items listed in Exhibit D of this Agreement.

10. Indemnification by Seller. The Seller and its Directors and Shareholders hereby agree to indemnify and hold Buyer harmless against, and will reimburse the Buyer on demand for, any payment made by the Buyer at any time after the Closing in respect of the items listed in this Section 10. In addition, in the event that Buyer receives notice of any claim against it or the Seller with respect to any liability or obligation of the Seller, Buyer shall promptly notify Seller of same and Seller shall compromise or defend same with Seller further agreeing to inform Buyer in writing from time to time as is reasonable regarding the status of such claim.

- (a) Any and all liabilities and obligations of or claims against the Seller other than those permitted under the terms of this agreement
- (b) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty or nonfulfillment of any covenant on the part of the Seller or its Directors and Shareholders under this Agreement or from any misrepresentation in, or omission from, any certificate or other instrument furnished or to be furnished to Buyer pursuant to this Agreement, or in connection with the transactions contemplated hereby.
- (c) Any and all actions, suits, proceedings, demands, assessments, judgments, costs and expenses incident to any of the foregoing.

11. Indemnification by Buyer. The Buyer agrees to indemnify and hold Seller harmless against, and will reimburse the Seller on demand for, any payments made by the Seller at any time after the Closing in respect of the terms listed in this Section 11. In addition, in the event that the Seller receives notice of any claim against it or the Buyer with respect to any liability or obligation assumed by the Buyer, as specified in Exhibit D hereto, Seller shall promptly notify Buyer of same and Buyer shall compromise or defend same with Buyer further agreeing to inform Seller in writing from time to time as is reasonable regarding the status of such claim.

- (a) Any and all liabilities and obligations incurred by Buyer prior to the date of this transaction.
- (b) Any and all damage or deficiency resulting from any misrepresentation, breach of warranty or nonfulfillment of any covenant on the part of the Buyer under this Agreement or from any misrepresentation in connection with the transactions contemplated hereby.

(c) Any and all actions, suits, proceedings, demands, assessments, judgments, costs, and expenses incident to (a) or (b) of the foregoing.

12. Risk of Loss. Until the date of Closing the Seller shall bear the risk of loss should there be damage to any of the Assets by fire or other casualty. If, prior to the Closing, any of the Assets shall be damaged to the extent that there are insufficient assets remaining for Buyer to conduct the business operations of Seller which relate to such assets or for which the Buyer is purchasing the assets, or the assets have been damaged to an extent which prevents such operations, then the Seller shall give Buyer written notice thereof within seven (7) business days after such damage or loss. In such written notice, the Seller may elect to (i) terminate this Agreement and its obligations hereunder; (ii) expend the insurance proceeds, if any, which it receives to place the Assets in the working order necessary to conduct the business operations of the Seller which relate to the Assets or the business operations for which the Buyer is purchasing the Assets; or (iii) pay to Buyer all insurance proceeds payable by reason of such loss or damage and allow Buyer to conduct Asset repairs.

13. Miscellaneous Provisions

(a) Nature and Survival of Representations. All statements contained in any instrument delivered by or on behalf of the Seller pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties hereunder. All statements contained in any instrument delivered by or on behalf of the Buyer pursuant to or in connection with the transactions contemplated hereby shall be deemed representations and warranties hereunder. All representations, warranties, covenants and agreements in this Agreement or pursuant hereto shall survive the Closing.

(b) Parties in Interest. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and assigns of the Seller its Shareholders and Directors and the Buyer.

(c) Law to Govern. This Agreement is being made in Texas and shall be construed and enforced in accordance with the laws of that state. Venue for all actions hereunder shall be in Travis County, Texas.

(d) Notices. All notices shall be in writing and shall be deemed to have been duly given if delivered personally or if mailed first class, postage prepaid, to the party at his address stated at the end of this Agreement.

(e) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

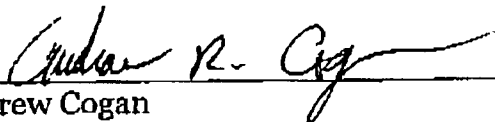
(f) Headings. The Table of Contents and the headings of this Agreement are for the convenience of the parties only and shall not be deemed to affect the meaning of the provisions hereof.

(g) Non-compete and Employment Agreement. Andy Cogan agrees to enter into the five (5) year non-compete agreement and three (3) year employment contract listed as Exhibit E hereto. Frank Hannon agrees to enter into the three (3) year non-compete agreement and one (1) year employment contract listed as Exhibit F hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 11th day of June, 2003, to be effective as of the date first above written.

**SELLER:**

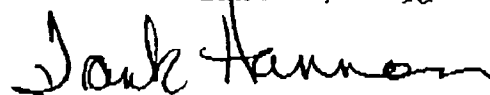
EPIPHANY SOFTWARE, INC.



By: Andrew Cogan

Title: President

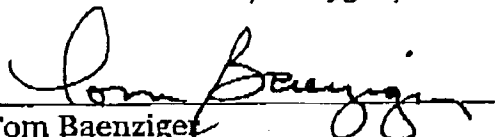
Address: 39 N. Cragmont Ave  
San Jose, CA. 9512



By: Frank Hannon

Title: Vice President

Address: 39 N. Cragmont Ave  
San Jose, CA. 95127



By: Tom Baenziger

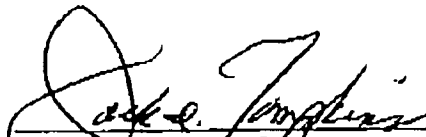
Title: Stockholder and Representative of  
the Campbell Family Foundation  
Stockholder

Address: 350 Second Street  
Ste 7  
Los Altos, CA 94022

**BUYER:**

d.b.a. WORDSEARCH CORP.

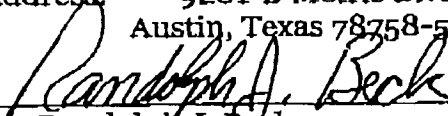
U. S. SPORTING INTERESTS, L.L.C.,



By: Jack I. Tompkins

Title: Chairman, Manager (Director),  
and Shareholder

Address: 9201-B Metric Blvd  
Austin, Texas 78758-5993



By: Randolph J. Beck

Title: President and Shareholder

Address: 9201-B Metric Blvd  
Austin, Texas 78758-5993