

02-02-2005

FORM PTO-1594 (Modified)  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)  
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TM05/REV03

RECOI



102931453

Docket No.:

594-2

TRADEMARKS

Tab settings

01/18/05

To the Director of the United States Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Saverio J. Minucci  
38 Hills Road  
Loudonville, NY 12211

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

Additional names(s) of conveying party(ies)  Yes  No

2. Name and address of receiving party(ies):

Name: Sandell Manufacturing Company, Inc.

Internal Address: \_\_\_\_\_ 2005

Street Address: 310 Wayto Road

City: Schenectady State: NY ZIP: 12303

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

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

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

Execution Date: December 13, 2004

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

A. Trademark / Service Mark Application No.(s)

B. Trademark / Service Mark Registration No.(s)

0,769,012

Additional numbers

Yes  No

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

Name: Gerald T. Bodner, Esq.

Internal Address: Bodner & O'Rourke, LLP

Street Address: 425 Broadhollow Road, Suite 108

City: Melville State: NY ZIP: 11747

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

1

7. Total fee (37 CFR 3.41):.....\$ 340.00

- Enclosed
- Deficiency or overpayment
- Authorized to be charged to deposit account

8. Deposit account number:

502335

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.

Gerald T. Bodner, Esq.

*Gerald T. Bodner*

Jan. 12, 2005

Name of Person Signing

Signature

Date

02/01/2005 00000219 0769012

Total number of pages including cover sheet, attachments, and

8

01 FC:8521

Mail documents to be recorded with required cover sheet information to:  
Mail Stop Recordation Services  
Director of the United States Patent and Trademark Office  
P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK  
REEL: 003113 FRAME: 0261

Exhibit

A

ASSET PURCHASE AGREEMENT

AGREEMENT made and entered into this 7th day of November, 1989, by and among Micon Flashing, Inc., a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business located at 324 Rindge Ave., Cambridge, Massachusetts herein referred to as "Buyer", and Sandoll Manufacturing Co., Inc. a corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business located at 324 Rindge Ave., Cambridge, Massachusetts herein referred to as "Seller" and Tomco International, Inc. a Massachusetts Corporation having a usual place of business at 360 Beacham Street, Chelsea, Massachusetts, the sole shareholder of the Seller herein referred to as "Shareholder".

WITNESSETH

WHEREAS, the Seller desires to sell certain assets (hereinafter "the Assets") of the business which it currently conducts at 324 Rindge Ave., Cambridge, Massachusetts; and

WHEREAS, Buyer desires to purchase such assets upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

A. Purchase and Sale of Assets.

1. Subject to the terms and conditions set forth in this Agreement, Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire and take assignment of all of Seller's right, title and interest in the following:

a) the tangible and intangible Assets of the Seller, excluding the Seller's inventory, all of which assets are listed on the Schedule of Assets marked Exhibit "A" and attached hereto and made a part hereof;

b) the Seller agrees that as part of the consideration paid to it by the Buyer it will transfer to the Buyer the telephone numbers presently assigned to Seller, to wit: (617) 491-0540, (617) 491-0541. In the event that Buyer and Polytite Manufacturing Co. no longer occupy the same premises within three (3) years from the date hereof, the parties hereto agree that the aforesaid numbers will be electronically answered, Polytite calls being referred to

Seller or its nominee, and flashing calls being referred to Buyer or its nominee, said referral to continue until three (3) years from the date hereof.

2. Purchase Price. a. The purchase price for the Assets shall be Two Hundred Thousand Dollars (\$200,000.00) less the amount by which the accounts receivable of the Seller are less than One Hundred Thousand Dollars (\$100,000.00) as of the date of closing ("Purchase Price") payable as follows:

i) One Thousand Dollars (\$1,000.00) has been paid as a deposit this date.

ii) At the Closing, Buyer shall deliver to Seller a certified, treasurer's or cashier's check payable to Seller in the amount of the balance of the purchase price.

b. The total trade payables of the Seller shall be shown on Exhibit B-1. At the closing the proceeds will be used to pay those trade payables in full listed on Exhibit B-2. Any trade payable other than those listed on said Exhibit B-1 shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller. Said Exhibits B-1 and B-2 are attached hereto and made a part hereof.

B. Closing. The closing of the purchase and sale transaction contemplated by this Agreement ("closing") shall be held at the offices of Dropkin, Perlman, Leavitt & Rubin, 474 Broadway, Somerville, Massachusetts at 10:00 a.m. on October 30, 1989, or such other time and/or date as the parties may mutually agree upon.

C. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

1. Organization and Standing. Seller is a Corporation duly organized, validly existing and in good standing under laws of the Commonwealth of Massachusetts; has full corporate power and authority to carry on its business as it is now being conducted and to own and operate the properties and Assets now owned and operated by it; and is duly qualified and in good standing to do business in every jurisdiction where the conduct of its business or the ownership of its property and Assets requires such qualification.

2. Authority. Seller has full legal right and power to execute deliver and perform this Agreement (including all transactions contemplated by this agreement), and the execution, delivery and performance of this agreement by Seller and the consumation of the transactions contemplated hereby have been duly authorized by all necessary corporate and shareholder action, and Seller will furnish a Clerk's Certificate of the Vote of the Corporation to that effect.

3. Title to Assets. Seller is the lawful owner of, has good and marketable title to, and has the full right to sell, transfer and assign without any restrictions of any kind whatsoever, all of the Assets, including without limitation, those shown on Exhibit "A" previously referred to above. All of the Assets are entirely free and clear of all liens, state or federal tax liens, mortgages, debts, leases, conditional sales agreements, title retention agreements, security interests, charges, equities, encumbrances of any kind or restrictions against transfer and assignment, and there are not filings in any registry of deeds in any jurisdiction or under the Uniform Commercial Code or similar statute in any jurisdiction showing the Seller as debtor which create or perfect a security interest, lien, mortgage or encumbrance.

4. Location of Assets. All of the tangible Assets acquired by the buyer hereunder are located on the premises at 324 Rindge Ave., Cambridge, Massachusetts.

5. Broker. The parties hereto acknowledge that no Broker has been involved in the within transaction business.

6. Taxes. Seller has paid in full all State and Federal withholding taxes (FICA and Income), social security taxes, unemployment insurance taxes, and sales taxes which may be due and owing or which have accrued to the date of closing.

7. Indemnification. Seller and shareholder will indemnify Buyer and hold Buyer harmless from and against all actions, suits, damages, judgments, costs, charges, expenses, and attorney's fees of any kind or nature whatsoever that may be sustained or suffered by the Buyer (i) as a result of a breach of any of the provisions of this Agreement by the Seller or (ii) as a result of any misrepresentation by the Seller, or (iii) by reason of any claim, action or proceeding asserted or maintained against the Buyer pertaining to any matter covered by Seller's warranties and covenants set forth in said agreement; (iv) or on account of any liabilities whatsoever of any nature accruing prior to the closing which are assessed against the Buyer as the Transferee of the Assets to be purchased by the Buyer hereunder provided that Buyer notifies the Seller of any such matter specified in (i)-(iv) within thirty (30) days of Buyer's first notice of any such claims and offers the Seller the opportunity to defend the same.

8. Violations. There are no violations of any kind alleged by any governmental authority to be pending against, or threatened by any governmental authority against, Seller or against its business or against any of its assets.

9. Obligations Outstanding. Seller represents that it has no material contracts or other obligations outstanding which would affect any of the assets that are being conveyed pursuant to this agreement.

10. Future Encumbrances. Seller will not create, incur, assume or allow to be created, incurred or assumed, any pledge of, or any lien, charge or encumbrance of any kind on any of the assets which are the subject of this agreement without the prior written consent of the Buyer.

11. Defend Title. Seller will forever warrant, indemnify and defend the Buyer against any claim or claims of any kind or description affecting the title to any of its assets which are the subject of this agreement and intended to be transferred under this agreement or the right to possession of such assets.

12. Survival of Representations. All representations, warranties, covenants and agreements herein contained on the part of any of the parties hereto shall be deemed and construed to be continuing representations, warranties, covenants and agreements surviving the closing of this Agreement.

E. Closing. At the Closing, Seller shall deliver to the Buyer any and all documents necessary to carry out the terms of this Agreement including assignments, bills of sale, certificates of good standing, etc.

F. Risk of Loss Pending Closing. In the event of any loss or damage to the Assets between the date hereof and Closing which exceeds, either individually or in the aggregate, five thousand dollars (\$5,000.00), Buyer may, but shall not be obligated, to consummate the closing. In the event that (i) any such loss or damage is sustained, in any amount, as to which insurance shall have been maintained by Seller, and as to which payment shall not have been heretofore received by Seller, and (ii) Buyer shall have elected or been obligated (if the loss does not exceed five thousand dollars (\$5,000.00)) to consummate the closing, then such payment will be assigned to Buyer, an equitable adjustment of the purchase price shall be made at Closing, and thereafter the parties shall readjust promptly upon receipt by Buyer of such insurance proceeds.

G. Documents to be Delivered or Executed at Closing. At the closing the Seller shall:

1. Deliver Bills of Sale and all other necessary instruments of assignment and transfer, in a form usual and normal in the Commonwealth of Massachusetts and satisfactory to Buyer, covering all of the Assets of the Seller to be transferred hereunder.

2. Deliver votes of recent date by Seller's Board of Directors authorizing the transfer and sale of the aforementioned assets and copies of all other corporate proceedings of Seller relating to such authorization and approval, certified by its Clerk.

3. Execute such other documents and do and perform such other acts as the Buyer shall reasonably request in order to place the Buyer in actual possession and operating control of the aforementioned Assets.

4. Deliver Certificates of Good Standing and Legal Existence from the Commonwealth of Massachusetts and its Department of Revenue.

5. Deliver any indemnification agreement required by the terms of this agreement.

#### H. Covenant Not to Compete.

1. The Seller and Shareholder agree that neither the Seller, nor any of its officers or stockholders, shall engage directly or indirectly in any manner or circumstance or condition whatsoever, or be or become interested as an individual, principal, agent, employee, investor, lender, or in any other capacity whatsoever in any business which manufactures, sells, markets, produces or otherwise deals in TBRU-WALL FLASHINGS in the United States of America for a period of three (3) years from the date of the Closing hereunder.

2. The Buyer and Shareholder agree that neither the Buyer, nor any of its officers or stockholders, shall engage directly or indirectly in any manner or circumstance or condition whatsoever, or be or become interested as an individual, principal, agent, employee, investor, lender, or in any other capacity whatsoever in any business which manufactures, sells, markets, produces or otherwise deals in joint sealants in the United States of America for a period of three (3) years from the date of the Closing hereunder.

#### I. General Provisions.

1. No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same or another provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

2. Notice. Any notice required or permitted under this Agreement shall be given in writing (i) by (A) delivery in hand or by postage prepaid, United State first class mail and (B) registered or certified mail, return receipt requested, or (ii) by telegram to the parties at their respective addresses specified below, or at such other address for a party as that party may specify by notice. Notice shall be effective upon receipt. Address for notice:

Buyer

Mr. Ronald Buonomo  
Micron Flashing, Inc.  
324 Rindge Avenue  
Cambridge, MA 02140

with a copy to:

Martin Dropkin, Esquire  
Dropkin, Perlman, Leavitt & Rubin  
474 Broadway  
Somerville, MA 02145

Seller and shareholder

Mr. Edward Patapanian  
Sandell Manufacturing Co., Inc.  
324 Rindge Avenue  
Cambridge, MA 02140

with a copy to:

Robert M. Striberg, Esquire  
Shocket & Dockser  
One Apple Hill - Suite 225  
Post Office Box 8007  
Natick, MA 01760-0050

3. Miscellaneous. This Agreement: (i) may be executed in any number of counterparts, each of which, when executed by all parties shall be deemed to be an original, and all of which counterparts together shall constitute one and the same instrument; (ii) shall be governed by and construed under the laws of the Commonwealth of Massachusetts applicable to contracts made, accepted, and performed wholly within the Commonwealth; (iii) constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understanding, courses of dealing, agreements, contracts, and the like among any or all parties in such respect; (iv) may be amended, modified, or terminated, and any right under this agreement may be waived in whole or in part, only by a writing signed by all parties; (v) contains headings only for convenience, which headings do not form part, and shall not be used in construction of this Agreement; (vi) shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns, except that no party may delegate any of its obligations under this Agreement or assign this Agreement, without the prior written consent of all the parties; and (vii) may be enforced only in courts located in the Commonwealth of Massachusetts, and the parties hereby agree that such courts have venue and exclusive subject matter and personal jurisdiction, and consent to service of process by registered mail, return receipt requested, or by any other manner provided by law, and agree that the party to this Agreement prevailing in a suit or action arising from breach of this Agreement or any of its provisions shall be entitled to all costs of such suit or action, including attorney's fees.



4. Availability of Equitable Relief. The obligations imposed by this Agreement are unique. Breach of any of such obligations would injure the parties to this Agreement; such injury is likely to be difficult to measure; and monetary damages, even if ascertainable, are likely to be inadequate compensation for such injury. Therefore, the parties acknowledge and agree that protection of the respective interests in this Agreement would require equitable relief, including specific performance and injunctive relief, in addition to any other remedy or remedies that the parties may have at law or under this Agreement, including, without limitation, entitlement to reimbursement by the breaching party or parties of the legal fees and expenses of the injured party or parties prevailing in any such suit.

5. Force Majeure. No party to this Agreement shall be responsible to the other for delays or errors in its performance or other breach under this Agreement occurring solely by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation, communication or power supply.

6. Warranties and Representations. Warranties and representations made by either party under the within Agreement shall survive the sale and also be true as though made on as of the closing date.

7. Use of Space. This agreement is conditional upon Seller delivering to Buyer a valid lease in the form attached hereto and marked Exhibit "C" executed by the landlord of the premises providing for the occupancy at 324 Rindge Avenue, Cambridge, Massachusetts, by the Buyer hereunder.

EXECUTED under seal in *Notick*, Massachusetts, as of the date first above written.

SELLER:  
Sandell Manufacturing Co., Inc.

BUYER:  
Micron Flashing, Inc.

By: *Edward Patapanian*  
Edward Patapanian, President

By: *Ronald Buonomo Pres*  
Ronald Buonomo, President

SHAREHOLDER:  
TOMCO INTERNATIONAL, INC.

POLYTITE MANUFACTURING CO., INC.

By: *E. Jay Patapanian*

By: *Edward Patapanian*

EXHIBIT "A"

- CRIMPING MACHINE
- BAND SAW
- STRAPPING MACHINE
- 2 PALLET JACKS
- 1 FORK LIFT
- SANDO FLASH MACHINE & CONTROLS
- 4 25' TABLES-WOOD
- COATING & LEAD MACHINE, TOWER COOLERS & CONTROLS
- 1 COMPRESSOR
- DRILL PRESS
- 2 METAL CABINETS IN SHIPPING PLANT (BROWN)
- 1-METAL SHELF RACK
- GOODWILL
- CUSTOMER LISTS & FILES
- BROCHURES & ALL LITERATURE Relating to Flashing
- ACCOUNTS RECEIVABLE
- 1-1988 FORD PICKUP TRUCK
- TELEPHONE # 491-0540, 491-0541
- FAX # 617-864-4765
- 1-800-282-3888
- 2 SCALES
- 2-2WHEEL TRUCKS
- 1 DRUM JACK
- 2 CHAINS FALLS
- 1 BATTERY CHARGER
- EXCULSIVE USE AND OWNERSHIP OF SANDELL  
MANUFACTURING COMPANY NAME

Exhibit

B

**CONFIRMATORY ASSIGNMENT**

**NUNC PRO TUNC**

**WHEREAS, SANDELL MANUFACTURING COMPANY, INC.**, a corporation duly organized and existing under the laws of New York and having a place of business at 310 Wayto Road, Schenectady, New York 12303 ("**ASSIGNEE**") is the purchaser of certain business assets of **SAVERIO J. MINUCCI**, an individual residing at 38 Hills Road, Loudonville, New York 12211 ("**ASSIGNOR**");

**WHEREAS**, said certain business assets of **ASSIGNOR** purchased by **ASSIGNEE** includes, but is not limited to, a certain trademark and registration therefor, filed and registered in the United States, and the goodwill of the business symbolized by said trademark and registration;

In consideration of the aforementioned purchase of said certain business assets of the **ASSIGNOR** by the **ASSIGNEE** on March 30, 1994, which is hereby acknowledged, and for other good and valuable consideration, the receipt of which is also hereby acknowledged, **ASSIGNOR** hereby confirms the aforementioned sale, assignment and transfer to **ASSIGNEE** and **ASSIGNEE'S** successors, assigns and legal representatives, of all right, title and interest, in the United States of America and throughout the world, in and to said trademark and registration therefor, with the goodwill of the business symbolized by said trademark and registration, as set forth below:

**U.S. Trademark**

Trademark	Serial Number	Filing Date	Registration No.	Grant Date
SANDELL	72/152,921	09/11/1963	769,012	05/05/1964

**ASSIGNOR** hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this Confirmatory Assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said trademarks, applications and registrations therefor, and will testify as to the same in any opposition proceeding, cancellation proceeding, litigation or other proceeding relating thereto, and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said trademarks, registrations and applications therefor which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I/We have caused this Confirmatory Assignment to be executed and effective *Nunc Pro Tunc*.

Signed at Schenectady, New York this 13<sup>th</sup> day of December, 2004.

By:   
Name. Saverio J. Minucci, an individual



**Dennis J. Eagan**  
Notary Public State of New York  
Qualified in Schenectady County  
Commission expires February 28, ~~2007~~ 2009

**CONFIRMATORY ASSIGNMENT**

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By:   
Name. Saverio J. Minucci, an individual

  
**Dennis J. Eagan**  
Notary Public State of New York  
Qualified in Schenectady County  
Commission expires February 28, ~~19~~ 2007