

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM804739

SUBMISSION TYPE:	RESUBMISSION		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
RESUBMIT DOCUMENT ID:	900758560		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Chiwich Holding IV, LLC		03/13/2023	Limited Liability Company: DELAWARE
RECEIVING PARTY DATA			
Name:	LOMFO, LLC d/b/a Upstream Brands, LLC		
Street Address:	1721 Beulah Place		
City:	Richmond Heights		
State/Country:	MISSOURI		
Postal Code:	63117		
Entity Type:	Limited Liability Company: MISSOURI		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	5773732	EVERSTRONG	
Registration Number:	5655727	ONGUARD	
Registration Number:	6191220	ONSHIELD	
Registration Number:	5750584	WANDER CAMP	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	6125526094		
Email:	Leigh.Rand@jonespross.com		
Correspondent Name:	Leigh A Rand		
Address Line 1:	1605 Lakecliff Hills Lane		
Address Line 4:	Austin, TEXAS 78732		
NAME OF SUBMITTER:	Leigh Rand		
SIGNATURE:	/Leigh Rand/		
DATE SIGNED:	04/20/2023		
Total Attachments: 14			
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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into effective March 13, 2023 between Chiwich Holdings IV LLC (“***Seller***”), and LOMFO, LLC dba Upstream Brands (“***Purchaser***

WHEREAS, Seller is the direct owner of the Assets used in connection with [various FBA private label Amazon brands, supplier relationships, Amazon brand registries, certain patents, inventory and the Virtuous Imports Amazon seller account through which Seller sells inventory branded under the Everstrong, OnGuard, Wandercamp, Reveal Squad, and Onshield brands (the “***Business***”); and

WHEREAS, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller the Assets.

NOW, THEREFORE, the parties agree as follows:

1. Purchase of Assets. Subject to the terms and conditions set forth in this Agreement, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser, and Purchaser hereby purchases from Seller, the Assets, and all right, title, interest and entitlement therein and thereto, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement “Assets” means and includes all properties, rights (contractual or otherwise) of every kind, nature and description, real, personal and mixed, tangible and intangible, wherever located which are owned and controlled by Seller and used exclusively in the Business (collectively, the “***Assets***”). Without limiting the generality of the foregoing, the Assets includes the following:

1.1 The intellectual property rights owned and controlled by Seller and used exclusively in the Business, including, brands, trade secrets, processes, proprietary rights, proprietary knowledge, all trademarks, names and trade names; all service marks, copyrights, marks, symbols, logos and all applications contained therein; all registrations and licenses, sublicenses or agreements related thereto; goodwill of the Business; and all rights in and to all artwork, plates, and computer generated materials, in each case owned and controlled by Seller and used exclusively in the Business.

1.2 A copy of all of the Seller’s lists of vendors and suppliers, databases, files and other papers of any nature whatsoever (either in electronic or other form), in each case compiled or maintained by Seller for use only in the Business.

1.3 All licenses, permits, consents, subscriptions, authorizations, approvals and certificates of any regulatory, administrative or other government agency or body relating exclusively to the Business.

1.4 All claims, privileges and rights of Seller under any third-party contracts, agreements, contract rights, license agreements, purchase and sale orders, arrangements, and understandings of Seller, whether oral or written that pertain only to the business.

1.5 Any additional assets as defined in Exhibit A.

2. Excluded Assets. Other than the Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of

Seller and all such other assets and properties shall be excluded from the Transferred Assets (the "Retained Assets").

2.1 Retained Assets include the following assets and properties of the Asset Seller:

A. vehicles, furniture, fixtures, equipment, computers, leases, cash on hand or on deposit or in financial institutions (unless funds are a deposit or prepayment for undelivered goods or services of the Business), any accounts receivable, security deposits of any kind, prepaid taxes that pertain to any period after the Closing, tax refunds or rebates, insurance premium refunds or personal property,

B. assets used (but not exclusively used) in or held for use (but not held exclusively for use) in the Business including, for further clarification, Assets does not include (i) any of the assets of Seller's parent company, Profound Commerce, Inc. and/or any of Profound Commerce, Inc.'s subsidiaries or affiliates (ii) any materials, tangible or intangible, that are used by both Seller and Profound Commerce, Inc. and/or Profound Commerce, Inc.'s subsidiaries or affiliates.

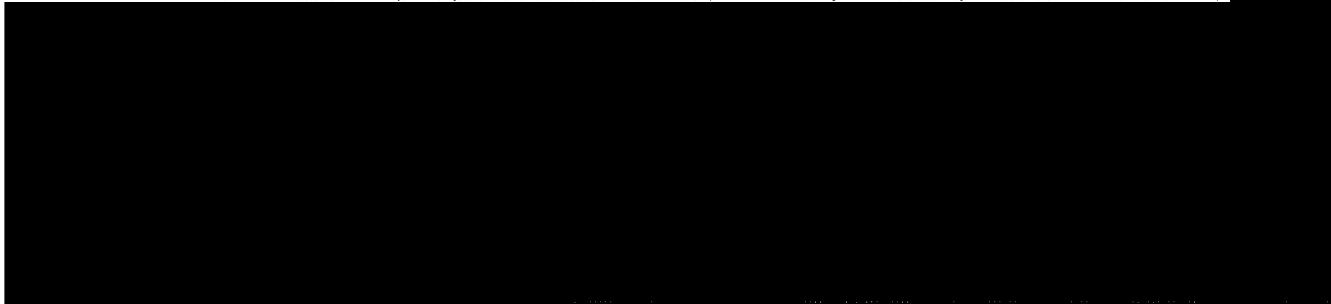
C. Any items set forth on Schedule 2.1(C).

2.2 Notwithstanding anything in this Agreement to the contrary, on or prior to Closing, Seller shall if it deems it necessary or appropriate, cause the conveyance, transfer, assignment and delivery to any other entity or Seller affiliate, any right, title and interest of any such Seller in and to those assets and rights, which if held by any Seller, would constitute a Retained Asset, for such consideration (or no consideration) as shall be determined by Seller.

2.3 No Assumption of Liabilities. Except as set forth in this Agreement, effective as of the Closing neither Seller nor any of its affiliates shall have any liability or obligation with respect to, and Purchaser shall assume and thereafter pay, perform and discharge when due, all liabilities and obligations of Seller after Closing to the extent related to or arising exclusively from the Business and the Assets other than the Retained Liabilities.

2.4 Retained Liabilities. Purchaser shall not be responsible to pay, perform, or discharge any liabilities or obligations to the extent not arising exclusively to the Business or the Assets.

3. Purchase Price, Payment and Allocation. The purchase price for the Assets



Purchaser agrees that Seller shall have the right to examine, inspect, audit, review and copy or make extracts from all such books, records and any source documents used in the preparation thereof.

4. The Closing.

4.1 Post Closing Account Balance and Ad Spend Reconciliation

A.

5. Warranties and Representations of Seller. Seller hereby makes the following representations and warranties to Purchaser, which representations and warranties are made for the express purpose of inducing Purchaser to enter into this Agreement.

5.1 Organization and Good Standing of Seller. Seller is a duly organized, validly existing and in good standing under the laws of Delaware and has the power and authority to own or lease its properties and to carry on the Business as now being conducted.

5.2 Authorization. The execution and delivery of this Agreement to Purchaser and the sale and assignments contemplated herein have been duly approved by all appropriate corporate action of Seller.

5.3 Ownership. Seller has good and marketable title to the Assets being transferred to Purchaser, free and clear of all encumbrances, security interests, liens, charges, conditional sales agreements or claims by any person of any kind, whether known or unknown. None of the Assets are subject to any commitment or other arrangement for their sale or use by Seller or third parties. The Assets constitute all of the assets of the Seller used exclusively by the Business and are in good and marketable condition.

5.4 Litigation and Adverse Claims. There are no actions, suits, arbitrations, regulatory proceedings or other litigation, pending or, to the knowledge of Seller, threatened against Seller, the Assets or the Business. Seller is not subject to any material order, judgment, decree, injunction, or consent order of or with any court or other governmental agency.

5.5 Restrictions on Transfer. Seller is not subject to any agreement, judgment or decree, restriction or instrument of any kind which would prevent the consummation of any of the transactions provided in this Agreement. The consummation of this transaction will not give rise to the right to terminate or require the modification of any agreement which is an Asset, except where such termination or modification would not cause a material adverse effect, or prevent the execution of this

Agreement.

5.6 Financial Statements. The financial statements of Seller, relating to the Business, that have been provided to Purchaser (the “*Financial Statements*”) are true, correct, complete and fairly represent in all material respects the financial condition of the Business for the periods reflected therein. Seller represents and warrants that the Business is not subject to any material liabilities, known or, fixed or contingent, except for those liabilities reflected in the Financial Statements, if any, set forth in a schedule hereto or incurred in the ordinary course of the Business.

6.7 Taxes & Litigation. All required taxes and fees related to the Business have been paid when due, and no deficiencies for any taxes have been proposed, asserted or assessed against Seller and no requests for waivers of the time to assess any such taxes have been granted or are pending. In addition, there are no material claims, actions, suits, proceedings, judgments, orders, or investigations (including but not limited to actions for property damages) pending or threatened against Seller that would diminish the value of, or otherwise impair the operation and maintenance of the Business.

6.8 No other Representations. Except for the representations and warranties contained in this Section 6 as modified by the Schedules hereto), Seller makes no other express or implied representation or warranty with respect to Seller, the Assets, the Assumed Liabilities or the transactions contemplated herein, and Seller disclaims any other representations or warranties, whether made by Seller, any affiliate of Seller, or any of Seller’s or its affiliates’ respective representatives.

6.9 **PURCHASER HEREBY ACKNOWLEDGES THAT IF THE CLOSING IS CONSUMMATED, THE BUSINESS, ASSETS AND LIABILITIES OF THE COMPANY ARE BEING SOLD TO PURCHASER ON AN “AS IS, WHERE IS” BASIS WITH ALL FAULTS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR CAUSE.** Notwithstanding anything to the contrary in this Agreement, nothing in this Section shall limit Purchaser’s rights with respect to claims of, or causes of action arising from, fraud.

7. Warranties and Representations of Purchaser. Purchaser hereby represents and warrants to Seller, which representations and warranties are made for the express purpose of inducing Seller to enter into this Agreement, that Purchaser has full power and authority to execute, deliver and perform this Agreement and all action of Purchaser necessary for such execution, delivery and performance will have been taken. No consent of any federal, state, municipal or other governmental authority is required for the execution, delivery or performance of this Agreement by Purchaser. No consent of any party to any contract or agreement to which Purchaser is a party or that relates to any of the properties or assets of Purchaser is required for the execution, delivery or performance of this Agreement. This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms. Purchaser has conducted its own independent investigation, review and analysis of the Assets and the Business. In making its decision to enter into this Agreement and to consummate the transaction contemplated by this Agreement, Purchaser has relied solely upon its own investigation and the express representations and warranties of Seller set forth in Section 6 of this Agreement. Except for the express representations and warranties of Seller set forth in Section 6 of this Agreement, Purchaser specifically disclaims that it is relying upon or has relied upon any other

representations or warranties that may have been made by Seller or any other person in connection with the transactions contemplated by this Agreement.

8. Covenants of Seller.

8.1 Performance of Transition Services. [REDACTED]

8.2 Non-Compete. [REDACTED]

9. Indemnity.

9.1 Indemnification by Seller. [REDACTED]

9.2 Indemnification by Purchaser. [REDACTED]

[REDACTED] with the ownership of the Assets or the operation of the Business arising after the Closing.

9.3 Limitations. [REDACTED]

[REDACTED]

10. Survival of Representations. [REDACTED]

[REDACTED]

11. Notices. If any notification is required by law, such notification shall be deemed reasonable and properly given five days following deposit in the U.S. Mail or one day following deposit in a reputable overnight service postage prepaid, addressed to Seller at:

or Purchaser at:

1721 Beulah Place
Richmond Heights, MO 63117

or at such other address as shall be given in writing by one party to the other.

12. Entire Agreement. This Agreement (including all exhibits attached hereto and all documents delivered as provided for herein) constitutes the entire agreement of the parties and supersedes any and all other agreements and understandings, whether written or oral, relative to the matters discussed herein.

13. Governing Law. This Agreement shall be interpreted and governed under the laws of the State of Delaware, other than its choice of law provisions. Each party to this agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action (a) arising under this agreement or any documents delivered in connection thereto.

14. Successors or Assigns. The parties agree that this Agreement shall be binding on their respective successors and assigns, and that the term "Seller" and the term "Purchaser" as used herein shall be deemed to include, for all purposes, the respective designees, successors, assigns, heirs, executors and administrators. Notwithstanding the foregoing, this Agreement and the rights and obligations of the parties hereunder shall not be assignable, in whole or in part, by either party without the prior written consent of the other party.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile signature or an e-mail of a PDF signature which shall in all events have the same force and effect as original signatures.

16. Headings. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

17. Invalidity of Particular Provisions. The unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein or this Agreement itself invalid.

18. Brokers or Agents. [REDACTED]

19. Attorneys' Fees and Interest. In any suit or action brought to enforce this Agreement, the exhibits attached hereto or any other signed instrument referred to herein, or to obtain an adjudication, declaratory or otherwise, of rights hereunder or thereunder, the losing party shall pay to the prevailing party actual reasonable attorneys' fees and all other costs and expenses that may be incurred by the prevailing party in such action.

20. No Third Party Beneficiaries. This Agreement is not intended to benefit any third parties, and no entity not a party to this Agreement shall be granted any rights hereby.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

Purchaser
LOMFO, LLC

By: Michael Orłowski

Title: Manager

Michael Orłowski

SignNow e-signature ID: a62395d65a...
03/13/2023 16:46:39 UTC

Seller
Profound Commerce Inc.

By: Foley Schmidt

Title: Head of Strategy

Foley Schmidt

Exhibit A

ASSET TRANSFER LIST

Below is a list of assets that will be transferred at closing to Purchaser.



Exhibit B

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Assignment**”) is dated as of March 13th, 2023 (the “**Effective Date**”), and is from CHIWICH HOLDING IV, LLC (“**Transferor**”), to LOMFO, LLC d/b/a Upstream Brands, a Missouri limited liability company (“**Transferee**”).

WHEREAS, Transferor and Transferee are parties to that certain Asset Purchase Agreement dated as of March 13, 2023 (the “**Purchase Agreement**”);

WHEREAS, Transferor and Amazon.com, Inc., a Delaware corporation, and its affiliates are parties to that certain Amazon Services Business Solutions Agreement (the “**Amazon Agreement**”);

WHEREAS, in addition to the Amazon Agreement and associated accounts, Transferor is also selling its intellectual property to Transferee which includes all trademarks, logos, domain names, customer lists, supplier lists, and intangible property otherwise necessary to operate the business being sold (the “**Intellectual Property**”).

WHEREAS, pursuant to the terms of the Purchase Agreement and this Assignment, Transferor desires to convey and transfer to Transferee, and Transferee desires to accept and receive from Transferor, all of Transferor’s right, title, interest and obligations in connection with the Amazon Agreement and Intellectual Property.

1. **Assignment.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor hereby sells, conveys, transfers, assigns and delivers to Transferee, its successors and assigns forever, free and clear of any liens or encumbrances, and Transferee accepts from Transferor, all of the right, title and interest that Transferor possesses in the Amazon Agreement and Intellectual Property.

2. **Further Actions.** At any time and from time to time after Effective Date, each of Transferor and Transferee shall execute and deliver, or cause to be executed and delivered to the other party, such other instruments and take such other action, all as such other party may reasonably request, in order to carry out the intent and purpose of this Assignment.

3. **Terms of the Purchase Agreement.** The parties hereto acknowledge and agree that this Assignment is entered into pursuant to the Purchase Agreement, to which reference is made for a further statement of the rights and obligations of Assignor and Assignee with respect to the Amazon Agreement and Intellectual Property. The representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Assignment, the terms of the Purchase Agreement shall govern and control.

4. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement. A signed copy of this Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

This Assignment shall constitute an assignment of Transferor’s entire right, title and interest in and to the Amazon Agreement and Intellectual Property for which an assignment is necessary or appropriate to transfer such right, title and interest.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed and delivered as of the Effective Date.

TRANSFEROR:

Foley Schmidt

By: Profound Commerce Inc

Name: Foley Schmidt

Title: Head of Strategy

TRANSFeree:

LOMFO, LLC DBA UPSTREAM BRANDS

By: Michael Orłowski
SignNow e-signature ID: B24068538a...
03/13/2023 16:40:38 UTC

Name: Michael Orłowski

Title: Manager

Exhibit C

ALLOCATION OF PURCHASE PRICE

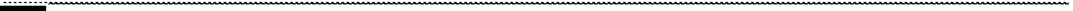


Exhibit D

BILL OF SALE

THIS BILL OF SALE is made and effective as of the 13th day of March 2023 by SELLER ("Seller"), to and for the benefit of BUYER ("Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser are the parties to that certain Asset Purchase Agreement dated March 13, 2023 (the "Purchase Agreement");

NOW, THEREFORE, in accordance with the terms and subject to the conditions contained in the Agreement and for good and valuable consideration paid by Purchaser to Seller as recited in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, Seller has sold, assigned and transferred and by these presents does hereby sell, assign and transfer to Purchaser the Assets (as defined in the Purchase Agreement), free and clear of all liens, claims, and encumbrances, and Seller hereby guarantees that Purchaser will receive good and marketable title to the Assets pursuant to this Bill of Sale,

TO HAVE AND TO HOLD the Assets unto Purchaser and Purchaser's successors, assigns, and heirs forever.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above-written.

SELLER Profound Commerce Inc

Signature: *Foley Schmidt*

Printed Name: Foley Schmidt

SCHEDULES TO ASSET PURCHASE AGREEMENT

Schedule 2.1(C)

None.