

03-03-2004



102682392

TRADEMARK  
3156-0103T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



RECORDING OF ASSIGNMENT

Honorable Commissioner of Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

February 20, 2004

2-20-04

Sir:

Please record the attached original documents or copy thereof.

1. Name of Conveying Party(ies):

**1222884 ONTARIO INC.**  
**5 Commerce Road**  
**Orangeville, Ontario, L9W 3X5, Canada**

- Individual
- General Partnership
- Corporation - Canada
- Other
- Association
- Limited Partnership

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

**PHOENIX PERFORMANCE PRODUCTS INC.**  
6955 Columbus Road  
Mississauga Ontario L5T 1K1, Canada

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation Canada
- Other

03/02/2004 DBYRNE 00000157 2094742  
01 FC:8521 3. Nature of ~~00.00.00~~ 00.00.00 ~~00.00.00~~

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

Execution Date: March 11, 1999

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

A. Trademark Application No(s):

B. Trademark Registration No(s):

Reg. No. 2,094,742 THE TIPPERAIRY SOLUTION

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

**Birch, Stewart, Kolasch & Birch, LLP**  
**P.O. Box 747**  
**Falls Church, VA 22040-0747**  
**(703)205-8000**

6. Total number of applications and registrations involved:

7. X The recording fee in the amount of \$40.00 is attached hereto.

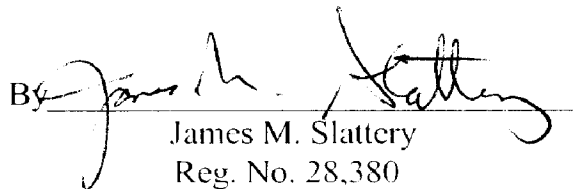
8. — Please charge Deposit Account No. 02-2448 in the amount of \$\_\_\_\_\_. A duplicate copy of this request is enclosed.

9. X The Commissioner is hereby authorized to charge any fees under 37 C.F.R. 2.6 which may be required, or credit any overpayment to Deposit Account No. 02-2448.

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.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
James M. Slattery  
Reg. No. 28,380

P.O. Box 747  
Falls Church, VA 22040-0747  
(703)205-8000

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET,  
ATTACHMENTS, AND DOCUMENT: 14

THIS AGREEMENT made as of the 11th day of March, 1999

**B E T W E E N:**

**1222884 ONTARIO INC.,**

a corporation incorporated under the laws of the Province of Ontario,

(hereinafter called the "Vendor")

- and -

**PHOENIX PERFORMANCE PRODUCTS INC.,**

a corporation incorporated under the laws of the Province of Ontario,

(hereinafter called the "Purchaser")

**THIS AGREEMENT WITNESSETH** that for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

1. **PROPERTY TO BE PURCHASED AND SOLD**

Subject to the terms and conditions hereof, the Vendor hereby sells, assigns and transfers to the Purchaser and the Purchaser hereby purchases from the Vendor effective the close of business on February 28, 1999 (the "Effective Date") as a going concern all the undertaking and all the property and assets of the business involving the manufacturing and distribution of protective garments presently carried on by the Vendor at and from 5 Commerce Road, Orangeville, Ontario, L9W 3X5 under the name Phoenix Performance Products (the "Business") including without limiting the generality of the foregoing:

- (a) the goodwill of the Business together with the exclusive right of the Purchaser to represent itself as carrying on the same in continuation of and in succession to the Vendor and the right to use any words indicating that the Business is so being carried on;
- (b) all inventories, stock in trade and supplies of every nature and kind of the Business wheresoever situate (collectively, "Inventory");

- 2
- (c) all equipment, furniture, furnishings, fixtures, tools and supplies owned by the Vendor in connection with the Business, a list of which appears as Schedule A;
  - (d) all patents, trademarks and other intellectual property beneficially owned by the Vendor in connection with the Business, a list of which appears as Schedule B;
  - (e) all real property of the Vendor, including freehold and leasehold property and leases, owned or held by the Vendor in connection with the Business;
  - (f) the full benefit and advantage of all existing contracts and engagements to which the Vendor may be entitled in respect of the Business;
  - (g) all amounts prepaid by the Vendor in connection with the Business; and
  - (h) all other property and assets of the Business, movable or immovable, real and personal, tangible and intangible, of every kind and description and wheresoever situate provided that there shall be specifically excluded from the purchase and sale of assets herein provided for the following which shall remain the property of the Vendor:
    - (i) all accounts receivable, trade accounts or other debts due or accruing due to the Vendor in respect of the Business as at the Effective Date and the full benefit of all securities, if any, for such debts;
    - (ii) all cash on hand and in the bank and all bills, notes, shares, bonds, debentures and other securities (if any) owned or held by the Vendor as at the Effective Date; and
    - (iii) Karen Breitbart's computer server, monitor, printer and electronic scanner and camera.

The undertaking, property and assets to be purchased and sold herein are hereinafter sometimes collectively referred to as the "Purchased Assets". For greater certainty, the Purchaser is not assuming any liabilities of the Business that exist as at the Effective Date.

## 2. PURCHASE PRICE

The purchase price (hereinafter referred to as the "Purchase Price") payable for the Purchased Assets shall be the sum of One \_\_\_\_\_ Dollars, the amount determined to be the value of the Inventory in accordance with section 3(c) hereof and the payment to the Vendor of the royalties described in section 3(d) hereof allocated as follows:

- (i) the payment on or prior to June 30, 2000 of \_\_\_\_\_ gross sales of the Business for the fiscal year ended February 28, 2000 as set forth on the internally prepared financial statements of the Business for such fiscal year to a maximum of \_\_\_\_\_;
- (ii) the payment on or prior to June 30, 2001 of \_\_\_\_\_ gross sales of the Business for the fiscal year ended February 28, 2001 as set forth on the internally prepared financial statements of the Business for such fiscal year to a maximum of \_\_\_\_\_;
- (iii) the payment on or prior to June 30, 2002 of \_\_\_\_\_ sales of the Business for the fiscal year ended February 28, 2002 as set forth on the internally prepared financial statements of the Business for such fiscal year to a maximum of \$ \_\_\_\_\_;
- (iv) the payment on or prior to June 30, 2003 of \_\_\_\_\_ ss sales of the Business for the fiscal year ended February 28, 2003 as set forth on the internally prepared financial statements of the Business for such fiscal year to a maximum of \_\_\_\_\_ les; and
- (v) the payment on or prior to June 30, 2004 of \_\_\_\_\_ sales of the Business for the fiscal year ended February 28, 2004 as set forth on the internally prepared financial statements of the Business for such fiscal year to a maximum of \_\_\_\_\_.

The Purchaser agrees to execute such further documents, notices and forms as may be necessary to register a security interest in the assets of the Business to secure its obligation under the Promissory Note and the Royalty, including, without limitation, a royalty agreement. The Purchaser covenants and agrees to permit the Vendor or its agents reasonable access to its books and records to confirm and, if determined necessary by the Vendor, audit the financial statements of the Business in connection with the determination of the Royalty payable in any year. The Vendor agrees that it will be liable for, and pay the costs associated with, any such registration of a security agreement, confirmation or audit, as the case may be

4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE VENDOR**

The Vendor represents, warrants and covenants with the Purchaser that:

- (a) the Vendor is the sole beneficial owner of the Purchased Assets and has the exclusive right to dispose of the Purchased Assets agreed to be sold hereunder and the Vendor has good and marketable title thereto, free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever;

- (b) no person, firm or corporation has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming an agreement, for the purchase from the Vendor of any of the Purchased Assets;
- (c) the entering into of this Agreement and the completion of the transactions contemplated hereby will not result in the violation of any of the terms and provisions of the constating documents or by-laws of the Vendor or of any indenture or other agreement, written or oral, to which the Vendor may be a party or which it is bound;
- (d) there are no actions, suits or proceedings (whether or not purportedly on behalf of the Vendor or any subsidiary), pending or threatened against or affecting the Vendor or any subsidiary at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. The Vendor is not now aware of any existing ground on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success;
- (e) the trade names, trade marks and patents, both domestic and foreign, used in whole or in part in or required for the proper carrying on of the Business, are listed in Schedule B hereto, are validly and beneficially owned by the Vendor with the sole and exclusive right to use the same and are in good standing and duly registered in all appropriate offices to preserve the rights thereof and thereto;
- (f) to the best of the Vendor's knowledge, the conduct of the Business does not infringe upon the patents, trade marks, trade names or copyrights, domestic or foreign, of any other person, firm or corporation;
- (g) the Vendor is conducting the Business in compliance with all applicable laws, rules and regulations of each jurisdiction in which the Business is carried on, is not in breach of any such laws, rules or regulations, except for breaches which in the aggregate are immaterial, and is duly licensed, registered or qualified in each jurisdiction in which the Vendor owns or leases property or carries on the Business, to enable the Business to be carried on as now conducted and its property and assets to be owned, leased and operated, and all such licences, registrations and qualifications are valid and subsisting and in good standing and none of the same contains any burdensome term, provision, condition or limitation which has or may have an adverse effect on the operation of the Business;
- (h) all facilities and equipment owned and used by the Vendor in connection with the Business are in good operating condition and are in a state of good repair and maintenance reasonable wear and tear excepted and all Inventory forming part of the Purchased Assets are in saleable condition and are not obsolete;

- (i) The only employees of the Business, their dates of hire and their remuneration are set forth on Schedule C. The Vendor is not a party to any written or oral employment, service or pension agreement, except as set out and described in Schedule C, and all employees of the Business can be dismissed on the notice period set out for each employee in Schedule C. All vacation pay, bonuses, commissions and other emoluments are reflected and have been accrued in the books of account of the Vendor.
- (j) The Corporation has filed all necessary tax returns and notices and has paid all applicable taxes of whatever nature for all tax years to the date hereof to the extent such taxes have become due or have been alleged to be due and the Corporation is not aware of any tax deficiencies or interest or penalties accrued or accruing, or alleged to be accrued or accruing, thereon. The Corporation has withheld from all payments made to its directors, officers and employees and to all non-residents of Canada and other persons with respect to whom withholdings are required to be made by law, all taxes and other deductions (including, without limitation, Canada Pension Plan and unemployment insurance premiums) and has remitted the same to the proper tax or other receiving authorities on a timely basis;
- (k) no guarantee or warranty has been given in respect of any of the products sold or the services provided as part of the Business, no claims have been made against the Vendor for breach of warranty or contract requirement or negligence or for a price adjustment or other concession in respect of any defect in or failure to perform or deliver any products, services or work in connection with the Business, there are no repair contracts or maintenance obligations in favour of the customers or users of products of the Business, and the Vendor is not now subject to any agreement or commitment and the Vendor has not entered into any agreement with or made any commitment to any customer of the Business which would require the repurchase of any products sold to such customers or adjustment of any price or the granting of any refund, discount or other concession to such customers;
- (l) the Vendor does not have any information or knowledge of any facts relating to the Business which, if known to the Purchaser, might reasonably be expected to deter the Purchaser from completing the transactions herein contemplated;
- (m) there are no material liabilities of the Vendor of any kind whatsoever, whether or not accrued and whether or not determined or determinable, in respect of which the Purchaser may become liable on or after the consummation of the transaction contemplated by this agreement; and
- (n) the Vendor is a Canadian resident.

5. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER**

The Purchaser hereby represents, warrants and covenants with the Vendor that:

- (a) the Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power, authority and capacity to acquire the Purchased Assets and to perform its obligations hereunder; and
- (c) the execution and delivery of the Promissory Note in partial payment of the Purchase Price complies with all requirements of any laws applicable and does not conflict with any provision of the constating documents of the Purchaser, or conflict with, or create an event of default under any indenture, agreement or other instrument to which the Purchaser is a party.

6. **SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

Each of the aforementioned representations, warranties and covenants of the Vendor and of the Purchaser shall be true and correct as of the Closing Date and shall survive the completion of the purchase and sale of the Purchased Assets.

7. **BULK SALES ACT**

The Purchaser hereby waives compliance by the Vendor with the provisions of the Bulk Sales Act (Ontario).

8. **CLOSING ARRANGEMENTS**

At the closing on the Closing Date:

- (a) the Vendor shall deliver to the Purchaser all necessary deeds, conveyances, bills of sale, assurances, transfers, assignments and consents, and any other documents necessary or reasonably required to effectively transfer the Purchased Assets to the Purchaser with a good and marketable title, free and clear of all mortgages, liens, charges, pledges, claims, security interests or encumbrances whatsoever;
- (b) the Vendor shall deliver actual possession of the Purchased Assets to the Purchaser;



11. **MANAGEMENT**

The Purchaser agrees to retain the services of Doug Cudney and Karen Breitbach as the representatives of Productos Deportivos Phoenix SA de CV, to assist in the management of the Business for a period of four months from the date hereof at a cost of \$5,000 per month (or \$20,000 in the aggregate).

12. **TIME OF ESSENCE**

Time shall be of the essence of this Agreement.

13. **PROPER LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the courts of such Province shall have jurisdiction to entertain any action arising in connection with this Agreement.

14. **ASSIGNS ETC.**

Subject to the terms of this Agreement, the provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto on the day and year first above written.

1222884 ONTARIO INC.

By: 

PHOENIX PERFORMANCE PRODUCTS  
INC.

By: 

## SCHEDULE B

### TRADE NAMES, TRADE MARKS AND PATENTS

Impact-absorbing equestrian saddle pad, U.S. Patent No. 5,299,412, patented April 5, 1994 for 21 years until April 5, 2015, registered in the name Tipperary Sport Products Inc.

Saddle pad, U.S. Patent No. DES. 350,420, patented September 6, 1994, for 14 years until September 5, 2008, registered in the name Tipperary Sport Products Inc.

Body protector, U.S. Patent No. 5,465,424, patented November 14, 1995, for 21 years until November 13, 2006, registered in the name Tipperary Sport Products Inc.

Trademark: Phoenix - Registration applied for by 1222884 Ontario Inc.

Trademark: Tipperary - U.S. Registration No. 1,807,198, registered November 30, 2003, expires November 20, 2003, registered in the name Tipperary Sport Products Inc.

Tipperary - Canadian Registration No. 344747, registered September 15, 1988, expires September 15, 2004, registered in the name Tipperary Sport Products Inc.

Trademark: The Tipperary Solution, U.S. Registration No. 2,094,742, registered September 9, 1997, expires September 8, 2003, registered in the name Tipperary Sport Products Inc.

**1222884 ONTARIO INC.**  
(the "Corporation")

The following resolution signed by the sole Shareholder of the Corporation is hereby passed pursuant to the provisions of *The Business Corporations Act (Ontario)* as a special resolution of Shareholder.

Sale of Protective Clothing Business:

**RESOLVED** that:

1. The sale of the Business, including assets, goodwill, patents, trademarks and inventories, carried on by the Corporation, to Phoenix Performance Products Inc. at 5, Commerce Road, Orangeville, Ontario, is hereby approved in accordance with the terms and conditions as set forth in an Agreement of Purchase and Sale dated March 11th 1999 between the Corporation, as Vendor, and Phoenix Performance Products Inc., as Purchaser. A copy of the said Agreement is directed to be filed with this resolution.
2. The Corporation shall enter into a Royalty Agreement with Phoenix Performance Products Inc., on substantially the same terms and conditions as set forth in the draft of the said Royalty Agreement which is directed to be filed with this resolution.
3. The Corporation shall accept a General Security Agreement and Promissory Note from Phoenix Performance Products Inc. on substantially the same terms and conditions as set forth in the General Security Agreement and Promissory Note, draft copies of which are directed to be filed with this resolution.
4. The sole Director of the Corporation shall execute the said Agreements and all other documentation necessary to effect the transactions contemplated herein.

---

**CERTIFICATION**

I, KAREN BREITBACH, sole Officer and Director of **1222884 Ontario Inc.** hereby certify that the foregoing is a true and correct copy of a resolution

of the sole Shareholder of the said Corporation passed and effective as of the 11th day of March 1999, which resolution is still in full force and effect, without amendment.

DATED at Brampton Ontario this 11th day of March 1999.



---

**KAREN BREITBACH**