

10-06-2004

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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102852715

10-4-04

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):
PocketGear.com, LLC

- Individual(s)
- General Partnership
- Corporation-State
- Other Limited Liability Company,

Citizenship (see guidelines) Michigan

Execution Date(s) March 21, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: PocketGear, LLC

Internal Address: Suite 150

Street Address: 2800 Meridian Street

City: Durham

State: North Carolina

Country: USA Zip: 27713

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other LLC

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

76492700

B. Trademark Registration No.(s)

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Christopher A. Sloan, Esq.

Internal Address: Boult, Cummings, Conners & Berry, PLC

Street Address: 414 Union Street, Suite 1600

City: Nashville

State: TN Zip: 37219

Phone Number: (615) 252-2392

Fax Number: (615) 252-6392

Email Address: csloan@boultcumings.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

Signature

September, 2004

Date

Christopher A. Sloan, Esq.

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 10

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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REEL: 003056 FRAME: 0803

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is dated March 12, 2004, by and among PocketGear, LLC, a Tennessee limited liability company ("Buyer"); Power by Hand Holdings, LLC, a Delaware limited liability company ("PBH Holdings"); PocketGear.com, LLC, a Michigan limited liability company ("Seller"); James Miller, a resident of Michigan ("J. Miller"); Nathan Miller, a resident of Michigan ("N. Miller"), and Slawek Pruchnik, a resident of Michigan ("Pruchnik") (J. Miller, N. Miller, and Pruchnik are referred to herein as "Members").

RECITALS:

A. Members own one hundred percent of the membership interests (including financial and governance rights) of Seller.

B. Seller desires to sell, and Buyer desires to purchase, the Assets of Seller for the consideration and on the terms set forth in this Agreement.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound, further agree as follows:

ARTICLE 1 DEFINITIONS

Capitalized terms used and not defined elsewhere in this Agreement shall have the meanings set forth below:

1.1 Accounts Receivable. "Accounts Receivable" means (a) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Seller, (b) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

1.2 Affiliate. "Affiliate" means, with respect to a specified Person, any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person. For purposes of this definition, "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act.

1.3 Appraised Value. The "Appraised Value" of PBH Holdings shall be [REDACTED]

1.4 Assets. "Assets" is defined in Section 2.1.

1.5 Assignment and Assumption Agreement. "Assignment and Assumption Agreement" is defined in Section 2.3.

- 1.6 Buyer.** "Buyer" is defined in the first paragraph of this Agreement.
- 1.7 Closing.** "Closing" is defined in Section 6.1.
- 1.8 Closing Date.** "Closing Date" means the date on which the Closing occurs.
- 1.9 Code.** "Code" means the Internal Revenue Code of 1986.
- 1.10 Damages.** "Damages" is defined in Section 7.1.
- 1.11 Earnout.** "Earnout" means [REDACTED], less any payments made to Seller pursuant to Section 2.5(a).
- 1.12 Employment Agreements.** "Employment Agreements" is defined in Section 5.1.
- 1.13 Encumbrance.** "Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.
- 1.14 Exchange Act.** "Exchange Act" means the Securities Exchange Act of 1934.
- 1.15 Excluded Assets.** "Excluded Assets" is defined in Section 2.2.
- 1.16 Gross Profits.** "Gross Profits" means gross revenue derived from the Assets or any sale of pocket pc software or related accessories (even if received by an Affiliate of Buyer) less cost of goods sold including, but not limited to, developer licensee and "affiliate" royalty payments, credit card and banking fees, production costs, commissions, chargebacks, refunds and returns, and other transaction fees, and shall not include any parent company overhead charges or the like.
- 1.17 Initial Purchase Price.** "Initial Purchase Price" is defined in Section 2.4.
- 1.18 Intellectual Property.** "Intellectual Property" means any or all of the following and all rights in, arising out of, or associated therewith: (A) United States, international and foreign patents and applications therefore and all reissues, divisions, renewals, extensions, provisional patents, continuations and continuations-in-part thereof; (B) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (C) all copyrights (whether registered or unregistered), mask work rights, copyright registrations and applications therefore throughout the world; (D) all industrial designs and any registrations and applications therefore throughout the world; (E) all trade names, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefore throughout the world; (F) all databases and data collections and all rights therein throughout the world; (G) all web pages, web sites, domain names and URLs; (H) all software and other computer code, including source code and object code and any programmer's notes relating thereto, and (I) any similar, corresponding or equivalent rights to any of the foregoing.

- 1.19 IRS.** "IRS" means the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.
- 1.20 Liability.** "Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.
- 1.21 Members.** "Members" is defined in the first paragraph of this Agreement.
- 1.22 Minimum Earnout Payment.** "Minimum Earnout Payment" shall mean [REDACTED] per calendar quarter during the first year of this Agreement. The Minimum Earnout Payment shall increase by [REDACTED] per calendar quarter for each subsequent year of this Agreement, up to a maximum of [REDACTED] per calendar quarter.
- 1.23 Order.** "Order" means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any governmental body or arbitrator.
- 1.24 Person.** "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.
- 1.25 Proceeding.** "Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any governmental body or arbitrator.
- 1.26 Purchase Price.** "Purchase Price" is defined in Section 2.4.
- 1.27 Representative.** "Representative" means, with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.
- 1.28 Securities Act.** "Securities Act" means the Securities Act of 1933.
- 1.29 Seller.** "Seller" is defined in the first paragraph of this Agreement.
- 1.30 Tax.** "Tax" or "Taxes" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the tax liability of any other Person.

1.31 Tax Return. "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

1.32 Third Party. "Third Party" means a Person that is not a party to this Agreement, but not including any Affiliate of Buyer.

1.33 Third Party Claim. "Third Party Claim" means any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

ARTICLE 2 SALE AND TRANSFER OF ASSETS

2.1 Agreement of Sale and Purchase. Upon the terms and subject to the conditions set forth in this Agreement, Seller hereby sells, conveys, assigns, transfers and delivers to Buyer, and Buyer hereby purchases and acquires from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in and to all of Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located (the "Assets"). Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the transfer to or assumption by Buyer of any Liability of Seller, other than those Liabilities arising under the Assumed Contracts from and after the Closing Date.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, Seller's cash, accounts receivable existing on the Closing Date and those assets of Seller listed on Schedule 2.2 (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing. Notwithstanding the foregoing, Seller shall not directly or indirectly distribute any cash or other Excluded Assets to the Members until all Liabilities arising prior to the Closing Date have been settled in full, including the maintenance of reasonable reserves against any chargebacks or refunds that may occur from and after the Closing Date with respect to sales that occurred prior to the Closing Date.

2.3 Assignment and Assumption of Contracts. At the Closing, Buyer and Seller shall enter into an Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit A (the "Assignment and Assumption Agreement") pursuant to which Seller shall assign to Buyer and Buyer shall assume and agree to pay and perform all of Seller's obligations arising from and after the Closing Date under those contracts of Seller that are listed on Schedule 2.3 (the "Assumed Contracts").

2.4 Purchase Price. The purchase price for the Assets (the "Purchase Price") will be (a) [REDACTED] (the "Initial Purchase Price"), and (b) the Earnout (as described in Section 2.5 below). At the Closing, the Initial Purchase Price shall be delivered by Buyer to Seller by wire transfer.

2.5 Earnout.

3.12 Legal Proceedings; Orders. Except as set forth in Schedule 3.12, there is no pending or, to Seller's or the Members' knowledge, threatened Proceeding by or against Seller or that otherwise relates to or may affect the business of, or any of the assets owned or used by, Seller. To the knowledge of Seller and the Members, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. There is no Order to which Seller, its business or any of the Assets is subject, and, to the knowledge of Seller or the Members, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the business of Seller.

3.13 Contracts; No Defaults. Except as set forth on Schedule 3.12, there are no material agreements, contracts and commitments to which Seller is a party or by which Seller is bound that are not Assigned Contracts. To the knowledge of Seller, all of the Assigned Contracts are legal, valid, binding and enforceable against the parties in accordance with their respective terms and in full force and effect. No default (or event or condition which, upon notice, passage of time or both, would become a default or would cause the acceleration of any obligation of any party thereto or the creation of any Encumbrance on the Assets) currently exists on the part of the Seller or, to the knowledge of Seller or the Members, on the part of any third party, with respect to any Assigned Contract. Seller has delivered to Buyer a correct and complete copy of each Assigned Contract. Except as set forth on Schedule 3.12, no consent is required for such assignment.

3.14 Employees and Benefits. Except as provided in Schedule 3.14, Seller (a) does not maintain or contribute to any employee pension benefit plans, any employee welfare benefit plans, or any stock option, stock bonus, restricted stock, phantom stock, 401(k), profit-sharing, bonus, deferred compensation, stock appreciation rights, severance pay or similar plan or agreement and (b) is not a party to any employment agreement. Schedule 3.14 lists each employee of Seller and describes such employee's title, annual compensation, bonus or profit-sharing arrangements, accrued vacation and the date his or her employment commenced. No present or former employee of Seller has any claim against Seller on account of or for (a) overtime pay (other than for the current payroll period), (b) wages or salary (excluding current bonuses or accruals) for any period other than the current pay period, (c) vacation, time off or pay in lieu of vacation or time off, other than earned in respect of the current fiscal year, (d) any violation of any law relating to minimum wages, child labor or maximum hours of work.

3.15 Intellectual Property.

(a) Schedule 3.15 sets forth a list of all Intellectual Property (other than trade secrets, know-how and goodwill attendant to Intellectual Property not readily reducible to schedule form) owned by Seller (the "Seller Intellectual Property Assets"). Except as set forth on Schedule 3.15, Seller exclusively owns all Seller Intellectual Property Assets free and clear of any Encumbrances.

(b) Schedule 3.15 sets forth a list of all Intellectual Property (specifically including software applications, software libraries or other machine-readable computer code licensed pursuant to any open source software license, including but not limited to the General Public License) licensed from third parties to Seller, excluding widely available off-the-shelf software products that (i) are only used internally, and (ii) do not require customization or third party

implementation assistance (e.g. Microsoft Word, Adobe Acrobat, etc.). Each such license is valid and in full force and effect, and is enforceable by Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws or court decisions relating to or affecting the rights of creditors generally. Except as set forth on Schedule 3.15, Seller does not use any Intellectual Property of any third party that is not the subject of a written license agreement.

(c) Except as set forth on Schedule 3.15, Seller has not (i) entered into any exclusive outbound agreements relating to the Seller Intellectual Property Assets (including any trade secrets); or (ii) entered into any arrangements or agreements that would cause or may give rise to an Encumbrance on the Seller Intellectual Property Assets.

(d) Neither the Seller Intellectual Property Assets, nor Seller's use thereof, infringes, or are based on a misappropriation of, any Intellectual Property of any other person. No proceeding charging Seller with, or an allegation of, infringement or misappropriation of Intellectual Property has been filed or, to the knowledge of Seller, threatened by any person.

(e) To the knowledge of Seller or the Members, there has not been any unauthorized use, disclosure, infringement or misappropriation of the Seller Intellectual Property Assets, or any Intellectual Property of any third party to the extent used by Seller, by any third party, including any employee or former employee of Seller.

(f) Seller has secured valid written assignments or work-made-for-hire agreements from all consultants and employees who have contributed or may contribute to the creation or development of any Seller Intellectual Property Assets. Seller has taken all other steps reasonably necessary to secure and protect its right and title in and to all Seller Intellectual Property Assets.

(g) Seller has taken all steps reasonably necessary to protect and preserve the confidentiality of non-public Seller Intellectual Property Assets, including all source code for software owned by Seller, including using written agreements that contain customary confidentiality provisions. To the knowledge of Seller or the Members, no third party (including any present or former employee or consultant of any of them) is in violation of any written agreement relating to confidentiality.

(h) The Seller Intellectual Property Assets are sufficient for the operation of the business of Seller as currently conducted.

3.16 Privacy. Seller has provided Buyer with true and complete copies of all privacy policies that apply to any personally identifiable information that Buyer has collected from its customers, including any policies that may no longer be in effect. Seller is, and at all times has been, in material compliance with all applicable privacy policies, and the consummation of the transactions contemplated herein will not violate any applicable laws, statutes, or regulations relating to privacy.

3.17 Brokers or Finders. Neither Seller nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents'

Agreement or any other document delivered in connection herewith, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that Proceeding, in addition to any other relief to which it or they may be entitled.

[The remainder of this page intentionally left blank. Signature page to follow.]

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

SELLER:

POCKETGEAR.COM, LLC

By: James N. Miller
Name: JAMES N. MILLER
Title: Manager

J. MILLER:

James N. Miller
James Miller

BUYER:

POCKETGEAR, LLC

By: Ryan K. Wuerch
Name: Ryan K. Wuerch
Title: President

N. MILLER

Nathan Miller
Nathan Miller

PRUCHNIK:

Slawek Pruchnik
Slawek Pruchnik

PBH HOLDINGS:

POWER BY HAND HOLDINGS, LLC

By: Ryan K. Wuerch
Name: Ryan K. Wuerch
Title: President

SCHEDULE 3.15

Seller Intellectual Property

Trade Names, Trademarks and Service Marks

1. Trade names: "PocketGear.com LLC," "Smartphone.net" (dba filed with the State of Michigan) and "PDAGreen.com" (dba filed with the State of Michigan)
2. Trademark: Although Seller originally abandoned its application for U.S. Trademark Application No. 78/091112, Seller has re-filed an application on the same basis for the word mark POCKETGEAR.COM. The new application is U.S. Trademark Application No. 76/492700 (PocketGear.com)
3. Trademark: U.S. Trademark Application No. 78/091107 has been intentionally abandoned based on Seller's non-use of that logo. Seller has not filed any documentation in furtherance of or for the continuance of registration with regard to that abandoned mark.
4. Trademark: Seller owns the common law trademark rights to its new "Spinning Wheel" Logo. It has yet to file a trademark application at the state or federal level for the same.
5. Trademark: Seller owns the common law trademark rights to the word mark PALMGREEN.COM.
6. Trademark: Seller owns the common law trademark rights to the word mark PDAGREEN.COM.
7. Trademark: Seller owns the common law trademark rights to the word mark SMARTPHONE.NET.

Copyrights

1. No copyright applications or registrations.

Patents

1. No patent applications or registrations.