

MD  
4.17.98

RE

05-20-1998



100714805

SET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

APR 17 1998

To the Honorable Commissioner of Pa

attached original documents or copy thereof.

1. Name of conveying party(ies):  
Krames Communications Incorporated

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

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

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

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

Street Address: 1100 Grundy Lane

City: San Bruno State: CA ZIP: 94066

Individual Citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State Delaware  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation 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 \_\_\_\_\_

Execution Date: March 31, 1998

4. Application number(s) or registration number(s):  
A. Trademark Application Nos.(s)  
75/040144 75/314740 75/314741

B. Trademark registration No.(s)  
1977616 2063073 2028094 2055102 2049135 1637931  
2115345 2069398 1889656 1904147 1189585 2043710  
1939454 1913299 1374751 1366652 1452962 1366653  
1344049

Additional numbers attached?  Yes  No

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

Name: Avis Frazier-Thomas, Esq.

Internal Address: The Times Mirror Company  
Legal Department, C-5

Street Address: 220 West First Street, 5th Floor

City: Los Angeles State: CA ZIP: 90012

6. Total number of applications and registrations involved: [ 22 ]

7. Total fee (37 CFR 3.41)..... \$ 565.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
20-1115  
(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.

6/19/1998 05:11:18 00000002 00000000 75/040144  
Avis Frazier Thomas  
Name of Person Signing

Avis Frazier Thomas  
Signature

4-14-98  
Date

Total number of pages comprising cover sheet [ \_\_\_\_\_ ]

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

TRADEMARK  
REEL: 1727 FRAME: 0689

*State of Delaware*  
*Office of the Secretary of State* PAGE 1

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"MADISON PUBLISHING CORPORATION", A MASSACHUSETTS CORPORATION,

"STAYWELL HEALTH MANAGEMENT SYSTEMS, INC.", A MINNESOTA CORPORATION,

WITH AND INTO "KRAMES COMMUNICATIONS INCORPORATED" UNDER THE NAME OF "THE STAYWELL COMPANY", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SIXTH DAY OF MARCH, A.D. 1998, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AGREEMENT OF MERGER IS THE THIRTY-FIRST DAY OF MARCH, A.D. 1998.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

2285969 8100M

981117048

AUTHENTICATION:

8995386

DATE:

03-26-98  
TRADEMARK

REEL: 1727 FRAME: 0690

PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER ("Agreement of Merger") is entered into on this 13<sup>th</sup> day of March, 1998 by and among StayWell Health Management Systems, Inc., which is a corporation for profit organized under the laws of the State of Minnesota ("StayWell"); and by Madison Publishing Corporation, which is a corporation for profit organized under the laws of the Commonwealth of Massachusetts ("Madison"); and by Krames Communications Incorporated, which is a corporation for profit organized under the laws of the State of Delaware ("Krames").

WHEREAS, this Agreement of Merger was approved by resolution adopted by the Board of Directors of StayWell, Madison and Krames on said date and thereafter was submitted to a vote and approved by The Times Mirror Company, a Delaware corporation and the sole shareholder of StayWell, Madison and Krames by written consent in lieu of a meeting on March 16, 1998; and

WHEREAS, StayWell is a corporation for profit organized under the laws of the State of Minnesota with its principal office therein located at 1340 Mendota Heights Road, St. Paul, Minnesota 55120; and

WHEREAS, the total number of shares of stock which StayWell has authority to issue is 800,000 shares of common stock, without par value, and 200,000 shares of preferred stock, without par value, of which 81,817 shares of common stock have been duly issued and are now outstanding; and

WHEREAS, Madison is a corporation for profit organized under the laws of the Commonwealth of Massachusetts with its principal office therein located at 263 Summer Street, Boston, Massachusetts 02210; and

WHEREAS, the total number of shares of stock which Madison has authority to issue is 1,350,000 shares of common stock, par value \$.01 each, 250,000 shares of Series A Preferred stock, par value \$.01 each, and 160,000 shares of Series B Preferred stock, par value \$.01 each, of which 786,000 shares of common stock have been duly issued and are now outstanding; and

WHEREAS, Krames is a corporation for profit organized under the laws of the State of Delaware with its registered office therein located at 1013 Centre Road, Wilmington, Delaware 19805; and

WHEREAS, the total number of shares of stock which Krames has authority to issue is 100 shares of common stock, par value \$.01 each, of which 100 shares have been duly issued and are now outstanding; and

WHEREAS, Section 302A.601 of the Minnesota Business Corporation Act and Chapter 156B, Section 79 of the Business Corporation Law of the Commonwealth of Massachusetts permit a merger of a business corporation of the State of Minnesota and a business corporation of the Commonwealth of Massachusetts with and into a business corporation of another jurisdiction; and

WHEREAS; Section 252 of the General Corporation Law of the State of Delaware permits the merger of a business corporation of another jurisdiction with and into a business corporation of the State of Delaware; and

WHEREAS, each of the Board of Directors of StayWell and Madison respectively, deem it advisable and to the advantage, welfare and best interests of said corporations and their respective shareholders to merge StayWell and Madison with and into Krames as permitted by and pursuant to the provisions of the Minnesota Business Corporation Act and the Business Corporation Law of the Commonwealth of Massachusetts and pursuant to the provisions of the Delaware General Corporation Law upon the terms and conditions hereinafter set forth; and

WHEREAS, it is intended that the said merger qualify as a reorganization within the meaning of section 368 (a) (1) (A) of the Internal Revenue Code.

NOW, THEREFORE, in consideration of the premises and of the mutual agreement of the parties hereto, being thereunto duly entered into by StayWell and approved by a resolution adopted by its Board of Directors and being thereunto duly entered into by Madison and approved by a resolution adopted by its Board of Directors and being thereunto duly entered into by Krames and approved by a resolution adopted by its Board of Directors, the Agreement of Merger and the terms and conditions thereof and the mode of carrying the same into effect, together with any provisions required or permitted to be set forth therein, are hereby determined and agreed upon as hereinafter in this Agreement of Merger set forth.

1. MERGER. At the effective time on the effective date, StayWell and Madison shall be merged with and into Krames, which shall be the surviving corporation from and after the effective time of the merger, and which shall continue to exist as said surviving corporation under the name The StayWell Company pursuant to the provisions of the General Corporation Law of the State of Delaware. The separate existence of StayWell and Madison, which shall be the terminating corporations, shall cease at said effective time in accordance with the provisions of the Minnesota Business Corporation Act and the Business Corporation Law of the Commonwealth of Massachusetts.

2. CERTIFICATE OF INCORPORATION: The Certificate of Incorporation of Krames as amended by Section 3 below shall be the Certificate of Incorporation following the effective time of the merger.

3. **AMENDMENT OF CERTIFICATE OF INCORPORATION.** Article FIRST of the Certificate of Incorporation of Krames shall be amended in its entirety to read as follows:

"FIRST. The name of the Corporation is The StayWell Company."

4. **BYLAWS.** The present bylaws of Krames will be the bylaws of said surviving corporation following the effective time unless and until the same shall be amended or repealed as therein provided and in accordance with the provisions of the General Corporation Law of the State of Delaware.

5. **BOARD OF DIRECTORS.** The number of directors of the surviving corporation shall be three until changed by action of the shareholder of the surviving corporation pursuant to law and the bylaws; and the names of the directors of the surviving corporation, who shall hold office until their successors have been duly elected and qualified, or as otherwise provided in the bylaws of the surviving corporation shall be as follows:

Mary E. Junck  
Nancy C. Walker  
James Imbriaco

6. **OFFICERS.** The officers of the surviving corporation immediately after the effective time of the merger shall be as follows, and all such persons shall serve in such respective offices for the terms provided by law or in the bylaws, or until their respective successors are elected and qualified:

President and CEO	Nancy C. Walker
Vice President, Finance and Accounting and Treasurer	Alison R. Brown
Vice President, Programs and Services	David Anderson
Vice President, Marketing and Strategic Development	Hugh Bryne
Vice President, Sales	Deborah Dunnam
Vice President, Product Development	Deborah Gale
Vice President, Research	Seth Serxner
Secretary	James Imbriaco
Assistant Secretary	William H. Barlow
Assistant Treasurer	Debra A. Gastler

7. **CANCELLATION OF OUTSTANDING STOCK.** Each issued and outstanding share of capital stock of StayWell and Madison and all rights in respect thereof shall be canceled without consideration and the certificates representing all such shares of capital stock of StayWell and Madison shall be presented for surrender and cancellation. The issued and outstanding shares of the surviving corporation shall

not be converted or exchanged in any manner, but each said share which is issued as of the effective time of the merger shall continue to represent one issued share of the surviving corporation.

8. **RIGHTS AND LIABILITIES OF KRAMES.** At the effective time, Krames shall succeed to and possess, without further act or deed, all of the estate, rights, privileges, powers, and franchises, both public and private, and all of the property, real, personal, and mixed, of StayWell and Madison; all debts due to StayWell or Madison from whatever account shall be vested in Krames; all claims, demands, property, rights, privileges, powers, and franchises and every other interest of StayWell and Madison shall thereafter be the property of Krames as they were of the several and respective parties hereto immediately prior to the effective time; the title to any real estate vested by deed or otherwise in StayWell or Madison shall not revert or be in any way impaired by reason of the merger, but shall be vested in Krames; all rights of creditors and all liens upon any property, real, personal or mixed, of StayWell and Madison shall be preserved unimpaired, limited in lien to the property affected by such lien at the effective time; all debts, liabilities, and duties of StayWell and Madison hereto shall henceforth attach to Krames and may be enforced against Krames to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it; and Krames shall indemnify and hold harmless the officers and directors of each of the parties hereto against all such debts, liabilities and duties and against all claims and demands arising out of the merger.

9. **RECORDATION.** In the event that this Agreement of Merger shall have been fully approved and adopted upon behalf of the terminating corporations in accordance with the provisions of the Minnesota Business Corporation Act and the Business Corporation Law of the Commonwealth of Massachusetts and upon behalf of the surviving corporation in accordance with the provisions of the General Corporation Law of the State of Delaware, the said corporations agree that they will cause to be executed and filed and recorded any document or documents prescribed by the laws of the State of Minnesota and the Commonwealth of Massachusetts and by the laws of the State of Delaware, and that they will cause to be performed all necessary acts within the State of Minnesota and Commonwealth of Massachusetts and the State of Delaware and elsewhere to effectuate the merger herein provided for.

10. **EFFECTIVE TIME AND DATE.** This Agreement of Merger shall become effective as of 11:59p.m. (EST) on March 31, 1998.

11. **AMENDMENT AND TERMINATION.** This Agreement of Merger may be amended, terminated or abandoned by action of any of the respective Board of Directors of the parties at any time prior to the filing thereof with the Secretary of State of the State of Delaware, the Secretary of State of the State of Minnesota and the Secretary of the Commonwealth of Massachusetts or at any time prior to the effective time and date.


12. **PLAN OF REORGANIZATION.** This Agreement of Merger constitutes a plan of reorganization within the meaning of Section 368 (a) (1) (A) of the Internal Revenue Code to be carried out in the manner, on the terms, and subject to the conditions set forth herein.

13. **SERVICE OF PROCESS ON KRAMES.** Krames agrees that it shall accept the service of process by any means prescribed pursuant to the laws of the State of Minnesota and Commonwealth of Massachusetts, including service by registered or certified mail, return receipt requested, in any proceeding for the enforcement of any obligation of StayWell or Madison, respectively, arising from the merger, including any suit or other proceeding to enforce the right of any shareholder, at its principal business address of 1100 Grundy Lane, San Bruno, CA 94066.

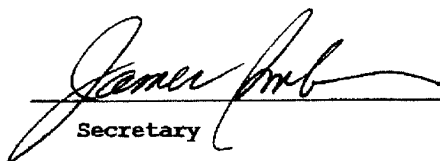
14. **EXPENSES AND RIGHTS OF DISSENTING SHAREHOLDERS.** Krames shall pay all expenses of carrying this Agreement of Merger into effect and of accomplishing the merger, including amounts, if any, to which dissenting shareholders of StayWell or Madison may be entitled by reason of this merger. Krames shall maintain an executed copy of the Agreement of Merger on file at its principal business address of 1100 Grundy Lane, San Bruno, CA 94066 and shall furnish a copy of such Agreement of Merger to any of its stockholders, or to any person who was a stockholder of any constituent corporation, upon written request and without charge.

IN WITNESS WHEREOF, each of the corporate parties hereto, pursuant to authority duly granted by their respective Board of Directors, has caused this Agreement of Merger to be executed by either its President or any Vice President and attested by its Secretary or Assistant Secretary.

Krames Communications Incorporated

By:   
Vice President

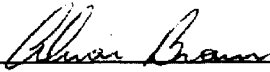
ATTEST:

  
Secretary

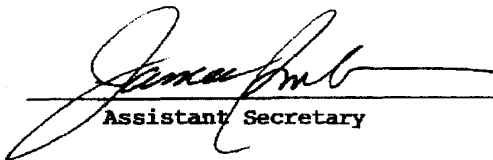


IN WITNESS WHEREOF, each of the corporate parties hereto, pursuant to authority duly granted by their respective Board of Directors, has caused this Agreement of Merger to be executed by either its President or any Vice President and attested by its Secretary or Assistant Secretary.

StayWell Health Management Systems, Inc.

By:  \_\_\_\_\_  
Vice President

ATTEST:

 \_\_\_\_\_  
Assistant Secretary

IN WITNESS WHEREOF, each of the corporate parties hereto, pursuant to authority duly granted by their respective Board of Directors, has caused this Agreement of Merger to be executed by either its President or any Vice President and attested by its Secretary or Assistant Secretary.

Madison Publishing Corporation

By:   
Vice President

ATTEST:

  
Assistant Secretary

CERTIFICATE OF SECRETARY

The undersigned, being the Secretary of Krames Communications Incorporated, does hereby certify that written consent has been given to the adoption of the foregoing Plan and Agreement of Merger by the holders of all of the outstanding stock of said corporation, in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

Date: March 20, 1998

  
James Imbriaco, Secretary  
Krames Communications Incorporated