

07-14-1998

Docket No.:

372510-094



Tab settings

To the Honorable Commissioner of Patent

100762873

Attached original documents or copy thereof.

1. Name of conveying party(ies):

Brazos Sportswear, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: **March 14, 1997**

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

Name: **Brazos Sportswear, Inc.**

Internal Address

Street Address: **3860 Virginia Avenue**

City: **Cincinnati** State: **OH** ZIP: **45227**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State **Delaware**
- 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

**1,868,362**

Additional numbers

Yes  No

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

Name: **Carol M. Nielsen**

Internal Address:

Street Address: **Butler & Binion, L.L.P.**

**1000 Louisiana Suite 1600**

City: **Houston** State: **TX** ZIP: **77002**

6. Total number of applications and registrations involved:

**1**

7. Total fee (37 CFR 3.41): .....\$ **\$40.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

**02-4952**

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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.

**Carol M. Nielsen**

Name of Person Signing

Signature

**07/08/98**

Date

Total number of pages including cover sheet, attachments, and

**TRADEMARK**

REEL: 1752 FRAME: 0625

**CERTIFICATE OF MERGER**

**OF**

**BRAZOS SPORTSWEAR, INC.**  
**(a Washington corporation)**

**WITH AND INTO**

**BRAZOS SPORTSWEAR, INC.**  
**(a Delaware corporation)**

Brazos Sportswear, Inc., a corporation organized under the Delaware General Corporation Law (the "Act"), for the purpose of merging with, and surviving, a foreign corporation pursuant to Section 252 of the Act, hereby certifies that:

1. The name and state of incorporation of each of the corporations which are constituent entities to the merger are:

<b><u>Name</u></b>	<b><u>State of Incorporation</u></b>
Brazos Sportswear, Inc.	Washington
Brazos Sportswear, Inc.	Delaware

2. That certain Plan and Agreement of Merger dated as of March 14, 1997 (the "Merger Plan") has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 252 of the Act.

3. The name of the domestic corporation which is to survive the merger is Brazos Sportswear, Inc., a Delaware corporation.

4. The certificate of incorporation of Brazos Sportswear, Inc., a Delaware corporation, shall be the certificate of incorporation of the surviving corporation.

5. An executed copy of the Merger Plan is on file at the principal place of business of the surviving corporation at the following address:

Brazos Sportswear, Inc.  
3860 Virginia Avenue  
Cincinnati, Ohio 45227

6. Brazos Sportswear, Inc., the surviving corporation, will furnish a copy of the Merger Plan, on request and without cost, to any stockholder of the constituent corporations.

7. The authorized capital stock of Brazos Sportswear, Inc., a Washington corporation, is 75,000,000 shares of capital stock, consisting of 50,000,000 shares of common stock, without par value, and 25,000,000 shares of preferred stock, par value \$.01 per share.

8. Pursuant to Section 103(d) of the Act, the Effective Time of the merger under the Merger Plan shall not become effective until March 14, 1997, at 5:30 p.m. United States Eastern Standard Time.

IN WITNESS WHEREOF, this Certificate of Merger has been duly executed by an authorized officer of the surviving corporation as of the 14th day of March, 1997, and is hereby being filed in accordance with Sections 252 and 103 of the Act.

**BRAZOS SPORTSWEAR, INC.**  
(a Delaware corporation)

By: 

Randall B. Hale, Chairman

**ARTICLES OF MERGER**

**BRAZOS SPORTSWEAR, INC.**  
(a Delaware corporation)

**AND**

**BRAZOS SPORTSWEAR, INC.**  
(a Washington corporation)

FILED  
STATE OF WASHINGTON  
MAR 14 1997  
DANIEL H. HARRIS  
SECRETARY OF STATE

Pursuant to the provisions of RCW 23B.11.050, the following Articles of Merger are executed for the purpose of merging BRAZOS SPORTSWEAR, INC., a Washington corporation (the "Disappearing Corporation"), with and into BRAZOS SPORTSWEAR INC., a Delaware corporation (the "Surviving Corporation").

1. The Plan and Agreement of Merger, approved by the shareholders of each of the Disappearing Corporation and the Surviving Corporation, is attached hereto as Exhibit A.

2. The Plan and Agreement of Merger was duly approved by the shareholders of each of the Disappearing Corporation and the Surviving Corporation pursuant to RCW 23B.11.030.

3. These Articles of Merger will be effective as of 5:30 PM Eastern Standard Time on March 14, 1997.

Dated as of March 14, 1997.

BRAZOS SPORTSWEAR, INC.,  
a Washington corporation

By: 

Randall B. Hale  
Its Chairman

EXHIBIT A

PLAN AND AGREEMENT OF MERGER

REINCORPORATION OF BRAZOS SPORTSWEAR, INC.  
IN DELAWARE

PLAN AND AGREEMENT OF MERGER, dated as of March 14, 1997, by and between Brazos Sportswear, Inc., a Washington corporation ("Oldco"), and Brazos Sportswear, Inc., a Delaware corporation and wholly-owned subsidiary of Oldco ("Newco" or the "Surviving Corporation"). Oldco and Newco are hereinafter collectively referred to as the "Merging Corporations."

WITNESSETH:

WHEREAS, Newco is a corporation duly organized and validly existing under the laws of the State of Delaware, with its registered office at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and with its principal executive offices at 3860 Virginia Avenue, Cincinnati, Ohio 45227; and

WHEREAS, the authorized capital stock of Newco consists of 15,000,000 shares of common stock, par value \$.001 per share, of which at March 14, 1997, 100 shares were issued and outstanding and owned by Oldco and 25,000,000 shares of preferred stock, par value \$.001 per share, of which at March 14, 1997, no shares were issued and outstanding; and

WHEREAS, Oldco is a corporation duly organized and validly existing under the laws of the State of Washington, with its registered office at 201 Elliot Avenue West, Suite 400, Seattle, Washington 98119, and with its principal executive offices at 3860 Virginia Avenue, Cincinnati, Ohio 45227; and

WHEREAS, the authorized capital stock of Oldco consists of 50,000,000 shares of common stock, no par value, of which at March 14, 1997, 23,214,886 shares were issued and outstanding and 25,000,000 shares of preferred stock, par value \$.01 per share, comprised of: 650,000 shares of Series A-1, of which, at March 14, 1997, 650,000 shares were issued and outstanding; 300,000 shares of Series A-2, of which, at March 14, 1997, 300,000 were issued and outstanding; 8,000,000 shares of Series B-1, of which, at March 14, 1997, 4,596,968 were issued and outstanding; 4,000,000 shares of Series B-2, of which, at March 14, 1997, 2,578,924; and 3,500,000 shares of Series B-3 of which, at March 14, 1997, 2,000,000 shares were issued and outstanding; and

WHEREAS, the respective boards of directors of Oldco and Newco deem it desirable and in the best interests of their respective corporations and their respective stockholders to merge Oldco into Newco, pursuant to the provisions of Section 253 of the General Corporation Law of the State of Delaware and Chapter 23B.11.010 of the Washington Business Corporation Act, and have proposed, declared advisable, and approved such merger pursuant to this Plan and Agreement of Merger (the "Agreement"), which Agreement has been duly approved by resolutions of the respective boards of directors of the Merging Corporations;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and in order to prescribe the terms and conditions of the merger, the mode of carrying the same into effect, the manner and basis of converting the shares of common and preferred stock of Oldco into shares of common and preferred stock of Newco, and such other details and provisions as are deemed necessary or proper, the parties hereby agree as follows:

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## ARTICLE I

### MERGER

1:1 *Surviving Corporation.* Subject to the adoption and approval of this Agreement by the requisite vote of the stockholders of each of the Merging Corporations and to the other conditions hereinafter set forth, the Merging Corporations shall be, upon the effective date of the merger as defined in Section 1:3 hereof, merged into a single surviving corporation, which shall be Newco, one of the Merging Corporations, which shall continue its corporate existence and remain a Delaware corporation governed by and subject to the laws of that State.

1:2 *Stockholder Approval.* This Agreement shall be submitted for adoption and approval by the stockholders of each of the Merging Corporations in accordance with the applicable laws of the States of Delaware and Washington.

1:3 *Effective Date.* The merger shall become effective upon (i) the filing of this Agreement with the Secretary of State of the State of Delaware following its adoption, certification, execution, and acknowledgment in accordance with Section 103 of the General Corporation Law of the State of Delaware, and (ii) the filing of Articles of Merger executed by each of the Merging Corporations with the Secretary of State of Washington pursuant to Chapter 23B.11.050 of the Washington Business Corporation Act and the issuance by the Secretary of State of the State of Washington of a Certificate of Merger. The date upon which the merger shall become effective, as defined by this Section 1:3, is referred to in this Agreement as the "Effective Date."

## ARTICLE II

### CONTINUED CORPORATE EXISTENCE OF SURVIVING CORPORATION

2:1 *Existence.* The identity, existence, purposes, powers, objects, franchises, rights, and immunities of Newco, the Surviving Corporation, shall continue unaffected and unimpaired by the merger, and the corporate identity, existence, purposes, powers, objects, franchises, rights, and immunities of the Merging Corporations shall be wholly merged into Newco, the Surviving Corporation, and Newco shall be fully vested therewith. Accordingly, on the Effective Date, the separate existence of the Merging Corporations, except insofar as continued by statute, shall cease.

## ARTICLE III

### GOVERNING LAW AND CERTIFICATE OF INCORPORATION OF SURVIVING CORPORATION

3:1 *Delaware Law Governs and Newco's Certificate of Incorporation Survives.* The laws of Delaware shall continue to govern the Surviving Corporation. On and after the Effective Date, the Certificate of Incorporation of Newco, as in effect on the Effective Date, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended in the manner provided by law.

## ARTICLE IV

### BYLAWS OF SURVIVING CORPORATION

4:1 *Newco's Bylaws Survive.* On and after the Effective Date, the Bylaws of Newco as in effect on the Effective Date, shall be the Bylaws of the Surviving Corporation until the same shall be altered, amended, or repealed, or until new Bylaws shall be adopted in accordance with the provisions of law, the Certificate of Incorporation, and the Bylaws of the Surviving Corporation.

## ARTICLE V

## DIRECTORS AND OFFICERS OF SURVIVING CORPORATION

5:1 *Directors of Surviving Corporation.* The incumbent directors of Oldco immediately prior to the Effective Date shall constitute the board of directors of the Surviving Corporation from and after the Effective Date, and such persons shall hold office until the first annual meeting of stockholders of the Surviving Corporation next following the Effective Date, or until their successors are, in accordance with the Bylaws of the Surviving Corporation, elected and qualify.

5:2 *Officers of Surviving Corporation.* The incumbent officers of Oldco immediately prior to the Effective Date shall hold their respective offices in the Surviving Corporation from and after the Effective Date and until the first meeting of directors following the next annual meeting of stockholders thereof, or until their successors are elected in accordance with the Bylaws of the Surviving Corporation.

5:3 *Vacancies.* On or after the Effective Date, if a vacancy shall for any reason exist in the board of directors or in any of the offices of the Surviving Corporation, such vacancy shall be filled in the manner provided in the Certificate of Incorporation or Bylaws of the Surviving Corporation.

## ARTICLE VI

### CAPITAL STOCK OF SURVIVING CORPORATION

6:1 *Capital Stock as in Newco's Certificate of Incorporation.* The authorized number of shares of capital stock of the Surviving Corporation, the par value, designations, preferences, rights, and limitations thereof, and the express terms thereof, shall be as set forth in the Certificate of Incorporation of the Surviving Corporation as in effect on the Effective Date.

## ARTICLE VII

### CONVERSION OF SECURITIES ON MERGER

7:1 *General.* The manner and basis of converting the issued and outstanding shares of the capital stock of Oldco into shares of the capital stock of Newco shall be as hereinafter set forth in this Article VII.

7:2 *Cancellation of Newco's Capital Stock.* On the Effective Date, each share of Newco common stock, par value \$.001 per share, and Newco preferred stock, par value \$.001 per share then issued and outstanding shall be automatically canceled and cease to exist.

7:3 *Conversion of Oldco's Common Stock.* On the Effective Date, each share of common stock, no par value, of Oldco then issued and outstanding (excluding any Oldco shares which may then be held in the treasury of Oldco, all of which shares shall cease to exist), without any action on the part of the holders thereof, shall automatically become and be converted into 0.2 fully paid and nonassessable shares of the issued and outstanding common stock, par value \$.001 per share, of the Surviving Corporation.

7:4 *Conversion of Oldco's Preferred Stock.* On the Effective Date, each share of Oldco Preferred Stock, Series A-1, A-2, B-1, B-2 and B-3 then issued and outstanding, without any action on the part of the holders thereof, shall automatically become and be converted into one fully paid and nonassessable share of Newco Preferred Stock, Series A-1, A-2, B-1, B-2 and B-3, respectively, and any other series of Oldco Preferred Stock then issued and outstanding shall be converted into an equal number of fully paid and nonassessable shares of Newco Preferred Stock, having substantially similar preferences and rights (with any conversion feature adjusted to reflect the 5 for 1 conversion of Oldco's common stock into Newco Common Stock).

pending by or against either of the Merging Corporations may be prosecuted to judgment as if the merger had not taken place, or the Surviving Corporation may be substituted in place of either of the Merging Corporations.

8:2 *Accounting Treatment.* The assets and liabilities of the Merging Corporations shall be taken up on the books of the Surviving Corporation in accordance with generally accepted accounting principles, and the capital surplus and retained earnings accounts of the Surviving Corporation shall be determined, in accordance with generally accepted accounting principles, by the board of directors of the Surviving Corporation. Nothing herein shall prevent the board of directors of the Surviving Corporation from making any future changes in its accounts in accordance with law.

This Agreement may be terminated at any time prior to the Effective Date, whether before or after action thereon by the stockholders of the Merging Corporation, by mutual consent of the Merging Corporation, expressed by action of their respective Boards of Directors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective corporate names by their respective chairmen of the boards, presidents, or vice presidents and their corporate seals to be hereunto affixed and attested by their respective secretaries or assistant secretaries, all as of the day and year first above written.

BRAZOS SPORTSWEAR, INC.  
(a Delaware corporation)

By \_\_\_\_\_  
Its \_\_\_\_\_

BRAZOS SPORTSWEAR, INC.  
(a Washington corporation)

By \_\_\_\_\_  
Its \_\_\_\_\_



7:5 *Conversion of Oldco's Options and Warranties.* On the Effective Date, each of the then outstanding options and warrants to purchase Oldco common stock, without any action on the part of the holders thereof, shall automatically become and be converted into an option or warrant, as the case may be, to purchase that number of shares of Newco common stock determined by multiplying the number of shares of Oldco common stock subject to such Oldco option or warrant on the Effective Date, times the applicable exchange rate for the Oldco common stock set forth in Section 7.3 hereof, and the exercise price thereof shall adjust in accordance with the terms and provisions of such option or warrant.

7:6 *Exchange of the Merging Corporations' Stock Certificates.* As promptly as practicable after the Effective Date, each holder of an outstanding certificate or certificates theretofore representing shares of common or preferred stock of Oldco may surrender the same to an exchange agent of and designated by the Surviving Corporation and such holder shall be entitled upon such surrender to receive in exchange therefor a certificate or certificates representing the number of whole shares of common stock or preferred of the Surviving Corporation into which the shares of common or preferred stock of Oldco theretofore represented by the certificate or certificates so surrendered shall have been converted as aforesaid. However, prior to any surrender, each outstanding certificate representing Oldco's outstanding common or preferred stock (or common stock or preferred stock of BSI Holding, Inc., a Delaware corporation shall be deemed for all purposes (other than the right to receive any dividend payable by Newco, which shall be deferred until such certificate surrender) to evidence ownership of the number of whole shares of common or preferred stock of the Surviving Corporation into which the same shall have been converted. At or before the Effective Date, each holder of an outstanding certificate or certificates theretofore representing shares of common or preferred stock of Newco shall surrender the same to an exchange agent of, and designated by, the Surviving Corporation.

7:7 *Newco Fractional Shares.* No certificates for fractional share interests of Common Stock of Newco will be issued, but, in lieu thereof, Newco will settle all such fractional share interests in cash on the basis of the Closing price for Oldco common stock on the last trading day before the Effective Date.

7:8 *Oldco's Transfer Books Closed.* Upon the Effective Date, the stock transfer books of Oldco shall be deemed closed, and no transfer of capital stock of Oldco shall thereafter be made or consummated. If, after the Effective Date, certificates for shares of Oldco Common Stock or Oldco Preferred Stock are presented to Newco for registration or transfer, they shall be canceled and exchanged for certificates representing the appropriate number of shares of Newco common stock or preferred stock, as applicable.

## ARTICLE VIII

### ASSETS AND LIABILITIES

8:1 *Assets and Liabilities of Merging Corporations Become Those of Surviving Corporation.* On the Effective Date, all rights, privileges, powers, immunities, and franchises of each of the Merging Corporations, both of a public and private nature, and all property, real, personal, and mixed, and all debts due on whatever account, as well as stock subscriptions and all other choses or things in action, and all and every other interest of or belonging to or due to either of the Merging Corporations, shall be taken by and deemed to be transferred to and shall be vested in the Surviving Corporation without further act or deed, and all such rights, privileges, powers, immunities, franchises, property, debts, choses or things in action, and all and every other interest of the Merging Corporations shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Merging Corporations, and the title to any real or other property, or any interest therein, whether vested by deed or otherwise, in either of the Merging Corporations, shall not revert or be in any way impaired by reason of the merger; *provided, however,* that all rights of creditors and all liens upon any properties OF EACH of the Merging Corporations shall be preserved unimpaired, and all debts, liabilities, restrictions obligations, and duties of the respective Merging Corporations, including without limitation all obligations, liabilities, and duties as lessee under any existing lease, shall thenceforth attach to the Surviving Corporation and may be enforced against and by it to the same extent as if said debts, liabilities, restrictions, obligations, and duties had been incurred or contracted by it. Any action or proceeding

*State of Delaware*  
*Office of the Secretary of State*

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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 MERGER, WHICH MERGES:

"BRAZOS SPORTSWEAR, INC.", A WASHINGTON CORPORATION,  
WITH AND INTO "BRAZOS SPORTSWEAR, INC." UNDER THE NAME OF  
"BRAZOS SPORTSWEAR, INC.", A CORPORATION ORGANIZED AND EXISTING  
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED  
IN THIS OFFICE THE FOURTEENTH DAY OF MARCH, A.D. 1997, AT 1:20  
O'CLOCK P.M.

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



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

Edward J. Freel, Secretary of State

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971084374

RECORDED: 07/09/1998

AUTHENTICATION: 8374520

DATE: 03-14-97  
TRADEMARK

REEL: 1752 FRAME: 0634