

08-13-1998

SHEET

Docket No.:

NLY

24307.13



Tab settings

To the Honorable Commissioner

100791463

of the attached original documents or copy thereof.

1. Name of conveying party(ies):

Our Own Hardware Company
P.O. Box 720
Minneapolis, Minnesota 55440

- Individual(s)
- General Partnership
- Corporation-State **Minnesota**
- 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: **December 31, 1997**

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

Name: **Our Own Hardware Company**

Internal Address:

Street Address: **6502 Nelson Road**

City: **Fort Wayne** State: **IN** ZIP: **46801**

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

70,312	1,397,218	1,514,123
1,279,276	1,429,659	1,538,577
1,397,215	1,434,373	1,575,556

Additional numbers Yes No

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

Name: **Gregory P. Kaihoi**

Internal Address: **Fredrikson & Byron, P.A**

1100 International Centre

Street Address: **900 Second Avenue South**

City: **Minneapolis** State: **MN** ZIP: **55402**

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 3.41): \$ **\$290.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

06-1910

08/12/1998 DNGUYEN 00000167 1279276

DO NOT USE THIS SPACE

01 FC:481 40.00 DP
02 FC:482 250.00 DP

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.

Gregory P. Kaihoi

Name of Person Signing

Greg Kaihoi

Signature

8/16/98

Date

Total number of pages including cover sheet, attachments, and

TRADEMARK

REF: 1767 FRANK 0388

Page 2.

4. Additional application number(s) or registration numbers(s):

B. Trademark Registration No.(s)

2,055,274

2,115,680

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
CERTIFICATE OF MERGER

To Whom These Presents Come, Greeting:

WHEREAS, there has been presented to me at this office for filing duplicate copies of Articles of Merger, merging

OUR OWN HARDWARE COMPANY
non-survivor, a Minnesota corporation

with and into

HWI/OUR OWN, INC.
survivor, an Indiana corporation

The name of the corporation following the merger is

OUR OWN HARDWARE COMPANY
an Indiana corporation

Said Articles of Merger, having been prepared and signed in accordance with the Indiana Business Corporation Law.

WHEREAS, upon due examination I find that they conform to law;

NOW, THEREFORE, I, Sue Anne Gilroy, hereby certify that said Articles of Merger have this day been filed in this office. The effective date of the merger is the twenty-third day of December, 1997.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Twenty-third day of December, 1997.

Deputy

1997100398

APPROVED
AND
FILED
IND. SECRETARY OF STATE

ARTICLES OF MERGER

of

1991060597

OUR OWN HARDWARE COMPANY

MN

into

HWI/OUR OWN, INC.

As of December 31, 1997

JN

1997100398

RECEIVED
97 DEC 23 AM 10:11
SUE ANNE GILROY

ARTICLES OF MERGER

THESE ARTICLES OF MERGER (the "Articles") dated as of December 31, 1997 are hereby entered into by and between HWI/OUR OWN, INC., an Indiana corporation ("Merger Subsidiary"), and OUR OWN HARDWARE COMPANY, a Minnesota corporation ("Our Own").

WHEREAS, the Merger Subsidiary is an Indiana corporation organized and existing under the laws of the State of Indiana, with principal offices located in Fort Wayne, Indiana;

WHEREAS, Our Own is a Minnesota corporation organized and existing under the laws of the State of Minnesota, with principal offices located in Burnsville, Minnesota;

WHEREAS, the Merger Subsidiary is a wholly owned subsidiary of Hardware Wholesalers, Inc., a corporation organized and existing under the laws of Indiana with principal offices located in Fort Wayne, Indiana ("HWI");

WHEREAS, the Merger Subsidiary, immediately prior to the filing of these Articles, has authorized capital stock of One Million (1,000,000) shares, consisting of One Million (1,000,000) shares of Merger Subsidiary Common Stock, no par value, and there are presently issued and outstanding One Thousand (1,000) shares;

WHEREAS, Our Own, immediately prior to the filing of these Articles, has authorized capital stock of Three Hundred Ten Thousand (310,000) shares, consisting of Ten Thousand (10,000) shares of Our Own Common Stock, par value \$100.00 per share, Two Hundred

Thousand (200,000) shares of Our Own Class A Stock, par value \$100.00 per share, and Sixty Thousand (60,000) shares of Our Own Commission Stock, par value \$100.00 per share, and Forty Thousand shares of one or more classes with such designations, rights and preferences as may be established from time to time by the Board of Our Own, and there are presently issued and outstanding 4,245 shares of Our Own Common Stock, 54,400 shares of Our Own Class A Stock and 19,686 shares of Our Own Commission Stock;

WHEREAS, the respective Boards of Directors of Our Own and Merger Subsidiary have by resolutions adopted these Articles and deem it advisable for the mutual benefit of the parties, and of the respective shareholders of each, that Our Own merge with and into Merger Subsidiary under and pursuant to the laws of the State of Indiana and the State of Minnesota upon the terms and conditions hereinafter set forth; and

WHEREAS, the respective shareholders of Our Own and Merger Subsidiary have approved these Articles and the Merger.

NOW, THEREFORE, in consideration of the premises and the mutual agreement, provisions and covenants contained in the Articles and in compliance with the requirements of the IBCL and the MBCA, Our Own and Merger Subsidiary hereby set forth the following facts and agree that, in accordance with Indiana and Minnesota law, Our Own shall be merged with and into Merger Subsidiary, and Merger Subsidiary shall be the surviving corporation, and that the terms and conditions of the Merger and the mode of carrying the same into effect shall be as follows:

199 7100 398

APPROVED
AND
FILED
IND. SECRETARY OF STATE

ARTICLE I

MERGER SUBSIDIARY

1.01. Name of Merger Subsidiary. The Merger Subsidiary shall be the corporation surviving the Merger and the name of such corporation will be OUR OWN HARDWARE COMPANY, and such name has been changed as a result of the Merger. The Merger Subsidiary is a domestic corporation existing pursuant to the provisions of the Indiana Business Corporation Law ("IBCL").

ARTICLE II

OUR OWN

2.01. Name of Our Own. The name, state of incorporation and date of incorporation of Our Own, which is a party to the Merger is OUR OWN HARDWARE COMPANY, a Minnesota corporation incorporated on June 16, 1913, pursuant to the provisions of the Minnesota Business Corporation Act ("MBCA").

ARTICLE III

PLAN OF MERGER

3.01. Definitions. The terms defined in this Section 3.01 shall for purposes of these Articles, have the meanings herein specified, unless the context expressly or by necessary implication otherwise requires:

“Dissenting Holder” means each person electing to exercise dissenters’ rights in accordance with the provisions of §302A.473(3) of the MBCA.

“Dissenting Shares” means any shares of Our Own Stock held by a Dissenting Holder as to which appraisal has been so demanded.

“HWI Common Stock” means the shares of HWI’s Common Stock, without par value, authorized as of the Merger Date.

“HWI Preference Stock” means the shares of HWI’s Preference Stock, without par value, authorized as of the Merger Date.

“HWI Stock” means the shares of HWI Common Stock and HWI Preference Stock.

“Merger” means the merger of Our Own into Merger Subsidiary pursuant to these Articles.

“Merger Subsidiary Common Stock” means shares of the Merger Subsidiary’s common stock, without par value, authorized as of the Merger Date.

“Our Own Class A Stock” means the shares of Our Own’s Class A Stock of par value \$100.00 per share, authorized immediately prior to the filing of these Articles.

“Our Own Commission Stock” means the shares of Our Own’s Commission Stock of par value \$100.00 per share, authorized immediately prior to the filing of these Articles.

“Our Own Common Stock” means the shares of Our Own’s Common Stock of par value \$100.00 per share, authorized immediately prior to the filing of these Articles.

“Our Own Stock” means the Our Own Common Stock, Our Own Class A Stock and Our Own Commission Stock.

“Shareholder” means any shareholder, whether of record or beneficial, of any corporation, and when used in the plural means all the shareholders of such entity.

3.02. Other Definitions. In addition to the terms defined in Section 3.01, various other terms are defined elsewhere in these Articles, as indicated below:

<u>Term</u>	<u>Section</u>
“Dissenting Shares:	3.03(b)
“IBCL”	1.01
“MBCA”	2.01
“Merger Date”	5.01
“Paying Agent”	3.03(c)

3.03. Conversion and Exchange of Securities.

(a) Conversion. (i) Each issued and outstanding share of Our Own Common Stock, Our Own Class A Stock and Our Own Commission Stock shall be converted into the number of shares of HWI Stock having an issue price and liquidation value equal to the par value of the Our Own Stock; (ii) the shares of HWI Stock received in exchange for the Our Own Stock shall be divided between HWI Common Stock and HWI Preference Stock in accordance with HWI’s current arrangements for admitting new shareholders of HWI; (iii) the Our Own Stock shall be canceled; and (iv) as provided in Section 3.03(v), no fractional shares shall be issued. The shares of HWI Stock may be issued without a certificate and a statement of information otherwise required to be in a certificate shall be promptly provided to each Shareholder. Any shares of Our Own Stock held in the treasury of Our Own shall not be considered as outstanding for purposes of these Articles.

(b) Exchange of Shares and Payment. At the Merger Date, each holder of issued and outstanding shares of Our Own Stock, whether represented by certificate or certificates or by a statement, shall be entitled to receive, upon confirmation of each holder's shares of Our Own Stock, and, if applicable, the surrender to HWI for cancellation of any certificates representing Our Own Stock, a statement for the aggregate number of shares of HWI Common Stock and HWI Preference Stock provided for in Section 3.03(a); provided, however, that such shares of Our Own Stock are not shares of a Shareholder who has effectively asserted dissenters' rights pursuant to §302A.473(5) of the MBCA. Any such Shareholder who has asserted dissenters' rights shall, upon the Merger Date, have only such rights, if any, as such Shareholder may have as a dissenting Shareholder under the MBCA, and any amounts to be paid to such a Shareholder with respect to such shares shall be paid by Merger Subsidiary.

(c) Paying Agent. HWI shall act as the agent for itself and the Merger Subsidiary for purposes of mailing and receiving transmittal letters and distributing cash and/or HWI Stock, as provided in Section 3.03(a), to the Our Own Shareholders (the "Paying Agent").

(d) Rights of Our Own Shareholders; Payment. As soon as practicable after the Merger Date, HWI shall make available, and each Our Own Shareholder shall be entitled to receive, upon confirmation of each holder's shares of Our Own Stock and, if applicable, the surrender to HWI for cancellation of any certificates representing Our Own Stock, a statement for the aggregate number of shares of HWI Common Stock and HWI Preference Stock to which such Shareholder is entitled under Section 3.03(a). Until so surrendered, any Our Own Shareholder shall be deemed

to own for all corporate purposes the aggregate number of shares of HWI Stock into which the Our Own Stock represented thereby shall have been converted. The HWI Stock into which the Our Own Stock shall be converted in the Merger shall be deemed to have been issued on the Merger Date.

(e) No Fractional Shares. No fractional shares of HWI Stock shall be issued pursuant to the Merger. In lieu of the issuance of any such fractional shares, cash adjustments at a rate of \$50 per share of HWI Stock will be made to holders of Our Own Stock that would otherwise be issued fractional shares of HWI Stock.

3.04. Articles of Incorporation of the Merger Subsidiary. Upon the Merger Date, the Articles of Incorporation of the Merger Subsidiary shall be existing Articles of Incorporation and such Articles shall not be amended.

PART II

STATEMENT OF CHANGES MADE WITH RESPECT TO THE NUMBER OF SHARES HERETOFORE AUTHORIZED

Aggregate number of shares previously authorized	1,000,000
Increase	<u>0</u>
Aggregate number of shares to be authorized after effect of the Restated Articles	<u>1,000,000</u>

3.05. By-Laws of the Merger Subsidiary. Upon the Merger Date, the By-Laws of the Merger Subsidiary shall be the By-Laws of the Merger Subsidiary as they exist prior to the Merger Date and shall be amended in such respects as may be necessary to carry out these Articles and in whatever additional respects the Merger Subsidiary deems appropriate after the Merger Date.

3.06. Board of Directors and Officers of the Merger Subsidiary. Upon the Merger Date, the Merger Subsidiary shall have as its Board of Directors the following person: Michael J. McClelland. Upon the Merger Date, its officers shall be those persons named for the office set opposite their name as set forth below:

Michael J. McClelland	Chairman & CEO
James E. Weyrens	President
David W. Dietz	Secretary and Treasurer

Such directors shall serve until the next annual meeting of the shareholders or until their successors are elected and qualified. Such officers shall serve until the next annual meeting of the directors or until their successors are elected and qualified.

3.07. Necessary Acts. All parties to these Articles shall perform any and all acts as well as execute any and all documents that reasonably may be necessary or appropriate to fully carry out the provisions and intent of these Articles.

3.08. Headings. The headings of the articles and sections of these Articles have been inserted solely for convenience of reference and shall in no way restrict or modify any of the terms or provisions hereof.

3.09. Counterparts. These Articles may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

3.10. Choice of Law. These Articles shall be construed and governed by the laws, commercial usages, and customs of the State of Indiana without giving effect to the principles of conflict of laws thereof.

3.11. Additional Actions. If, at any time after the Merger Date, the Merger Subsidiary shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Merger Subsidiary its rights, title, or interest in, to, or under any of the rights, properties or assets of Our Own, or (b) otherwise carry out the purposes of these Articles, Our Own and its officers and directors shall be deemed to have granted to the Merger Subsidiary an irrevocable power of attorney to execute and deliver all such deeds, assignments or assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in the Merger Subsidiary or otherwise to carry out the purposes of these Articles, and the officers and directors of the Merger Subsidiary are fully authorized in the name of Our Own or otherwise to take any and all such action.

ARTICLE IV

MANNER OF ADOPTION AND VOTE

4.01. Manner of Adoption. The manner of adoption and vote by which the Articles were approved by each corporation party to the Merger is as follows:

(a) Action by Our Own.

1. Action by Directors. At a meeting of the Board of Directors of Our Own, duly called, constituted and held on October 10, 1997, a resolution was duly adopted by a majority vote of the members of the Board of Directors approving these Articles and directing that it be submitted to the Shareholders of Our Own entitled to vote in respect thereof at a meeting of such Shareholders to be held on November 19, 1997, unless the same were so approved prior to such date by unanimous written consent.

2. Action by Shareholders. At a meeting of the Shareholders of the Our Own entitled to vote in respect of these Articles, duly called, constituted and held on November 19, 1997, at which a quorum of Shareholders was present in person or by proxy, the Shareholders authorized adoption of these Articles by the Our Own. The designation, the number of outstanding shares of the Our Own, the number of shares entitled to vote in respect of these Articles, the number of votes represented at the Shareholder's meeting, the number of shares voted in favor of the adoption of these Articles and the number of shares voted against such adoption are as follows:

<u>Designation</u>	<u>Common</u>	<u>Stock</u>	
		<u>Commission</u>	<u>Class A</u>
Number of Outstanding Shares	4,035	20,241	55,315
Number of Votes Entitled to be Cast	4,035	20,241	55,315
Number of Votes Represented at Meeting	3,285	16,808	49,503
Shares Voted in Favor	3,180	16,347	48,174
Shares Voted Against	60	258	573

(b) Action by Domestic Merger Subsidiary: HWI/Our Own, Inc.

1. Action by Directors. By unanimous written consent executed on November 24, 1997, signed by all members of the Board of Directors of the Merger Subsidiary, a resolution was adopted approving the Articles and directing that it be submitted to the Shareholders of the Merger Subsidiary entitled to vote in respect thereof at a meeting of such Shareholders to be held on November 24, 1997, unless the same were so approved prior to such date by unanimous written consent.

2. Action by Shareholders. By unanimous written consent executed November 24, 1997, signed by the holders of One Thousand (1,000) shares of the Merger Subsidiary, being all of the shares of the Merger Subsidiary entitled to vote in respect to the Articles, the Shareholders of the Merger Subsidiary authorized the adoption of the Articles by the Merger Subsidiary.

ARTICLE V

EFFECTIVE DATE

5.01 Effective Date of Merger. The Merger shall become effective as of the time of filing of these Articles with the Secretary of State of the State of Indiana and the Secretary of State of the

State of Minnesota but in no event prior to the close of business on December 31, 1997 (the "Merger Date").

ARTICLE VI

ADDITIONAL ACTIONS TO COMPLY WITH MBCA

6.01 Agreement of Surviving Corporation. To comply with the provisions of Section 302A.651 of the MBCA, the Merger Subsidiary hereby:

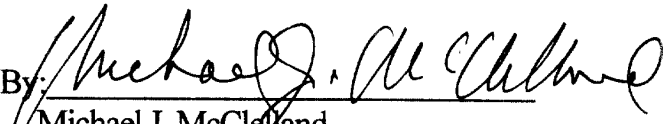
(a) Agrees that it may be served with process in the state of Minnesota in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the Merger Subsidiary;

(b) Irrevocably appoints the Minnesota Secretary of State as its agent to accept service of process in any proceeding, which the Minnesota Secretary of State may forward to: Assistant Secretary, Hardware Wholesalers, Inc., PO Box 868, 6502 Nelson Road, Fort Wayne, Indiana 46801-0868; and

(c) Agrees that it will promptly pay to the dissenting shareholders of Our Own the amount, if any, to which they are entitled under Section 302A.473 of the MBCA.

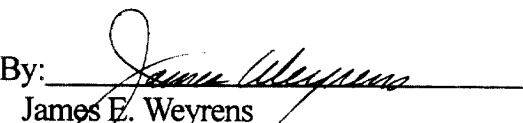
IN WITNESS WHEREOF, these Articles are executed and attested by duly authorized officers of each of the parties, all as of the date first above written.

HWI/OUR OWN, INC.

By: 
Michael J. McClelland
Its President

[MERGER SUBSIDIARY]

OUR OWN HARDWARE COMPANY

By: 
James E. Weyrens
Its President and CEO

[OUR OWN]

This instrument was prepared by David A. Haist, Attorney at Law, 6502 Nelson Road, Fort Wayne, Indiana 46803.