

03-29-1999



Tab settings → → → ▼

To the Honorable Commission

100995082

ad original documents or copy thereof.

1. Name of conveying party(ies):

Tumbleweed, LLC
1900 Mellwood Avenue
Louisville, Kentucky 40206

- Individual(s)
- General Partnership
- Corporation-State
- Other KY Limited Liability Co.

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

Name of receiving party(ies):

Name: Tumbleweed, Inc.

Internal Address: _____
Street Address: 1900 Mellwood Avenue

City: Louisville State: KY ZIP: 40206

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

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)

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

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

Execution Date: December 30, 1998

Effective Date: January 1, 1999

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

A. Trademark Application No.(s)
DNA

B. Trademark registration No.(s)
See Attached Exhibit

Additional numbers attached? Yes No

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

Name: David H. Cooper, Esq.
Internal Address: Roth & Cooper, P.S.C.

Street Address: 200 South Fifth Street
Suite 300 South
City: Louisville State: KY ZIP: 40202

6. Total number of applications and registrations involved: _____

16

7. Total fee (37 CFR 3.41):..... \$ 415.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DNA

(Attach duplicate copy of this page if paying by deposit account)

\$40.00 for first registration; \$25.00 for each additional registration

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.

March 15, 1999

Name of Person Signing

Signature

Date

David H. Cooper, Attorney of Record

Total number of pages comprising cover sheet: 2

OMB No. 0851-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

3/29/99

03/26/1999 JSHABAZZ 00000069 1228763

01 FC:481
02 FC:482

40.00 OP
375.00 OP

EXHIBIT TO COVER SHEET

QUESTION 4-B

Marks:	Registration Numbers:	Registration Dates:
Tumbleweed Mexican Food & Design	1,228,763	February 22, 1983
Tumbleweed	1,265,294	January 24, 1984
Tumbleweed & Design	1,265,312	January 24, 1984
Tumbleweed & Design	1,265,313	January 24, 1984
Tumbleweed & Design	1,265,314	January 24, 1984
Tumbleweed & Design	1,265,315	January 24, 1984
Tumbleweed & Design	1,509,508	October 18, 1988
Tumbleweed & Design	1,847,798	August 2, 1994
Tumbleweed & Design	1,847,833	August 2, 1994
Tumbleweed & Design	1,847,931	August 2, 1994
Tumbleweed	2,018,617	November 26, 1996
Tumbleweed & Design	2,030,238	January 14, 1997
Tumbleweed & Design	2,030,239	January 14, 1997
Tumbleweed Tewgo & Design	2,060,848	May 13, 1997
Tumbleweed	2,072,442	June 17, 1997
Tumbleweed Twister Onions ¹	1,809,638	April 18, 1995

¹ Assigned from S&A Restaurant Corp. to Tumbleweed, LLC in the USPTO as on September 8, 1997, recorded on Reel/Frame 1635/0180.

Office of the Secretary of State

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:

"TUMBLEWEED, LLC", A KENTUCKY LIMITED LIABILITY COMPANY, WITH AND INTO "TUMBLEWEED, INC." UNDER THE NAME OF "TUMBLEWEED, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF DECEMBER, A.D. 1998, AT 3:15 O'CLOCK P.M.



2834693 8100M

991063123

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

Edward J. Freel, Secretary of State

9588689

AUTHENTICATION:

02-22-99

DATE:

TRADEMARK
REEL: 1874 FRAME: 0880

**CERTIFICATE OF MERGER
OF
TUMBLEWEED, LLC
INTO
TUMBLEWEED, INC.**

Pursuant to Section 264 of the General Corporation Law of the State of Delaware ("DGCL"), Tumbleweed, Inc. hereby certifies that:

FIRST: The name and state of domicile of each of the constituent entities of the merger are as follows:

<u>Name</u>	<u>State of Domicile</u>
Tumbleweed, LLC	Kentucky
Tumbleweed, Inc.	Delaware

SECOND: An Agreement and Plan of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with the requirements of subsection (c) of Section 264 of the DGCL.

THIRD: The name of the surviving corporation of the merger is Tumbleweed, Inc.

FOURTH: The articles of incorporation of Tumbleweed, Inc. shall be the articles of incorporation of the surviving corporation.

FIFTH: The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation. The address of the principal place of business of the surviving corporation is 1900 Mellwood Avenue, Louisville, Kentucky 40206.


SIXTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request and without cost to any stockholder of Tumbleweed, Inc. or any member of Tumbleweed, LLC.

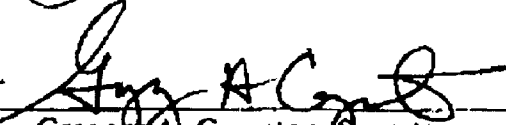
SEVENTH: The surviving corporation will continue to be governed by the DGCL, and the agreement contemplated by subsection (d) of section 264 of the DGCL, therefore, is not required.

EIGHTH: The merger shall become effective at 12:01 a.m. on January 1, 1999.

IN WITNESS WHEREOF, Tumbleweed, Inc. has caused this Certificate of Merger to be signed by John A. Butorac, Jr., its President and Chief Executive Officer and by Gregory A. Compton, its Secretary, this 29th day of December 1998.

TUMBLEWEED, INC.

By: 
John A. Butorac, Jr., President
and Chief Executive Officer

By: 
Gregory A. Compton, Secretary

Subscribed in my presence and sworn to before me this 29th day of December 1998.


Notary Public

Commission expires: 9/30/2002

TUMBLEWEED, INC. MERGER CERTIFICATE



JOHN Y. BROWN III
SECRETARY OF STATE

CERTIFICATE

I, **JOHN Y. BROWN III**, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

APPLICATION FOR CERTIFICATE OF AUTHORITY OF

TUMBLEWEED, INC. BY RESOLUTION IN KENTUCKY TUMBLEWEED RESTAURANTS, INC.
FILED DECEMBER 3, 1998,

ARTICLES OF MERGER OF TUMBLEWEED, LLC INTO TUMBLEWEED, INC. FILED DECEMBER
30, 1998 EFFECTIVE JANUARY 1, 1999.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal.

Done at Frankfort this 10TH day of

FEBRUARY, 1999

John Y. Brown III
Secretary of State, Commonwealth of Kentucky

LDL

TRADEMARK
REEL: 1874 FRAME: 0883

COMMONWEALTH OF KENTUCKY
JOHN Y. BROWN III
SECRETARY OF STATE



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APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to the provisions of KRS Chapter 271B, 273 or 274, the undersigned hereby applies for authority to transact business in Kentucky on behalf of the corporation named below and for that purpose submits the following statements:

- 1 The corporation is a business corporation (KRS 271B) a nonprofit corporation (KRS 273)
 a professional service corporation (KRS 274)
- 2 The name of the corporation is TUMBLEWEED, INC.
- 3 The name of the corporation to be used in Kentucky is TUMBLEWEED RESTAURANTS, INC.
(If "Dom Partner" is checked above for USA)
- 4 DELAWARE is the state or country under whose law the corporation is incorporated.
- 5 8-10-98 is the date of incorporation and the period of duration is _____
- 6 The street address of the corporation's principal office is 1400 MELLWOOD AVENUE, LOUISVILLE, KENTUCKY 40206
- 7 The street address of the corporation's registered office in Kentucky is 1900 MELLWOOD AVENUE, LOUISVILLE, KENTUCKY 40206
and the name of the registered agent at that office is GREGORY A. COMPTON
- 8 The names and usual business addresses of the corporation's current officers and directors are as follows:
 President JOHN A. BUTORAC, JR. JAMES AS ABBOTT
 Vice President JAMES A. MULROONEY
 Secretary GREGORY A. COMPTON
 Treasurer JAMES A. MULROONEY
 Directors SEE ATTACHED SHEET
(Attach a continuation sheet, if necessary.)
- 9 If a professional service corporation, all the individual shareholders, not less than one half of the directors, and all of the officers other than the secretary and treasurer are licensed in one or more states or territories of the United States or District of Columbia to render a professional service described in the statement of purposes of the corporation.
- 10 A certificate of existence duly authenticated by the Secretary of State accompanies this application.
- 11 This application will be effective upon filing, unless a delayed effective date and/or time is specified _____
(Delayed effective date and/or time)

GREGORY A. COMPTON
Gregory A. Compton Vice President/Secretary
Date 8/31 1998

1. GREGORY A. COMPTON
Type or print name of registered agent
consent to serve as the registered agent on behalf of the corporation
GREGORY A. COMPTON
Type or print name & Title

Tumbleweed, Inc.
Board of Directors
1998

Mr. John A. Butorac, Jr.
President
1900 Mellwood Avenue
Louisville, Kentucky 40206

Mr. James A. Mulrooney
Executive Vice President and Treasurer
1900 Mellwood Avenue
Louisville, Kentucky 40206

Mr. W. Roger Drury
8311 Croydon Circle
Louisville, Kentucky 40222

Mr. Lewis Bass
Whitehall South 21A
2800 South Ocean Boulevard
Boca Raton, Florida 33432
OR

Mr. Lewis Bass
5001 U.S. Highway 42
Louisville, Kentucky 40222

Mr. George Keller
4201 Paoli Pike
Floyd Knobs, Indiana 47119

Mrs. S.P. Auerbach
1400 Willow, Unit #405
Louisville, Kentucky 40204

Mr. David Roth
2406 Valley Vista
Louisville, Kentucky 40205

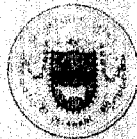
Terry Smith
Steenweg op Brussel 541
Box 2
3090 Overijse BELGIUM

Gregory A. Compton*
Secretary
1900 Mellwood Avenue
Louisville, KY 40206

*Secretary, not a board member

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 "TUMBLEWEED, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TENTH DAY OF AUGUST, A.D. 1998.



A handwritten signature in cursive script, appearing to read "Edward J. Freel".

Edward J. Freel, Secretary of State

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981306643

AUTHENTICATION: 9243480

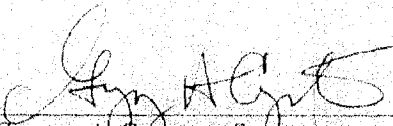
DATE: 08-10-98

RESOLUTION OF THE BOARD OF DIRECTORS
OF
TUMBLEWEED, INC.

The undersigned hereby certifies that the Board of Directors of Tumbleweed, Inc., a foreign corporation desiring a license to transact business in Kentucky, did on the 28th day of October, 1998, adopt the following resolution to wit:

RESOLVED, that due to the fact that name "Tumbleweed, Inc.", is not available, Tumbleweed, Inc., will do business in Kentucky as "Tumbleweed Restaurants, Inc.", and is directed to make application for a license to transact business in Kentucky under the name of Tumbleweed Restaurants, Inc., and that the corporation will transact business in Kentucky only under such name.

BY



Gregory A. Compton, Secretary

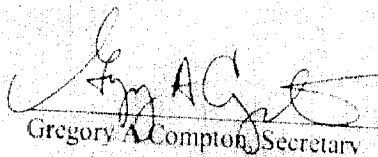
**UNANIMOUS CONSENT RESOLUTION
OF THE MANAGERS OF TUMBLEWEED, LLC,
a Kentucky limited liability company**

October 28, 1998

The undersigned hereby certifies that the Managers of Tumbleweed, LLC, a Kentucky limited liability company, adopted the following resolution, as of the 28th day of October, 1998, to wit:

RESOLVED, that Tumbleweed, LLC grants permission for Tumbleweed, Inc., a Delaware corporation, to do business in Kentucky as "Tumbleweed Restaurants, Inc.", and that Tumbleweed, Inc., will transact business in Kentucky only under such name.

WITNESS the signature of the undersigned Secretary of Tumbleweed, LLC, a Kentucky limited liability company, as of the 28th day of October, 1998.



Gregory A. Compton, Secretary

RECEIVED & FILED

500

DEC 30 4 10 PM '98

USA
LLC
INC
ARTICLE
OF MERGER

JB

ARTICLES OF MERGER
OF
TUMBLEWEED, LLC
AND
TUMBLEWEED, INC.

406851

405545

These Articles of Merger provide for the merger of Tumbleweed, LLC, a Kentucky limited liability company, into Tumbleweed, Inc., a Kentucky corporation.

1. The name and jurisdiction of formation or organization of each constituent business entity are as follows:

<u>Name</u>	<u>State of Domicile</u>
Tumbleweed, LLC	Kentucky
Tumbleweed, Inc.	Delaware

2. The Agreement and Plan of Merger providing for the merger of Tumbleweed, LLC into Tumbleweed, Inc. is attached as Exhibit A to these Articles of Merger.

3. The name of the surviving business entity is Tumbleweed, Inc.

4. The Agreement and Plan of Merger has been duly authorized and approved by each constituent business entity in accordance with KRS 275.350.

5. Tumbleweed, Inc. agrees that it may be served with process in the Commonwealth of Kentucky in any proceeding for enforcement of any obligation of Tumbleweed, LLC, as well as for enforcement of any obligation of Tumbleweed, Inc. arising from the merger. Tumbleweed, Inc. appoints the Secretary of State of the Commonwealth of Kentucky as its agent for service of process for such purpose. The Secretary of State shall mail a copy of such process to Tumbleweed, Inc. at the following address: 1900 Mellwood Avenue, Louisville, Kentucky 40206.

6. These Articles of Merger shall become effective at 12:01 a.m. on January 1, 1999.

TUMBLEWEED, LLC

By James M. Mulrooney
James M. Mulrooney, Manager

TUMBLEWEED, INC.

By John A. Butorac, Jr.
John A. Butorac, Jr., President
and Chief Executive Officer

IF USERS OF TUMBLEWEED MERGER ARE NER

Exhibit A

**AGREEMENT AND PLAN OF MERGER
BETWEEN
TUMBLEWEED, LLC AND TUMBLEWEED, INC.
PURSUANT TO THE
KENTUCKY LIMITED LIABILITY COMPANY ACT
AND
DELAWARE GENERAL CORPORATION LAW**

This Agreement and Plan of Merger (this "Agreement and Plan of Merger") dated as of June 23, 1998, is entered into by TUMBLEWEED, LLC, a Kentucky limited liability company and TUMBLEWEED, INC., a Delaware corporation.

ARTICLE I

THE CONSTITUENT ENTITIES

The name of each business entity that is a party to the merger (the "Merger") are Tumbleweed, LLC, a Kentucky limited liability company (the "LLC") and Tumbleweed, Inc., a Delaware corporation (the "Corporation") which shall be the surviving business entity (the "Surviving Business Entity").

ARTICLE II

THE MERGER

Upon the terms and subject to the conditions set forth in this Agreement and Plan of Merger, and in accordance with the Delaware General Corporation Law (the "DGCL") and the Kentucky Limited Liability Company Act (the "KLLCA"), the LLC shall be merged with and into the Corporation at the Effective Time (as hereinafter defined). The Surviving Business Entity shall be governed by the DGCL, and the separate existence of the LLC shall cease forthwith upon the Effective Time. Limited liability shall be retained by the Surviving Business Entity.

ARTICLE III

CONVERSION OF LLC INTERESTS AND SHARES

At the Effective Time, by virtue of the Merger and without any further action on the part of the holders thereof:

- (a) Each Class A Unit of the LLC that is outstanding immediately prior to the Effective Time shall be converted into the right to receive 53,425,606,397.1 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Business Entity (rounded to the lowest whole number of shares of Common Stock of the Surviving Business Entity with respect to the conversion of fractional Class A Units of the LLC).

- (b) Each Class B Unit of the LLC that is outstanding immediately prior to the Effective Time shall be converted into the right to receive 59,377.40 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Business Entity.
- (c) The membership interest issued to the sole Class C Member of the LLC in his capacity as such shall convert into 514,500 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Business Entity.
- (d) The aggregate membership interests issued to all of the Common Members of the LLC in their capacity as such that are outstanding immediately prior to the Effective Time shall be converted into 2,790,351 validly issued, fully paid and nonassessable shares of Common Stock, \$.01 par value, of the Surviving Business Entity (allocated among such Common Members in accordance with their relative Participating Percentages).
- (e) Each share of Common Stock, \$.01 par value, of the Corporation issued and outstanding immediately prior to the Effective Time shall remain issued, outstanding and unchanged as a validly issued, fully paid and nonassessable share of Common Stock, \$.01 par value, of the Surviving Business Entity.

ARTICLE IV

CERTIFICATE OF INCORPORATION AND BYLAWS

From and after the Effective Time, until changed or amended in accordance with the Certificate of Incorporation, Bylaws or applicable law, the Certificate of Incorporation and Bylaws of the Corporation will be the Certificate of Incorporation and Bylaws of the Surviving Business Entity.

ARTICLE V

EFFECTS OF THE MERGER

At and after the Effective Time, the Merger will have the effects set forth in the DGCL and the KBCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property rights, privileges, powers and franchises of the LLC shall be vested in the Surviving Business Entity, and all debts, liabilities and duties of the LLC shall become the debts, liabilities and duties of the Surviving Business Entity.

ARTICLE VI
ABANDONMENT

(1) Pursuant to Section 251(d) of the DGCL, the Board of Directors of the Corporation may at any time prior to the filing of the Agreement and Plan of Merger with the Secretary of State of the State of Delaware and with the Secretary of State of the Commonwealth of Kentucky terminate the Agreement and Plan of Merger notwithstanding approval of the Agreement and Plan of Merger by the stockholders of the Corporation and the members of the LLC

(2) Pursuant to Section 275.350(3) of the Kentucky Limited Liability Company Act, the Managers of the LLC, may at any time prior to the filing of the Agreement and Plan of Merger with the Secretary of State of the State of Delaware and with the Secretary of State of the Commonwealth of Kentucky, abandon and terminate the Agreement and Plan of Merger notwithstanding approval of the Agreement and Plan of Merger by the stockholders of the Corporation and the members of the LLC

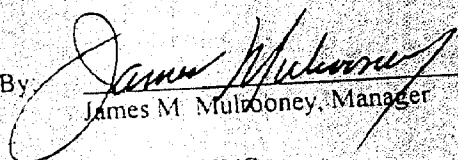
ARTICLE VII
EFFECTIVE TIME

The Merger shall become effective upon the filing of a Certificate of Merger (the "Certificate of Merger"), with the Secretary of State of the State of Delaware and Articles of Merger ("Articles of Merger"); with the Secretary of State of the Commonwealth of Kentucky or at such subsequent time as shall be specified in the Certificate of Merger and in the Articles of Merger as the date and time the Merger shall become effective being the "Effective Time".

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed on their behalf as of the date first above written.

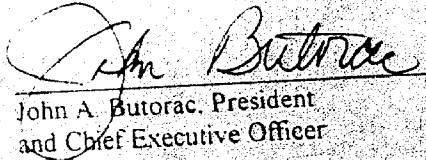
TUMBLEWEED, LLC

By:


James M. Mulrooney, Manager

TUMBLEWEED, INC.

By:


John A. Butorac, President
and Chief Executive Officer

OAK HILLS
FOLDERS TO TUMBLEWEED PLANS MERK

ROTH FOLEY BRYANT & COOPER

An Association of a Professional Service Corporation and a Professional Limited Liability Company

Attorneys at Law

First Trust Centre
200 South Fifth Street, Suite 300-S
Louisville, Kentucky 40202-3236
Fax: (502) 540-0123
Telephone: (502) 569-7550

IRVIN D. FOLEY
DAVID M. ROTH
DAVID H. COOPER
LISA KOCH BRYANT
K. GAIL RUSSELL

Of Counsel:
JAMES E. FAHEY
DAVID W. GRAY
GREGORY A. COMPTON

Also Admitted in Indiana
 Also Admitted in the District of Columbia
 Associated With Roth & Cooper, P.S.C.
All Others Associated With Foley & Bryant, PLLC

March 15, 1999

Commissioner of Patents and Trademarks
Box Assignments
Washington, D. C. 20231

**Re: Form Cover Sheet for a Merger Regarding
Conveyance of 16 Trademark Registrations**

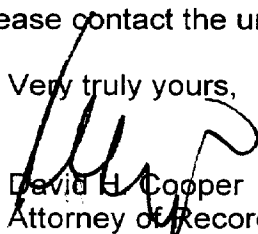
Gentlemen:

Pursuant to *(i)* the Articles of Merger filed with the Secretary of State's Office of Kentucky on December 30, 1998 and *(ii)* the Certificate of Merger filed with the Secretary of State's Office of Delaware on December 30, 1998, *but in each case effective as of January 1, 1999*, **Tumbleweed, LLC**, a prior Kentucky limited liability company, in accordance with the "Agreement and Plan of Merger" filed with the respective Secretary of State's Offices in each of Kentucky and Delaware, merged into **Tumbleweed, Inc.**, a Delaware corporation, as the surviving business entity (the "**Merger**").

Enclosed is a recordation form cover sheet regarding the above-described statutory Merger. Certified copies of the Merger documents as filed in both the Secretary of State's Offices of Kentucky and Delaware are attached herewith for recordation. A separate filing fee of \$415.00 is enclosed therewith concerning the conveyance of these sixteen registrations pursuant to the Merger.

If you should have any questions, please contact the undersigned.

Very truly yours,


David H. Cooper
Attorney of Record

cc Gregory A. Compton, Esq.
Vice President & General Counsel
Tumbleweed, Inc.

\\rfbcnt1\law\in to z\tumbleweed\trademar\usptoassignment2.ltr.doc 3/15/99

RECORDED: 03/22/1999

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REEL: 1874 FRAME: 0893