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FORM PTC
(Rev. 6-93)
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U.S. Patent & TMO/TM Mail Rcpt Dt. #33

REGISTRATION FORM COVER SHEET
TRADEMARKS OFFICE



DEPARTMENT OF COMMERCE
Patent and Trademark Office

101033817

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
McCain Foodservice, Inc.

2. Name and address of receiving party(ies)

Name: McCain Foods USA, Inc.

Internal Address: a corporation of the State of Maine

Street Address: 2905 Butterfield Road

City: Oak Brook State: IL Zip: 60521-1106

Country: U.S.A.

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

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

3. Nature of conveyance:

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

Execution Date: December 11, 1998

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State State of Maine
- 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

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

A. Trademark Application No.(s)

75/024,088; 75/024,085;
75/068,758

B. Trademark Registration No.(s)

749,885
778,582

Additional numbers attached? Yes No

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

Name: Robert B. Cohen, Esq.

Internal Address: LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP

Street Address: 600 South Avenue West

City: Westfield State: NJ ZIP: 07090

6. Total Number of applications and registrations involved: 20

7. Total Fee (37 CFR 3.41).....\$ 515.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

12-1095

(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.

Robert B. Cohen, Esq.
(Name of Person Signing)

(Signature)

April 14, 1999
(Date)

Total number of pages including cover sheet, attachments, and document: 9

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

Trademark Application Nos.

Trademark Registration Nos.

799,948
865,883
982,953
1,139,699
1,277,233
1,305,527
1,327,256
2,028,610
2,054,621
2,069,362
2,094,334
2,141,872
2,201,044
2,187,536
1,425,849

PLAN AND AGREEMENT OF MERGER

AGREEMENT OF MERGER, dated as of December 11, 1998, between McCAIN FOODSERVICE, INC., a Maine corporation with its registered office at Bangor, Maine (hereinafter sometimes called "Foodservice"), and McCAIN FOODS USA, INC., a Maine corporation with its registered office at Bangor, Maine (hereinafter sometimes called "Foods USA").

WHEREAS, Foodservice is a corporation duly organized and existing under the laws of the State of Maine, having been incorporated on May 13, 1997, and having an authorized capital stock consisting of 3,000 shares of Common Stock at no par value per share, of which 100 shares are issued and outstanding; and

WHEREAS, Foods USA is a corporation duly organized and existing under the laws of the State of Maine, having been incorporated on August 28, 1952, and having an authorized capital stock consisting of 5,000,000 shares of Common Stock at \$1.00 par value per share, of which 4,728,154 shares are issued and outstanding; 4,000,000 Shares of Preferred Stock, 8% Non-Cumulative, Non-Voting Class A, at \$1.00 par value; and 200,000 Shares Preferred Stock, Non-Cumulative, Non-Voting Class B, at no par value; and

WHEREAS, all of the shareholders of Foodservice and Foods USA entitled to vote by their respective Articles of Incorporation, have given their unanimous written consent to this Plan and Agreement of Merger pursuant to Sections 620(2) and 902(6) of the Maine Business Corporation Act; and

WHEREAS, the laws of the State of Maine permit such a merger, and Foodservice and Foods USA desire to merge under and pursuant to the provisions of the laws of the State of Maine.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants herein contained, it is agreed that Foodservice shall be and it hereby is merged into Foods USA (the "Surviving Corporation"), and the terms and conditions of such merger and the mode of carrying it into effect are and shall be as follows:

1. **NAME OF SURVIVING CORPORATION.**

McCain Foods USA, Inc. shall become the Surviving Corporation.

2. **ARTICLES OF INCORPORATION.**

The Articles of Incorporation of the Surviving Corporation, as they shall exist prior to and upon the effective date of the merger shall be and remain and continue to be the Articles of Incorporation of the Surviving Corporation until they shall be altered, amended, or repealed as therein provided.

3. **BYLAWS OF SURVIVING CORPORATION.**

The Bylaws of the Surviving Corporation, as they shall exist prior to and upon the effective date of the merger, shall be and remain and continue to be the Bylaws of the Surviving Corporation until they shall be altered, amended or repealed as provided therein.

4. **DIRECTORS AND OFFICERS.**

(a) Persons who are Directors of the Surviving Corporation on the effective date of the merger shall be and remain and continue to be Directors of the Surviving Corporation. Such Directors shall hold office until the first annual meeting of the shareholders of the Surviving Corporation after the effective date of the merger and until their respective successors are elected or appointed in the manner provided by the Bylaws thereof.

(b) The first annual meeting of the shareholders of the Surviving Corporation, after the effective date of the merger, shall be the annual meeting provided for by the Bylaws thereof.

(c) All persons who, upon the effective date of the merger, shall be executive or administrative officers of the Surviving Corporation shall be and remain and continue to be the officers of the Surviving Corporation, subject to the provisions of the Bylaws of the Surviving Corporation. The Board of Directors of Surviving Corporation may elect or appoint such additional officers as they may determine, subject to the provisions of the Bylaws of the Surviving Corporation.

(d) The officers and Directors of Surviving Corporation who will serve as hereinabove set forth are as follows:

Officers

Gilles Lessard	President
Randy Myles	Treasurer
Gerald E. Rudman	Clerk

Directors

Gilles Lessard
H. Harrison McCain
Howard Mann
Randy Myles

5. **EFFECTIVE DATE OF MERGER.**

(a) For all purposes of the laws of the State of Maine, this Plan and Agreement of Merger and the merger herein provided for shall become effective and the separate existence of

Foodservice shall cease as soon as this Agreement of Merger shall have been adopted, approved, signed, and acknowledged in accordance with the laws of the State of Maine, and this Plan and Agreement of Merger and Articles of Merger shall have been filed in the Office of the Secretary of State of the State of Maine.

(b) The corporate identity, existence, purposes, powers, objects, franchises, rights, and immunities of the Surviving Corporation shall continue unaffected and unimpaired by the merger hereby provided for; and the corporate identity, existence, purpose, power, object, franchise, right, and immunity of Foodservice shall be continued in and merged into the Surviving Corporation, and the Surviving Corporation shall be fully vested therewith.

(c) The date upon which Foodservice and the Surviving Corporation shall so become a single corporation shall be December 31, 1998.

6. CONVERSION OF SHARES.

(a) The manner and basis of converting the shares of Foodservice into shares of the Surviving Corporation shall be as follows:

Immediately upon the effective date of the merger, each share of stock of Foodservice outstanding, ipso facto, without any action on the part of the holder thereof, shall automatically become and be converted into one (1) share of Common Stock of the Surviving Corporation; and each outstanding certificate representing shares of Foodservice shall thereupon be deemed for all corporate purposes (other than the payment of dividends) to evidence the ownership of the number of fully paid, non-assessable shares of Common Stock of Foodservice into which such shares of Common Stock of Foodservice shall have been so converted.

(b) After the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing stock of Foodservice shall surrender the same, and such holder shall thereupon be entitled to receive in exchange a certificate or certificates representing the number of shares of Common Stock of the Surviving Corporation into which the shares of Foodservice represented by the certificate or certificates so surrendered shall have been converted. If the holder of such an outstanding certificate or certificates shall not have surrendered the same, no dividends payable to the holders of record of Common Stock of Foodservice, as of any date subsequent to the effective date of the merger, shall be paid to such holder with respect to the number of shares of Common Stock of Foodservice represented by such outstanding certificate or certificates; but, upon surrender of such outstanding certificate or certificates, there shall be paid to the holder of record of the certificate or certificates for Common Stock of the Surviving Corporation issued in exchange therefor the amount of dividends which theretofore have become payable with respect to the number of shares of Common Stock of Foodservice represented by the certificate or certificates issued in the exchange.

7. EFFECT OF MERGER.

Upon this merger becoming effective:

(a) The Surviving Corporation shall possess all the rights, privileges, powers, and franchises, and shall be subject to all the restrictions, obligations, and duties of Foodservice, except as otherwise herein provided, and except as otherwise provided by law;

(b) The Surviving Corporation shall be vested with all property, real, personal, or mixed, and all debts due to Foodservice on whatever account as well as all other things in action or belonging to Foodservice; and

(c) All property, rights, privileges, powers, and franchises of Foodservice shall be thereafter the property of the Surviving Corporation as they were of Foodservice, but all rights of creditors and all liens upon any property of Foodservice shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the effective date of the merger; and all debts, liabilities, obligations, and duties of Foodservice shall thenceforth attach to, and are hereby assumed by the Surviving Corporation and may be enforced against it to the same extent as if such debts, liabilities, obligations, and duties had been incurred or contracted by it.

8. DELIVERY OF DEEDS AND INSTRUMENTS.

From time to time as and when requested by the Surviving Corporation, or by its successors or assigns, Foodservice shall execute and deliver, or cause to be executed and delivered, all deeds and other instruments and shall take, or cause to be taken, all such other and further actions as the Surviving Corporation may deem necessary and desirable in order to more fully vest in and confirm title to and possession of all the property, rights, privileges, powers and franchises referred to in paragraph 7 hereof, and otherwise to carry out the intent and purposes of this Plan and Agreement of Merger. For the convenience of the parties and to facilitate the filing and recording of this Plan and Agreement of Merger, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed to be an original instrument.

9. EXPENSES OF MERGER.

The Surviving Corporation shall pay all expenses of carrying this Plan and Agreement of Merger into effect and of accomplishing the merger.

10. ABANDONMENT OF MERGER.

This Plan and Agreement of Merger may be terminated or abandoned before it becomes effective without further action or approval by the shareholders of any of Foodservice or the Surviving Corporation:

(a) By mutual consent of the Boards of Directors of Foodservice and the Surviving Corporation; or

(b) By the Board of Directors of any one of Foodservice or the Surviving Corporation in the event of failure or inability to obtain necessary authorizations and approvals of any governmental agencies; or


(c) By the Board of Directors of any one of Foodservice or the Surviving Corporation if any previously unknown material litigation or claims shall be discovered to be pending or threatened against or substantially affecting any of Foodservice or the Surviving Corporation or any of their respective assets, or the merger, which, in the judgment of such Board, renders it inadvisable to proceed with the merger.

IN WITNESS WHEREOF, Foodservice and the Surviving Corporation have caused this Plan and Agreement of Merger to be signed in their corporate names by their respective Presidents, and their corporate seal to be hereunto affixed and attested by their respective Clerks, all as of the day and year first above written.

WITNESS:

McCAIN FOODSERVICE, INC.
(Foodservice)


Corporate Seal
Attest:

BY: 
GILLES LESSARD, Its President


GEORGE F. EATON, CLERK

McCAIN FOODS USA, INC.
(Foods USA and Surviving Corporation)

Corporate Seal
Attest:

BY: 
GILLES LESSARD, Its President


GERALD E. RUDMAN, CLERK

67380-1

**DOMESTIC
BUSINESS CORPORATION**

STATE OF MAINE

ARTICLES OF MERGER

Minimum Fee \$80 (See §1401 sub-§17)

File No. 19520041 D Pages 7
File No. 19972467 D
Fee Paid \$ 80
DCN 1990061500009 MERG
-----FILED-----
24-DEC-98

Julie L. Reyna
Deputy Secretary of State

A True Copy When Attested By Signature

Julie L. Reyna
Deputy Secretary of State

McCain Foodservice, Inc.
(A Maine Corporation)

INTO

McCain Foods USA, Inc.
(A Maine Corporation)

Pursuant to 13-A MRSA §903, the board of directors of each participating corporation approve and the undersigned corporations, adopt the following Articles of Merger:

FIRST: The plan of merger is set forth in Exhibit A attached hereto and made a part hereof.

SECOND: As to each participating corporation, the shareholders of which voted on such plan of merger, the number of shares outstanding and the number of shares entitled to vote on such plan, and the number of such shares voted for and against the plan, are as follows:

Name of Corporation	Number of Shares Outstanding	Number of Shares Entitled to Vote	NUMBER Voted For	NUMBER Voted Against
McCain Foodservice, Inc.	100	100	100	0
McCain Foods USA, Inc.	4,728,154	4,728,154	4,728,154	0

THIRD: If the shares of any class were entitled to vote as a class, the designation and number of the outstanding shares of each such class, and the number of shares of each such class voted for and against the plan, are as follows:

Name of Corporation	Designation of Class	Number of Shares Outstanding	NUMBER Voted For	NUMBER Voted Against
N/A				

(Include the following paragraph if the merger was authorized without the vote of the shareholders of the surviving corporation. Omit if not applicable.)

FOURTH: The plan of merger was adopted by the participating corporation which is to become the surviving corporation in the merger without any vote of its shareholders, pursuant to section 902, subsection 5. The number of shares of each class outstanding immediately prior to the effective date of the merger, and the number of shares of each class to be issued or delivered pursuant to the plan of merger of the surviving corporation are set forth as follows:

Designation of Class	Number of Shares Outstanding Immediately Prior to Effective Date of Merger	Number of Shares to Be Issued Or Delivered Pursuant to the Merger
N/A		

FIFTH: The address of the registered office of the surviving corporation in the State of Maine is _____
84 Harlow Street, Bangor, ME 04401
(street, city, state and zip code)

The address of the registered office of the merged corporation in the State of Maine is _____
84 Harlow Street, Bangor, ME 04401
(street, city, state and zip code)

SIXTH: Effective date of the merger (if other than date of filing of Articles) is December 31, 1998
(Not to exceed 60 days from date of filing of the Articles)

DATED December 11, 1998

MUST BE COMPLETED FOR VOTE OF SHAREHOLDERS
I certify that I have custody of the minutes showing the above action by the shareholders.
McCain Foods USA, Inc. (name of corporation)
<u>Gerald E. Rudman</u> (signature of clerk, secretary or asst. secretary)

Gerald E. Rudman, Clerk

DATED December 11, 1998

MUST BE COMPLETED FOR VOTE OF SHAREHOLDERS
I certify that I have custody of the minutes showing the above action by the shareholders.
McCain Foodservice, Inc. (name of corporation)
<u>George F. Eaton</u> (signature of clerk, secretary or asst. secretary)

George F. Eaton, Clerk

McCAIN FOODS USA, INC.
(surviving corporation)

*By Gerald E. Rudman
(signature)

Gerald E. Rudman, Clerk
(type or print name and capacity)

*By _____
(signature)

(type or print name and capacity)

McCAIN FOODSERVICE, INC.
(merged corporation)

*By George F. Eaton
(signature)

George F. Eaton, Clerk
(type or print name and capacity)

*By _____
(signature)

(type or print name and capacity)

*This document **MUST** be signed by (1) the **Clerk** OR (2) the **President** or a vice-president and the **Secretary** or an assistant secretary, or such other officer as the bylaws may designate as a 2nd certifying officer OR (3) if there are no such officers, then a majority of the **Directors** or such directors as may be designated by a majority of directors then in office OR (4) if there are no such directors, then the **Holder**s, or such of them as may be designated by the holders, of record of a majority of all outstanding shares entitled to vote thereon OR (5) the **Holder**s of all of the outstanding shares of the corporation.

SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101