



09-08-1999



Docket No.:

064902.0002

08-30-1999

U.S. Patent & TMO/TM Mail Rpt Dt. #70

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Tab settings → → →

To the Honorable

CAUTION: Please return the attached original documents or copy thereof.

1. Name of conveying party(ies):

Empower Health Corporation

- Individual(s)
- General Partnership
- Corporation-State Texas
- Other

- Association
- Limited Partnership

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

3. Nature of conveyance:

8-30-99

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

Execution Date: March 18, 1999

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

Name: drkoop.com, Inc.

Internal Address: Longhorn Suite

Street Address: 8920 Business Park Drive

City: Austin State: TX ZIP: 78759

- 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)

75/650,512	75/650,514	75/650,511	75/404,945
75/404,944	75/404,943	75/404,948	
75/405,008	75/404,947	75/405,382	

Additional numbers

B. Trademark Registration No.(s)

Yes No

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

Name: Kirt S. O'Neill, Esq.

Internal Address:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.

Street Address: 300 Convent Street, Suite 1500

City: San Antonio State: TX ZIP: 78205

6. Total number of applications and registrations involved:.....

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7. Total fee (37 CFR 3.41):.....\$ \$265.00

Enclosed

The Commissioner is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 01-0477. A Duplicate copy of this sheet is enclosed.

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01 FC:481 40.00 DP
02 FC:482 225.00 DP

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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.

Kirt S. O'Neill, Esq.

Kirt S. O'Neill

August 30, 1999

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and

16

State of Delaware

PAGE 1

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:

"EMPOWERED HEALTH CORPORATION", A TEXAS CORPORATION, WITH AND INTO "DRKOOP.COM, INC." UNDER THE NAME OF "DRKOOP.COM, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FOURTH DAY OF MARCH, A.D. 1999, AT 2 O'CLOCK P.M.

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



Edward J. Freel

Edward J. Freel, Secretary of State

3010405 8100M

991114870

AUTHENTICATION:

9651008

DATE:

03-25-99

FROM LATHAM & WATKINS
FROM LATHAM & WATKINS

(FBI) 4: 2' 99 11:29/ST: 11:18/NO: 4862067776 P 2

CERTIFICATE OF MERGER
OF EMPOWER HEALTH CORPORATION,
A TEXAS CORPORATION

INTO

DRKOOP.COM, INC.,
A DELAWARE CORPORATION

Pursuant to the provisions of Section 252(c) of the Delaware General Corporation Law, Empower Health Corporation, a Texas corporation, and drkoop.com, Inc., a Delaware corporation, adopt the following Certificate of Merger:

1. The Reincorporation Agreement and Plan of Merger (the "Plan") attached hereto as Exhibit A was approved, adopted, certified, executed and acknowledged by the stockholders of each of the undersigned corporations in the manner prescribed by Section 252(c) of the Delaware General Corporation Law.
2. The surviving corporation is drkoop.com, Inc., a Delaware corporation, and the Certificate of Incorporation of drkoop.com, Inc. shall be unchanged.
3. The executed Plan is on file at the principal offices of drkoop.com, Inc. at 8920 Business Park Drive, Austin, Texas 78759. A copy of the Plan will be furnished by drkoop.com, Inc., on request and without cost, to any stockholder of drkoop.com, Inc. or any shareholder of Empower Health Corporation.
4. Immediately prior to the merger, the authorized stock of Empower Health Corporation consisted of 15,000,000 shares of Common Stock, 0.01 par value, and 15,000,000 shares of Preferred Stock, 0.01 par value. Of the Preferred Stock, 300,000 shares have been designated Series A 8% Convertible Preferred Stock; 5,512,458 shares have been designated Series B Preferred Stock; and 1,200,000 shares have been designated Series C Preferred Stock.

FROM LATHAM & WATKINS

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This Certificate of Merger is executed this 18th day of March 1999.

EMPOWER HEALTH CORPORATION,
a Texas corporation



Donald W. Hackett, President

DRKOOP.COM, INC.,
a Delaware corporation



Donald W. Hackett, President

FROM LATHAM & WATKINS
FROM LATHAM & WATKINS

(FRI) 4. 2' 99 11:21/ST. 11:18/NO. 4862067776 P 5
(FRI) 3. 29. 99 16:06/ST. 16:01/NO. 4862067684 P 4

EXHIBIT A

Reincorporation Agreement and Plan of Merger

FROM LATHAM & WATKINS
FROM LATHAM & WATKINS.

(FRI) 4. 2. 99 11:21/ST. 11:18/NO. 4862067776 P 6
(WED) 3. 24. 99 18:06/ST. 18:01/NO. 4862067684 P 3

REINCORPORATION MERGER AGREEMENT AND PLAN OF MERGER

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FROM LATHAM & WATKINS
FROM LATHAM & WATKINS

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 (WEL) 3. 24. 99 16:07/ST. 16:01/NO. 4862067664 P. 9

REINCORPORATION MERGER AGREEMENT AND PLAN OF MERGER

THIS REINCORPORATION MERGER AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated as of March 18, 1999, is by and between drkoop.com, Inc., a Delaware corporation ("drkoop.com"), and Empower Health Corporation, a Texas corporation ("Empower"). drkoop.com and Empower are sometimes referred to herein as the "Constituent Corporations."

RECITALS

- A. Empower is a corporation of the State of Texas.
- B. drkoop.com is a corporation of the State of Delaware.
- C. The Texas Business Corporation Act (the "Texas Law") permits a merger of a corporation of the State of Texas with and into a corporation of another jurisdiction.
- D. The General Corporation Law of the State of Delaware (the "Delaware Law") permits a merger of a corporation of another jurisdiction with and into a corporation of the State of Delaware.
- E. In furtherance of such merger, it is contemplated that drkoop.com will exchange all of the issued and outstanding shares of capital stock of Empower for the consideration described herein.
- F. The respective Boards of Directors of drkoop.com and Empower and the holders of the shares of each class of capital stock entitled to vote with respect to the merger contemplated by this Agreement (the "Merger") have each duly approved the Merger of Empower with and into drkoop.com upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Texas Law and the Delaware Law, as applicable.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, drkoop.com and Empower hereby agree as follows:

1. The Merger

1.1. The Merger In accordance with the provisions of this Agreement, the Delaware Law and the Texas Law, Empower shall be merged with and into drkoop.com (the "Merger"); the separate existence of Empower shall cease and drkoop.com shall be, and is herein sometimes referred to as, the "Surviving Corporation." The name of the Surviving Corporation shall be drkoop.com, Inc.

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1.2. Filing and Effectiveness. The Merger shall become effective when the following conditions shall have been satisfied or waived in accordance with Section 4.4. hereto.

(a) This Agreement and the Merger shall have been adopted and approved by the shareholders of each Constituent Corporation in accordance with the requirements of the Delaware Law and the Texas Law;

(b) All requisite consents to the Merger material to the business of Empower shall have been obtained;

(c) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof; and

(d) An executed Certificate of Merger meeting the requirements of the Delaware Law shall have been filed with the Secretary of State of the State of Delaware.

The date and time when the Merger shall become effective, as aforesaid, are herein called the "Effective Date" and "Effective Time," respectively.

1.3. Effect of the Merger. When the Merger has been effected, the Surviving Corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of drkoop.com and Empower, all property, real, personal and mixed, and all debts due on whatever account and all choses in action and all and every other interest, of, belonging to or due each of the Constituent Corporations shall be vested in the Surviving Corporation without further act or deed; and the title to any real estate, or any interest therein, vested in Empower or the Surviving Corporation shall not revert or be in any way impaired by reason of the Merger. The Surviving Corporation shall be responsible and liable for all fees and franchise taxes of Empower as required by law and will be obligated to pay such fees and franchise taxes if the same are not timely paid. The Surviving Corporation shall therefor also be responsible for all the other liabilities and obligations of each of the Constituent Corporations so merged; any claim existing or action or proceeding pending by or against any of the Constituent Corporations may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place. The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the Delaware Law, and neither the rights of creditors nor any liens upon the respective properties of the Constituent Corporations and the Surviving Corporation shall be impaired by the Merger; all with the effect set forth in the Delaware Law and the Texas Law, as applicable.

1.4. Restated Certificate of Incorporation; Bylaws; Directors and Officers. The Certificate of Incorporation of the Surviving Corporation shall be the Certificate of Incorporation of drkoop.com, as in effect immediately prior to the Effective Time. The By-Laws of the Surviving Corporation shall be the By-Laws of drkoop.com as in effect immediately prior to the Effective Time. The directors of Empower immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, and the officers of Empower immediately prior to

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the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their successors are elected and qualified.

1.5. Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of drkoop.com, Empower or the holder of any of the following securities:

(a) Series A 8% Convertible Preferred Stock. Each share of Series A 8% Convertible Preferred Stock of Empower issued and outstanding immediately prior to the Effective Time, if any, shall be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of drkoop.com Series A 8% Convertible Preferred Stock, without interest thereon or any additional payment in respect thereof.

(b) Series B Preferred Stock. Each share of Series B Preferred Stock of Empower issued and outstanding immediately prior to the Effective Time shall be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of drkoop.com Series B Preferred Stock, without interest thereon or any additional payment in respect thereof.

(c) Series C Preferred Stock. Each share of Series C Preferred Stock of Empower issued and outstanding immediately prior to the Effective Time, if any, shall be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of drkoop.com Series C Preferred Stock, without interest thereon or any additional payment in respect thereof.

(d) Common Stock. Each share of Common Stock of Empower issued and outstanding immediately prior to the Effective Time, if any, shall be canceled and extinguished and be converted into and become a right to receive one newly and validly issued, fully paid and nonassessable share of drkoop.com Common Stock, without interest thereon or any additional payment in respect thereof.

(e) drkoop.com Common Stock. Each share of drkoop.com Common Stock which is issued and outstanding immediately prior to the Effective Time and owned by any person, shall be canceled and retired, and no payment shall be made with respect thereto.

(f) Fractional Shares. No fractional shares of drkoop.com Preferred Stock or Common Stock shall be issued to any holder of the shares of Empower capital stock described in this Section 1.5. In determining the total number of shares of drkoop.com Common Stock to be issued to such holders of Empower capital stock in exchange for such shares, the number of shares of drkoop.com Common Stock to be issued shall be rounded down to the nearest whole share.

(g) Notes and Debt Instruments. All notes and other debt instruments of Empower which are outstanding at the Effective Time shall continue to be outstanding subsequent to the Effective Time as debt instruments of the Surviving Corporation, to the full extent permitted by their respective terms and provisions.

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1.6. Exchange of Certificates. At and after the Effective Time, each holder of a certificate representing shares of the Empower capital stock described in Section 1.5. above, shall be entitled, upon the surrender of such certificate or certificates at the place of the Closing (as defined in Section 19, below) to receive in exchange therefor a certificate or certificates representing the number of shares of drkoop.com Preferred Stock, Common Stock or cash, as the case may be, into which such Empower capital stock shall have been converted by the terms of this Agreement. Until so surrendered, at and after the Effective Time, each outstanding certificate which, prior to the Merger, represented such Empower capital stock, shall be deemed for all purposes to evidence only the ownership of, or right to receive, the amount of full shares of drkoop.com Preferred Stock, Common Stock or cash, as the case may be, into which such Empower capital stock shall have been converted as provided in Section 1.5 above, and there shall be no transfers on the stock transfer books of drkoop.com except in respect of drkoop.com Preferred Stock or Common Stock to be issued under said Section 1.5

1.7. Adjustments. If, between the date of this Agreement and the Effective Time, any outstanding shares of capital stock of Empower or drkoop.com shall be changed into a different number of shares or a different class by reason of any reclassification, recapitalization, split-up, combination, exchange of shares or readjustment, or a stock dividend or stock split thereon shall be declared with a record date prior to the Effective Time, the amount of consideration to be received pursuant to this Agreement in exchange for each outstanding share of Empower capital stock shall be correspondingly adjusted, as appropriate.

1.8. Assumption of Certain Obligations by the Surviving Corporation.

(a) Options. Without limiting any other provision of this Agreement, at and after the Effective Time, drkoop.com hereby expressly agrees to assume, perform and discharge the liabilities, obligations and duties of Empower under the Amended and Restated 1997 Stock Option Plan (the "1997 Plan"). drkoop.com expressly consents to the reliance on the undertaking made in the foregoing sentence by the holders of interests in the options identified therein and further agrees to acknowledge its assumption of those obligations to the extent necessary or advisable under the documents evidencing said options. Each outstanding and unexercised option, other right to purchase, or security convertible into Common Stock or Empower Preferred Stock (a "Right") shall become subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each one share of Empower Common Stock or Preferred Stock, as the case may be, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such Empower Right at the Effective Date. This paragraph shall not apply to Empower Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraph 1.5 hereof.

(b) Reservation of Shares. A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise of options, stock purchase rights and convertible securities equal to the number of shares of Empower Common Stock and Empower Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

FROM LATHAM & WATKINS
FROM LATHAM & WATKINS

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(c) **Fractional Shares.** The assumed Rights shall not entitle any holder thereof to fractional share upon exercise or conversion. In lieu thereof, any fractional share interests to which a holder of an assumed Right (other than an option issued pursuant to the 1997 Plan) would otherwise be entitled upon exercise or conversion shall be aggregated (but only with other similar Rights which have the same per share terms). To the extent that after such aggregation, the holder would still be entitled to a fractional share with respect thereto upon exercise or conversion, the holder shall be entitled upon the exercise or conversion of all such assumed Rights pursuant to their terms (as modified herein), to one full share of Common Stock or Preferred Stock in lieu of such fractional share. With respect to each class of such similar Rights, no holder will be entitled to more than one full share in lieu of a fractional share upon exercise or conversion.

Notwithstanding the foregoing, with respect to options issued under the 1997 Plan that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the aggregate exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 42(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

2. **Covenants of drkoop.com.** drkoop.com covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of Texas and, in connection therewith, appoint an agent for service of process as required under the Texas Law.

(b) File any and all documents with the State of Texas necessary for the assumption by drkoop.com of all of the franchise tax liabilities of Empower.

(c) Take such other actions as may be required by the Texas Law.

3. **Additional Agreements**

3.1. **Further Assurances.** Subject to the terms and conditions herein provided, each of the parties hereto agrees to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, and to cooperate with each other in connection with the foregoing, including using best efforts (i) to obtain all necessary waivers, consents and approvals from other parties to material loan agreements, leases and other contracts, if any, (ii) to obtain all necessary consents, approvals and authorizations as are required to be obtained under any federal, state or foreign law or regulations, (iii) to defend all lawsuits or other legal proceedings challenging this Agreement, or the consummation of the transactions contemplated hereby and thereby, (iv) to lift or rescind any injunction or restraining order or other order adversely affecting the ability of the parties to consummate the transactions contemplated hereby, (v) to effect all necessary registrations and filings and submissions of information requested by governmental authorities, and (vi) to fulfill all conditions to this Agreement.

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4. Miscellaneous

4.1. Termination. This Agreement may be terminated or abandoned at any time prior to the Effective Date, whether prior to or after approval of the Merger by the stockholders of the parties hereto, without such stockholders' approval:

(a) By mutual written consent of the Board of Directors of drkoop.com and Empower, and

(b) Automatically, if the Merger shall not have been consummated on or before April 15, 1999.

4.2. Effect of Termination. In the event of the termination of this Agreement as provided in Section 4.1, this Agreement shall forthwith become void and there shall be no liability on the part of drkoop.com or Empower.

4.3. Amendment. This Agreement may be amended by action of the Board of Directors of each of the parties hereto set forth in an instrument in writing signed on behalf of each of the parties hereto to the extent permitted by Texas Law and the Delaware Law and subject to compliance with applicable federal securities laws.

4.4. Waiver. At any time prior to the Effective Time, either party hereto, by action taken by its Board of Directors, may (i) extend the time for the performance of any of the obligations or other acts of any other party hereto or (ii) subject to Section 4.3, waive compliance with any of the agreements of any other party or with any conditions to its own obligations. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party by a duly authorized officer.

4.5. Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

4.6. Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.7. Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 8920 Business Park Drive, Austin, Texas 78759, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

4.8. Governing Law. This Agreement shall in all respects be construed, interpreted and enforceable in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the Texas Business Corporation Act.

4.9. Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

FROM LATHAM & WATKINS
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4.10. **FIRPTA Notification.** (a) On the Effective Date, Empower shall deliver to drkoop.com, as agent for the shareholders of Empower, a properly executed statement (the "Statement") substantially in the form attached hereto as Exhibit A. drkoop.com shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of Empower immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of Empower, (i) such shareholders shall be considered to have requested that the Statement be delivered to drkoop.com as their agent and (ii) Empower shareholders for purposes of satisfying drkoop.com's obligations under Treasury Regulation Section 1.1445-2(c)(3).

(b) Empower shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

(Signature Page Follows)

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FROM LATHAM & WATKINS

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IN WITNESS WHEREOF, drkoop.com and Empower have caused this Agreement to be executed as of the date first written above by their respective officers thereunder duly authorized.

DRKOOP.COM, INC.
a Delaware corporation

By: [Signature]
Name: Donald W. Hackett
Its: President

By: [Signature]
Name: Louis A. Scalpati
Its: Secretary

EMPOWER HEALTH CORPORATION,
a Texas corporation

By: [Signature]
Name: Donald W. Hackett
Its: President

By: [Signature]
Name: Louis A. Scalpati
Its: Secretary

Empower Health - Reincorporation Merger Agreement

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FROM LATHAM & WATKINS
FROM LATHAM & WATKINS

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(WED) 3. 24 '99 10:07/ST. 10:01/NO. 4002007007 P. 16

EXHIBIT A

_____ . 1999

TO THE SHAREHOLDERS OF EMPOWER HEALTH CORPORATION:

In connection with the reincorporation (the "Reincorporation") in Delaware of Empower Health Corporation, a Texas corporation (the "Company"), pursuant to the Reincorporation Agreement and Plan of Merger (the "Agreement") dated as of March 18, 1999 between the Company and drkoop.com, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("drkoop.com"), your shares of Company stock will be replaced by shares of stock in drkoop.com.

In order to establish that (i) you will not be subject to tax under Section 897 of the Internal Revenue Code of 1986, as amended (the "Code"), in consequence of the Reincorporation and (ii) drkoop.com will not be required under Section 1445 of the Code to withhold taxes from drkoop.com stock that you will receive in connection therewith, the Company hereby represents to you that, as of the date of this letter, shares of Company stock do not constitute a "United States real property interest" within the meaning of Section 897(c) of the Code and the regulations issued thereunder.

A copy of this letter will be delivered to drkoop.com pursuant to Section 4.10 of the Agreement.

Under penalty of perjury, the undersigned officer of the Company hereby
true and correct.

Sincerely,

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