

05-22-2000



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RECEIVED
MAY -1 PM 2:19 RECORD

OPR/FINANCE TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

05/01/00

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
10/1/99

Name Westfalia-Surge LLC

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other Limited Liability Company
- Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Name Westfalia Dairy Systems, Inc.

DBA/AKATA

Composed of

Address (line 1) 1880 Country Farm Drive

Address (line 2)

Address (line 3) Naperville

Illinois

60563

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization Delaware

05/19/2000 JSNADAZZ 00000203 75464575

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 OP
1825.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK

REEL: 002074 FRAME: 0100

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number (608) 257-7766

Name

Shelley J. Safer, Esq.

Address (line 1)

Lathrop & Clark LLP

Address (line 2)

740 Regent Street

Address (line 3)

P.O. Box 1507

Address (line 4)

Madison, WI 53701-1507

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

6

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

| | | |
|------------|--|--|
| 75/464,575 | | |
| | | |
| | | |

| | | |
|-----------|-----------|-----------|
| 2,218,210 | 832,147 | 1,374,659 |
| 1,139,538 | 2,038,693 | 1,489,005 |
| 2,136,572 | 1,745,648 | 944,905 |

Number of Properties

Enter the total number of properties involved.

74

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 1,865.00

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

15-0660

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Shelley J. Safer

Name of Person Signing

Shelley J. Safer
Signature

4/27/00

Date Signed

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 12/30/99
GMB 0551-6027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Conveying Party

Mark if additional names of conveying parties attached

Enter Additional Conveying Party

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Enter Additional Receiving Party

Name

Westfalia-Surge, Inc.

DBA/AKA/TA

Composed of

Address (line 1)

1880 Country Farm Drive

Address (line 2)

Address (line 3)

Naperville

City

Illinois

State/Country

60563

Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization Delaware

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

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Trademark Application Number(s)

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Registration Number(s)

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|-----------|-----------|-----------|
| 808,436 | 1,027,948 | 747,565 |
| 2,046,641 | 1,501,170 | 1,998,232 |
| 2,099,426 | 2,316,458 | 1,315,282 |
| 1,209,498 | 1,364,164 | 1,493,775 |
| 606,317 | 2,036,913 | 1,739,462 |
| 1,948,562 | 2,258,784 | 2,041,715 |
| 1,274,940 | 866,805 | 828,001 |

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 06/30/99
OMB 0651-6027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

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Enter Additional Conveying Party

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Execution Date
Month Day Year

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Other

Citizenship State of Incorporation/Organization

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Enter Additional Receiving Party

Mark if additional names of receiving parties attached

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DBA/AKA/TA

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State/Country

Zip Code

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Corporation Association

Other

Citizenship/State of Incorporation/Organization

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Registration Number(s)

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| 1,873,235 | 770,782 | 2,252,793 |
| 2,161,530 | 1,207,889 | 846,803 |
| 2,015,694 | 1,916,150 | 2,062,261 |
| 1,597,187 | 967,011 | 1,917,725 |
| 1,635,227 | 2,021,839 | 1,001,499 |
| 2,087,693 | 2,076,474 | 598,151 |
| 1,583,260 | 2,084,653 | 668,878 |

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

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Registration Number(s)

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| 690,856 | 1,525,103 | 1,443,861 |
| 822,124 | 965,851 | 1,937,667 |
| 389,572 | 991,656 | 387,233 |
| 390,651 | 515,737 | 564,541 |
| 604,810 | 990,874 | 201,871 |
| 903,829 | 1,239,979 | 1,588,461 |
| 1,053,501 | 1,321,628 | 1,493,776 |

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 06/30/99
OMB C651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

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Citizenship State of Incorporation/Organization

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Enter Additional Receiving Party

Mark if additional names of receiving parties attached

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DBA/AK/A

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| 2,328,308 | <input type="text"/> | <input type="text"/> |
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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 THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"WESTFALIA-SURGE LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "WESTFALIA DAIRY SYSTEMS, INC." UNDER THE NAME OF "WESTFALIA-SURGE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FIRST DAY OF OCTOBER, A.D. 1999, AT 9 O'CLOCK A.M.

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



Edward J. Freel, Secretary of State

2273223 8100M

991416322

AUTHENTICATION: 0015160

DATE TRADEMARK
REEL: 002074 FRAME: 0106

Sent By: INCORPORATING SERVICES LTD;

302 678 0789;

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 10/01/1999
991416322 - 2273223

CERTIFICATE OF MERGER
OF
WESTFALIA-SURGE LLC
(a Delaware Limited Liability Company)
INTO
WESTFALIA DAIRY SYSTEMS, INC.
(a Delaware Corporation)

Pursuant to Section 264 of the Delaware General Corporation Law (the "Act"), Westfalia Dairy Systems, Inc., a corporation formed and existing under the laws of the State of Delaware, certifies the following:

FIRST: That the name and state of incorporation or formation of each of the merging business entities are as follows:

| <u>Name</u> | <u>State of Incorporation or Formation</u> |
|-------------------------------|--|
| Westfalia-Surge LLC | Delaware |
| Westfalia Dairy Systems, Inc. | Delaware |

SECOND: That an Agreement of Merger dated as of October 1, 1999 (the "Agreement of Merger") has been approved, adopted, certified, executed and acknowledged by each of the merging entities in accordance with Section 264(c)(2) of the Act.

THIRD: That the name of the surviving business entity is Westfalia Dairy Systems, Inc. (the "Surviving Corporation").

FOURTH: The amendments to the Certificate of Incorporation of the Surviving Corporation that are effected by this merger are as follows:

" FIRST: The name of the corporation is Westfalia-Surge, Inc."

FIFTH: That this Certificate of Merger shall be effective upon filing with the Secretary of State of the State of Delaware.

Sent By: INCORPORATING SERVICES LTD;

302 678 0789;

Oct-7-99 2:30PM;

Page 2/2

SIXTH: That the executed Agreement of Merger is on file at the principal place of business of the Surviving Company, the address of which is 1880 Country Farm Drive, Naperville, IL 60563.

SEVENTH: That a copy of the executed Agreement of Merger will be furnished by the Surviving Company, on request and without cost, to any person or entity holding an interest in Westfalia-Surge LLC or to any person or entity holding an interest in Westfalia Dairy Systems, Inc.

IN WITNESS WHEREOF, the Surviving Corporation has caused this Certificate of Merger to be executed by its officers thereunto duly authorized as of the 1st day of October, 1999.

WESTFALIA DAIRY SYSTEMS, INC.

By: /s/ Dirk Hejnal

Name: Dirk Hejnal

Title: President

AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER, (this "Agreement") dated as of the 1st day of October, 1999, pursuant to Section 264 of the Delaware General Corporation Law, as amended (hereinafter referred to as the "DGCL") is entered into by and between the entities named in Article SECOND below, which are hereinafter collectively referred to as the Constituent Entities.

FIRST: Each of the Constituent Entities has agreed to effect a merger, and the terms and conditions of the merger, the manner of carrying the same into effect, and the manner and basis of converting or exchanging the shares of issued stock or ownership interests of each of the Constituent Entities into different stock or other consideration pursuant to Section 264 of the DGCL, are and shall be as set forth herein.

SECOND: The parties to this Agreement are Westfalia Dairy Systems, Inc., a corporation organized under the DGCL on September 10, 1991, (the "Corporation") and Westfalia-Surge LLC, a limited liability company organized under the Delaware Limited Liability Company Act on February 26, 1999 ("Merged Entity").

THIRD: (a) The Merged Entity is a single member limited liability company.

(b) The Corporation has an authorized capitalization of one thousand five hundred (1,500) shares of common stock, no par value, of which twenty (20) shares are issued and outstanding.

FOURTH: (a) The date upon which the Merger shall become effective shall be the date on which the Certificate of Merger reflecting the Merger is filed with the Secretary of State of the State of Delaware (the "Effective Date").

(b) On the Effective Date, the Merged Entity shall be merged with and into the Corporation, whereupon the separate existence of the Merged Entity shall cease, and the Corporation shall be the surviving business entity of the Merger (the "Surviving Corporation") in accordance with Section 264 of the DGCL.

(c) The Merger shall have the effects set forth in the DGCL.

(d) The members of the Board of Directors and the officers of the Corporation immediately prior to the Effective Date shall be the members of the Board of Directors and the officers, respectively, of the Surviving Corporation until their respective successors are duly elected and qualified.

(e) The name of the Surviving Corporation shall be "Westfalia-Surge, Inc."

FIFTH: On the Effective Date, all of the membership interests in the Merged Entity issued and outstanding immediately prior to the Effective Date shall, by virtue of the Merger, and without any action on the part of the holder thereof, cease to be outstanding, shall be canceled and retired without any payment of any consideration therefor and shall cease to exist. The issued shares of the Surviving Corporation shall not be converted or exchanged in any manner, but each said share which is issued at the Effective Date shall continue to represent one issued share of the Surviving Corporation.

SIXTH: The Certificate of Incorporation of the Surviving Corporation (the "Certificate"), separate and apart from this Agreement, shall be, and may be separately certified as, the Certificate of Incorporation of the Surviving Corporation.

SEVENTH: This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Date by mutual written consent of the Constituent Entities.


EIGHTH: This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to principles of conflicts of law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representatives as of the day and year first-above written.

WESTFALIA DAIRY SYSTEMS, INC.

By: 
Name: Dirk Hejnal
Title: President

WESTFALIA-SURGE LLC

By: 
Name: Dirk Hejnal
Title: Vice-President