

02-02-2001



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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECORDATION FORM COVER SHEET

1. 24.01

TO THE ASSISTANT COMMISSIONER FOR TRADEMARKS:

Please record the attached original documents or copy thereof:

- 1. Name and address of conveying party(ies): @once, LLC
a Delaware limited liability company
2001 Union Street, Suite 490
San Francisco, CA 94123
- 2. Name and address of receiving party(ies): @Once.com
a California corporation
309 S.W. Sixth Avenue, Suite 900
Portland, Oregon 97204

3. Nature of conveyance: Certificate of Merger

Execution Date: September 1, 1999

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

- A. Registration No.: 2,268,898
- Mark: @once
- Registration Date: August 10, 1999

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

Mr. John C. Motley
Stoel Rives LLP
900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
(503) 294-9584

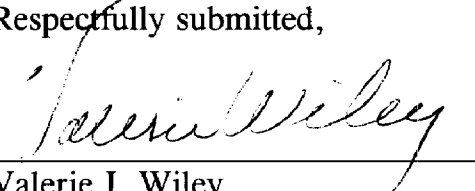
6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$40.00

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8. The Commissioner is hereby authorized to charge any additional fees which may be required in connection with the recording of this document or to credit any overpayment to Deposit Account No. 19-4455.
9. 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.

Respectfully submitted,



Valerie J. Wiley
Paralegal

Total number of pages comprising cover sheet and conveyance: 14

Date: January 18, 2001
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204-1268
Telephone: (503) 224-3380
Attorney Docket No. 0035193-00001

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:

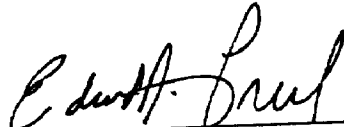
"@ONCE, LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "@ONCE.COM" UNDER THE NAME OF "@ONCE.COM", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA, AS RECEIVED AND FILED IN THIS OFFICE THE NINTH DAY OF SEPTEMBER, A.D. 1999, AT 4 O'CLOCK P.M.



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001519870



Edward J. Freel, Secretary of State

AUTHENTICATION: 0735762

DATE: 10-16-00

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CT CORPORATION

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**CERTIFICATE OF MERGER
OF
@ONCE, LLC
INTO
@ONCE.COM**

(Pursuant to Section 18-209 of the General Corporation Law of Delaware)

The undersigned corporation organized and existing under the laws of the State of California hereby certifies that:

1. The name and state of organization of the domestic limited liability company is @once, LLC, a Delaware limited liability company (the "LLC"). The name and state of incorporation of the surviving constituent corporation is @once.com, a California corporation.

2. The agreement and plan of reorganization (the "Agreement of Merger") has been approved, adopted, certified, executed and acknowledged by each of the corporation and the limited liability company in accordance with Section 18-209 of the General Corporation Law of Delaware.

3. The name of the surviving corporation of the merger is @Once.com

4. The Articles of Incorporation of @once.com, the surviving corporation, shall be as set forth in Exhibit A hereto.

5. The executed Agreement of Merger is on file at an office of the surviving corporation, the address of which is: 2001 Union Street, San Francisco, CA 94123.

6. A copy of the Agreement of Merger will be furnished by the surviving corporation, upon request and without cost, to any member of the LLC.

7. @once.com agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the LLC of the State of Delaware, and that the Secretary of State of the State of Delaware is irrevocably appointed as its agent to accept service of process in any such suit or other proceedings. A copy of such service of process shall be mailed to: 2001 Union Street, San Francisco, CA 94123 by the Secretary of State of the State of Delaware.

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
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IN WITNESS WHEREOF, @Once.com has caused this certificate to be executed by its authorized officer.

Dated: SEPTEMBER 1, 1999

@ONCE.COM

By:

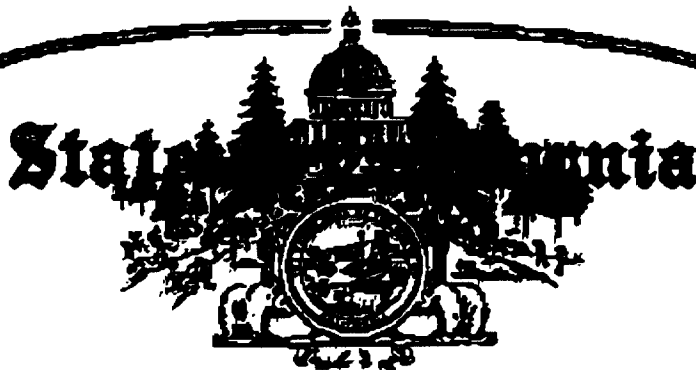


James R. Miller, President

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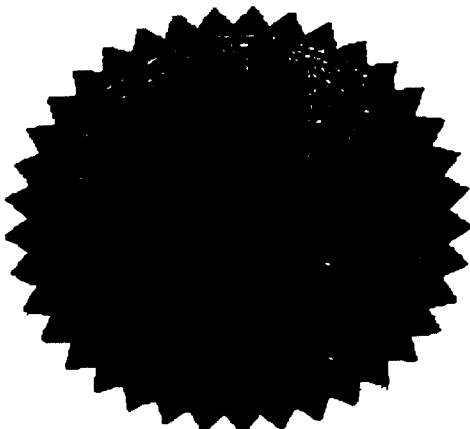


SECRETARY OF STATE

I, **BILL JONES**, Secretary of State of the State of California, hereby certify:

That the attached transcript of 6 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of



JUL 23 1999

Bill Jones

Secretary of State

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CT CORPORATION

C U I O U S E

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THIS INSTRUMENT IS FILED
IN THE OFFICE OF THE
SECRETARY OF STATE
OF THE STATE OF CALIFORNIA

JUL 23 1999

JILL JONES, SECRETARY OF STATE

ARTICLES OF INCORPORATION**OF****@ONCE.COM****ARTICLE I**

The name of the corporation is @Once.com

ARTICLE II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

A. The corporation is authorized to issue two classes of shares to be designated respectively Preferred Stock ("Preferred Stock") and Common Stock ("Common Stock"). The total number of shares of capital stock that the corporation is authorized to issue is Twenty-Five Million (25,000,000). The total number of shares of Preferred Stock the corporation shall have authority to issue is Ten Million (10,000,000). The total number of shares of Common Stock the corporation shall have authority to issue is Fifteen Million (15,000,000). Both the Preferred Stock and the Common Stock shall have a par value of \$.00001 per share.

B. The Preferred Stock shall be divided into series. The first series shall consist of Two Million (2,000,000) shares and is designated "Series A Preferred Stock." The remaining shares of Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the corporation (the "Board of Directors") is expressly authorized to provide for the issue of all or any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares (a "Preferred Stock Designation") and as may be permitted by the General Corporation Law of California. The Board of Directors is also expressly authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series other than the Series A Preferred Stock subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had

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prior to the adoption of the resolution originally fixing the number of shares of such series.

C. The powers, preferences, rights, restrictions, and other matters relating to the Series A Preferred Stock are as follows:

1. Dividends.

(a) The holders of the Series A Preferred Stock shall be entitled to receive dividends at the rate of \$0.08 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) per annum, respectively, payable out of funds legally available therefor. Such dividends shall be payable only when, as, and if declared by the Board of Directors and shall be noncumulative.

(b) No dividends (other than those payable solely in the Common Stock of the corporation) shall be paid on any Common Stock of the corporation during any fiscal year of the corporation until dividends in the total amount of \$0.08 per share (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Series A Preferred Stock, respectively, shall have been paid or declared and set apart during that fiscal year. Thereafter, dividends may be paid to the holders of Common Stock as declared by the Board of Directors.

(c) In the event of a conversion of the Series A Preferred Stock pursuant to Section 3, any accrued and unpaid dividends shall be paid at the election of the holder in cash or Common Stock at its then fair market value, as determined by the Board of Directors.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the corporation to the holders of Common Stock or other junior equity security by reason of their ownership thereof, an amount per share equal to the sum of (i) \$1.00 for each outstanding share of Series A Preferred Stock (the "Original Series A Issue Price"), as adjusted for any stock dividends, combinations or splits with respect to such shares. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A, shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A in proportion to the product of the liquidation preference of each such share and the number of such shares owned by each such holder.

(b) After the distribution described in subsection (a) above has been paid, the remaining assets of the corporation available for distribution to shareholders shall be distributed, among the holders of the Series A Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming the conversion of all outstanding shares of such Series A Preferred Stock).

(c) For purposes of this Section 2, any acquisition of the corporation by means of

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merger or other form of corporate reorganization in which the shareholders of the corporation immediately prior to such merger or other form of reorganization do not own (i) a majority of the outstanding Shares of the surviving corporation after such transaction; (ii) a majority of the voting shares of the corporation; or (iii) a sale of all or substantially all of the assets of the corporation shall be treated as a liquidation, dissolution or winding up of the corporation and shall entitle the holders of Series A Preferred Stock and Common Stock to receive at the closing cash, securities or other property as specified in Sections 2(a) and 2(b) above.

(d) Any securities to be delivered to the holders of Series A Preferred Stock and Common Stock pursuant to Section 2(c) above shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability:

(A) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty (30) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid and asked prices over the thirty (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the corporation and the holders of not less than a majority of the then outstanding shares of Series A Preferred Stock.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in clauses (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as mutually determined by the corporation and the holders of a majority of the then outstanding shares of Series A Preferred Stock.

3. **Conversion.** The holders of Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) **Right To Convert.** Subject to adjustments as provided for herein, each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the Conversion Price in effect at the time that the certificate is surrendered for conversion for the Series A Preferred Stock (the "Series A Conversion Price"). The initial Conversion Price per share for shares of Series A Preferred Stock shall be the Original Series A Issue Price, subject to adjustment as set forth in subsection (d).

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(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price then in effect for the Series A Preferred Stock upon the earlier of (i) the date specified by vote or written consent or agreement of holders of at least two-thirds (2/3) of the outstanding shares of Series A Preferred Stock, or (ii) immediately upon the closing of the sale of the corporation's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act").

(c) Mechanics of Conversion.

(i) Before any holder of Series A Preferred Stock shall be entitled voluntarily to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for such stock, and shall give written notice to the corporation at such office that such holder elects to convert the same and shall state therein the number of shares to be converted and the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. The corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(ii) If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Reserved.

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(e) Adjustments to Conversion Prices for Stock Dividends and for Combinations or Subdivisions of Common Stock. In the event that the corporation at any time or from time to time after the Original Issue Date shall declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise than by payment of a dividend in Common Stock or in any right to acquire Common Stock), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate. In the event that the corporation shall declare or pay, without consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration, then the corporation shall be deemed to have made a dividend payable in Common Stock in an amount of shares equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(f) Adjustments for Reclassification and Reorganization. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for in Section 3(e) above), the Conversion Price then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted so that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(g) No Impairment. The corporation will not, by amendment of its Articles of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(h) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 3, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate executed by the corporation's President or Chief Financial Officer setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such

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adjustments and readjustments, (ii) the Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of the Series A Preferred Stock.

(i) Notices of Record Date. In the event that the corporation shall propose at any time: (i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; (ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all of its assets, or to liquidate, dissolve or wind up; then, in connection with each such event, the corporation shall send to the holders of Series A Preferred Stock:

(A) At least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (iii) and (iv) above; and

(B) In the case of the matters referred to in (iii) and (iv) above, at least twenty (20) days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

(j) Issue Taxes. The corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of Series A Preferred Stock pursuant hereto; provided, however, that the corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(k) Reservation of Stock Issuable Upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Certificate.

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(l) Fractional Shares. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the corporation shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors).

(m) Notices. Any notice required by this Section 3 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address on the books of the corporation.

4. Voting Rights.

The holder of each share of Series A Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Series A Preferred Stock could be converted on the record date for the vote or written consent of shareholders. In all cases any fractional share, determined on an aggregate conversion basis, shall be rounded to the nearest whole share. With respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock (except as otherwise provided herein or as required by law, voting together with the Common Stock as a single class), and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders' meeting in accordance with the bylaws of the corporation. Each holder of Common Stock shall be entitled to one (1) vote for each share of Common Stock held. Except as otherwise required by law, the Common Stock and Preferred Stock shall vote on all matters as one class.

ARTICLE IV

(a) The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

(b) This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code.

(c) Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

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ARTICLE V

The name and address in the State of California of this corporation's initial agent for service of process is:

James R. Miller
2001 Union Street, Suite 490
San Francisco, CA 94123

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of California, the undersigned, as sole incorporator of this corporation, has executed these Articles of Incorporation this 10th day of July 1999.



James R. Miller
Sole Incorporator

