

06-07-2001



6-4-01

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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

JUN - 4 2001

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 #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached 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

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

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

FOR OFFICE USE ONLY

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: 002309 FRAME: 0298

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

(312) 984-3166

Name

Wendi E. Sloane

Address (line 1)

Barack Ferrazzano Kirschbaum Perlman & Nagelberg

Address (line 2)

333 West Wacker Drive, Suite 2700

Address (line 3)

Chicago, Illinois 60606

Address (line 4)

Pages

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

5

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)

75797492

76104248

76058623

2392898

2351923

2234297

75658398

76058624

76058647

2015437

2351921

75658377

76058334

76058649

2377045

2110632

Number of Properties

Enter the total number of properties involved.

21

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 540.00

Method of Payment:

Enclosed



Deposit Account



Deposit Account

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

Deposit Account Number:

50-1004

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.

Wendi E. Sloane

Name of Person Signing

Signature

5-30-01

Date Signed

RECORDATION FORM COVER SHEET CONTINUATION TRADEMARKS ONLY

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

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

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

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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)

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 08/15/2000
001467921 - 3257937

CERTIFICATE OF MERGER

OF

FRESH, INC.,
a Massachusetts corporation

WITH AND INTO

FRESH MERGER, INC.
a Delaware corporation

The undersigned corporation (the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the name and state of incorporation of each of the constituent corporations of the merger is as follows:

<u>Name</u>	<u>State of Incorporation</u>
Fresh, Inc.	Massachusetts
Fresh Merger, Inc.	Delaware

SECOND: That an agreement of merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 252 of the General Corporation Law of the State of Delaware.

THIRD: That the name of the surviving corporation of the merger is Fresh Merger, Inc., a Delaware corporation.

FOURTH: That the Certificate of Incorporation of the Corporation shall be amended and restated in its entirety to read as set forth on Exhibit A hereto.

FIFTH: That the executed agreement 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 25 Drydock Avenue, Boston, Massachusetts 02210.

SIXTH: That a copy of the agreement of merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the authorized capital stock of Fresh, Inc., a Massachusetts corporation, consists of 300,000 shares of common stock, par value \$0.01 per share.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed this 15th day of September, 2000.

FRESH MERGER, INC., a Delaware corporation

By: *Lilli Gordon*
Lilli Gordon, President

43776-1

EXHIBIT A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
FRESH MERGER, INC.**

The undersigned officer of Fresh Merger, Inc., a Delaware corporation duly incorporated on the 13th day of September, 2000, (the "Company") does hereby adopt the following Amended and Restated Certificate of Incorporation, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware:

ARTICLE ONE

The name of the Company is Fresh, Inc.

ARTICLE TWO

The registered office of the Company in the State of Delaware is located at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle 19808. The name of its Registered Agent at the above address is Corporation Service Company.

ARTICLE THREE

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law.

ARTICLE FOUR

The total number of shares of capital stock that the Company has authority to issue is 300,000 shares, which will be designated Common Stock, par value \$.01 per share.

ARTICLE FIVE

The name and mailing address of the incorporator are as follows:

<u>Name</u>	<u>Address</u>
Robin B. Connor	201 Main Street Suite 2500 Fort Worth, Texas 76102

SEP 15 '88 02:20P

ARTICLE SIX

Unless, and except to the extent that, the By-Laws of the Company (the "By-Laws") so require, the election of directors need not be by written ballot.

ARTICLE SEVEN

The board of directors of the Company (the "Board of Directors") may from time to time adopt, amend or repeal the By-Laws, subject to the power of the stockholders to adopt any By-Laws or to amend or repeal any By-Laws adopted, amended or repealed by the Board of Directors.

ARTICLE EIGHT

To the fullest extent that the Delaware General Corporation Law as it exists on the date hereof or as it may hereafter be amended permits the limitation or elimination of the liability of directors, no director will be liable to the Company or its stockholders for monetary damage for breach of fiduciary duty as a director. Any repeal or amendment of this Article will not adversely affect any limitation on the personal liability or alleged liability of a director arising from an act or omission of that director occurring prior to the time of such repeal or amendment.

ARTICLE NINE

Notwithstanding any other vote which may be required by applicable law, this Certificate or the By-Laws, (i) the following decisions if made on or prior to December 31, 2004 shall require the approval of all the stockholders of the Company: (a) selling or agreeing to sell all or substantially all of the assets of the Company and (b) entering into a merger, consolidation, business combination or similar transaction, and (ii) the following decisions if made on or prior to December 31, 2004 shall require the approval of holders of at least 77% of the outstanding capital stock of the Company entitled to vote thereon: (a) repurchasing or redeeming any of the capital stock of the Company, (b) amending the Certificate of Incorporation of the Company, (c) commencing any proceeding or filing any petition seeking relief under Title 11 of the United States Code or any other Federal, State or foreign bankruptcy, insolvency, liquidation or similar law, and (d) declaring or paying any dividend on the outstanding shares of capital stock of the Company.

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5:17 PM 6/25 F. 7/2/82

The undersigned officer of the Corporation, for the purpose of amending and restating the Corporation's Certificate of Incorporation, does make and file this Amended and Restated Certificate of Incorporation, hereby declaring and certifying the facts herein are true and accordingly has set his/her hand on September 14, 2000.

FRESH MERGER, INC

By: Lilli Gordon
Name: Lilli Gordon
Title: President