

RECOI  
TRA

06-19-2001



101753420

Docket No.:

1324.17505

Tab settings

To the Honorable Commissioner of Patents and Trademarks, please return the attached original documents or copy thereof.

1. Name of conveying party(ies):  
**Chilton Malting Company, Inc.**

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State **Wisconsin**  
 Other \_\_\_\_\_

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

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

Name: **Briess Industries, Inc.**

Internal Address: \_\_\_\_\_

Street Address: **625 South Irish Road, P.O. Box 229**

City: **Chilton**                      State: **WI**      ZIP: **53014-**

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State **Wisconsin**  
 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

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement               Change of Name  
 Other \_\_\_\_\_

Execution Date: **December 12, 1996**

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

A. Trademark Application No.(s)

Additional numbers                       Yes  No

B. Trademark Registration No.(s)

**MKD 6.11.01**

**502,782**

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

Name: **Allan O. Maki**

Internal Address: **Ryan Kromholz & Manion, S.C.**

Street Address: **P.O. Box 26618**

06/18/2001 6TDM11 00000101 502782

01 FD:481 40.00 DP

City: **Milwaukee**                      State: **WI**      ZIP: **53226**

6. Total number of applications and registrations involved:..... **1**

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

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:

**06-2360**

DO NOT USE THIS SPACE

*Allan O Maki*

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.

**Allan O. Maki**                      *Allan O Maki*                      **6/8/01**  
Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and

TRADEMARK



RECEIVED - DEPT OF FINANCIAL INSTITUTIONS STATE OF WISCONSIN

DEC 23 11:05

**ARTICLES OF MERGER  
OF  
BRIESS INDUSTRIES, INC.  
AND  
WATERLOO MALTING COMPANY  
INTO  
CHILTON MALTING COMPANY, INC.**

These Articles of Merger are executed by the undersigned surviving corporation pursuant to Section 180.1105 of the Wisconsin Business Corporation Law: *(and 180.1107)*

1. The name of the merging (non-surviving) Wisconsin corporation is:

**WATERLOO MALTING COMPANY**

2. The name of the merging (non-surviving) New York corporation is:

**BRIESS INDUSTRIES, INC.**

3. The name of the surviving Wisconsin corporation is:

**CHILTON MALTING COMPANY, INC.**

4. The Plan and Agreement of Merger adopted and approved by the surviving and the non-surviving corporations is attached hereto as Exhibit A.

5. The Plan and Agreement of Merger attached hereto was adopted and approved by each corporation that is a party to the merger, in accordance with Section 180.1103 of the Wisconsin Statutes and is permitted by the laws of New York.

6. Article I of the Articles of Incorporation of the surviving corporation, CHILTON MALTING COMPANY, INC., is amended to read as follows:

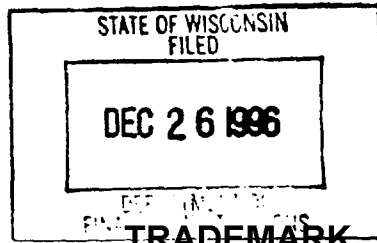
**Article I. The name of the Corporation is  
Briess Industries, Inc.**

Executed by the surviving corporation on behalf of all parties to the merger this 12<sup>th</sup> day of December, 1996.

**CHILTON MALTING COMPANY, INC.**

By: R. C. Briess  
Roger C. Briess, President

This document drafted by:  
Walter J. Lanier  
Michael, Best & Friedrich  
100 East Wisconsin Avenue, Suite 3300  
Milwaukee, WI 53202  
c:\xf\client\20047\0020\1b0644.w52;12/05/96



## PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER (the "Agreement") is made and entered into the 12<sup>TH</sup> day of DECEMBER, 1996, by and between CHILTON MALTING COMPANY, INC., a Wisconsin corporation ("Chilton"), WATERLOO MALTING COMPANY, a Wisconsin corporation ("Waterloo") and BRIESS INDUSTRIES, INC., a New York corporation ("Briess").

### RECITALS

WHEREAS, Chilton is a corporation duly organized and existing under the laws of the State of Wisconsin, with authorized capital stock of 4,400 shares of common stock, \$10.00 par value per share and 1,000 shares of common stock issued and outstanding; and

WHEREAS, Waterloo is a corporation duly organized and existing under the laws of the State of Wisconsin, with authorized capital stock of 9,000 shares of common stock, \$1.00 par value per share and 100 shares of common stock issued and outstanding; and

WHEREAS, Briess is a corporation duly organized and existing under the laws of the State of New York, with authorized capital stock of 9,000 shares of common stock, no par value per share, and 1,000 shares of common stock issued and outstanding; and

WHEREAS, Chilton is sometimes referred to herein as the "Surviving Corporation;" and

WHEREAS, Waterloo and Briess are sometimes collectively referred to herein as the "Terminating Corporations;" and

WHEREAS, Chilton, Waterloo and Briess are sometimes collectively referred to herein as the "Constituent Corporations;" and

WHEREAS, the Board of Directors of the Surviving Corporation has determined that it is advisable and generally to the advantage and welfare of the Surviving Corporation and its shareholders, and the Boards of Directors of the Terminating Corporations have determined that it is advisable and generally to the advantage and welfare of each Terminating Corporation and its shareholders that the Terminating Corporations be merged with and into the Surviving Corporation on the terms and conditions hereinafter set forth; and

WHEREAS, the Boards of Directors of the Constituent Corporations by resolutions duly adopted, have approved and adopted this Agreement and directed that it be submitted to the respective shareholders of the Constituent Corporations for approval; and

WHEREAS, the shareholders of the Constituent Corporations have duly approved this Agreement;

NOW, THEREFORE, the Constituent Corporations, in consideration of the premises and of the mutual provisions, agreements and covenants herein contained and in accordance with the applicable statutes of the States of Wisconsin and New York hereby agree as follows:

### AGREEMENT

1. Merger. At the Effective Time (as hereinafter defined), the Terminating Corporations will be merged with and into the Surviving Corporation in accordance with Subchapter XI of the Wisconsin Business Corporation Law and Section 907 of the New York Business Corporation Law (the "Merger"). All of the following shall occur upon the Effective Time: the separate existence of the Terminating Corporations cease and the existence of Chilton as the Surviving Corporation continues unaffected and unimpaired by the Merger; the title to all property owned by the Constituent Corporations is vested in the Surviving Corporation without reversion or impairment; the Surviving Corporation has all liabilities of each Constituent Corporation; a civil, criminal, administrative or investigatory proceeding pending against either Constituent Corporation may be continued as if the Merger did not occur or the Surviving Corporation may be substituted in the proceeding for Waterloo or Briess.

If at any time after the Effective Time, the Surviving Corporation shall deem it appropriate that any assignments or assurances should be made to vest, perfect or confirm of record in Surviving Corporation the title to any property or right of the Terminating Corporations acquired by Surviving Corporation as a result of the Merger, the officers and directors of the Surviving Corporation, in the name of the Terminating Corporation or otherwise, may take and do any action necessary or desirable to vest, perfect or confirm title to such property and rights in Surviving Corporation and otherwise to carry out the purposes of the Merger.

### 2. Articles of Incorporation and Bylaws.

(a) The Articles of Incorporation of Chilton, as in effect immediately prior to the Effective Time, shall continue in full force and effect as the Articles of Incorporation of the Surviving Corporation following the Effective Time until changed or amended, provided, however, that Article I of the Articles of Incorporation of Chilton be, and it hereby is, amended to read as follows:

#### "ARTICLE I

The name of the Corporation is Briess Industries, Inc."

(b) The Bylaws of Chilton, as in effect immediately prior to the Effective Time shall continue in full force and effect as the Bylaws of Surviving Corporation following the Effective Time until changed or amended.

3. Location of the Principal Office of Surviving Corporation. The Principal Office of Surviving Corporation shall be:

Chilton Malting Company, Inc.  
137 East Main Street  
Chilton, Wisconsin 53014

4. Purpose of Surviving Corporation. The Surviving Corporation will conduct or engage in any lawful activity under the laws of any state in which it is qualified.

5. Directors and Officers. The directors and officers of Chilton immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, each such director or officer to hold office until the term for which he or she has previously been elected shall expire and his or her successor has been duly elected and qualified, or until such director's or officer's earlier death, resignation or removal.

6. Conversion of Shares. The manner of converting the issued and outstanding shares of the Constituent Corporations shall be as follows:

(a) The Merger shall not effect a change in any of the issued and outstanding shares of stock of Chilton and none of such shares shall be exchanged or converted as a result of the Merger.

(b) Each share of common stock of Waterloo issued and outstanding prior to the Effective Time, upon surrender of the certificate representing such share in accordance with Section 6(c), shall be converted into the right to receive 125 shares of the common stock, \$10 par value, of Chilton (the "Waterloo Consideration").

(c) As soon as practicable following the Effective Time, each holder of shares described in Section 6(b) of an outstanding certificate or certificates which prior thereto represented shares of Waterloo's common stock shall surrender the same to its designated agent, and each such holder shall, upon such surrender, receive the Waterloo Consideration for each share of common stock represented by the certificate or certificates so surrendered; provided, however, that no certificate for fractional shares shall be issued but such certificate shall be rounded to the next whole number of shares.

(d) Each share of common stock held in treasury by Waterloo, if any, shall immediately upon the Effective Time cease to exist and all certificates representing such shares shall be cancelled and no Waterloo Consideration shall be paid and issued in respect thereof.

(e) Each share of common stock of Briess issued and outstanding prior to the Effective Time, shall be upon surrender of the certificate representing such share in accordance with Section 6(c), shall be converted into the right to receive 1.025 shares of the common stock, \$10 par value, of Chilton (the "Briess Consideration").

(f) As soon as practicable following the Effective Time, each holder of shares described in Section 6(e) of an outstanding certificate or certificates which prior thereto represented shares of Briess's common stock shall surrender the same to its designated agent, and each such holder shall, upon such surrender, receive the Briess Consideration for each share of common stock represented by the certificate or certificates so surrendered; provided, however, that no certificate for fractional shares shall be issued but such certificate shall be rounded to the next whole number of shares.

(g) Each share of common stock held in treasury by Briess, if any, shall immediately upon the Effective Time cease to exist and all certificates representing such shares shall be cancelled and no Briess Consideration shall be paid and issued in respect thereof.

7. Effective Time. The effective date and time of the Merger (the "Effective Time") shall be the close of business on December 31, 1996.

8. Articles of Merger. The appropriate officers of Chilton shall prepare and execute Articles of Merger as required by the Wisconsin Business Corporation Law and shall file such Articles of Merger with the Wisconsin Department of Financial Institutions. Such officers are further authorized to do any and all other things necessary to effectuate the Merger.

9. Certificate of Merger. The appropriate officers of Briess shall prepare and execute a Certificate of Merger as required by the New York Business Corporation law and shall file such Certificate of Merger with the New York Department of State. Such officers are further authorized to do any and all other things necessary to effectuate the Merger.

IN WITNESS WHEREOF, the parties hereto have executed this Plan and Agreement of Merger as of the date first above written.

CHILTON MALTING COMPANY, INC.

By: R. C. Briess  
Roger C. Briess, President

By: Fernande Sabounghi  
Fernande Sabounghi, Secretary

WATERLOO MALTING COMPANY

By: R. C. Briess  
Roger c. Briess, President

By: Fernande Sabounghi  
Fernande Sabounghi, Secretary

BRIESS INDUSTRIES, INC.

By: R. C. Briess  
Roger C. Briess, President

By: Fernande Sabounghi  
Fernande Sabounghi, Secretary

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