

OMB No. 0651-0027 (exp. 5/31/2002)



101781756

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

1. Name of conveying party(ies):

CocoExchange, Inc.
4101 Westerly Place, Suite 105
Newport Beach, CA 92660

- Individual(s)
- General Partnership
- Corporation-State (DEL)
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Name of conveyance:

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

Execution Date: June 14, 2001

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

Name: CocoCommerce, Inc.
Internal Address:
Street Address: 4101 Westerly Place, Suite 105
City: Newport Beach State: CA Zip: 92660

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State (DEL)
- Other

If assignee is not domiciled in the United States, a domestic representative designated is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

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

MWD 7/12/01

A. Trademark Application No.(s)

U.S. Application No. 76/042,628
U.S. Application No. 76/041,985
U.S. Application No. 76/041,986

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Linda A. Kuczma
Internal Address: Wallenstein & Wagner, Ltd.
Street Address: 311 South Wacker Drive, 53rd Floor
Chicago, IL 60606-6630

6. Total number of applications and registrations involved: 3

7. Total fee (37 C.F.R. 3.41): \$90.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: (DEFICIENCIES ONLY) 23-0280

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

~~07/17/2001 DBYRNE 00000150 76042628~~
01 FC:481 40.00 DP
02 FC:482 50.00 DP

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.

Richard C. Himelhoch 35.544
Name and Registration No. of Person Signing

Richard Himelhoch
Signature

7/9/01
Date

W&W File No.: 5235 T 003/004/005
(125666.1)

Total number of pages including cover sheet, attachments, and documents:

State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "COCOEXCHANGE INC.", CHANGING ITS NAME FROM "COCOEXCHANGE INC." TO "COCOCOMMERCE, INC.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF JUNE, A.D. 2001, AT 9 O'CLOCK A.M.

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



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3167588 8100

010292423

AUTHENTICATION: 1197262

DATE: 06-19-01

TRADEMARK
REEL: 002330 FRAME: 0470

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

COCOEXCHANGE INC.

Cocnexchange Inc. (hereinafter called the "Corporation"), a corporation organized and existing under and by virtue of the DGCL, does hereby certify:

1. The Corporation was originally incorporated under the name CoconutExchange.com Inc. The date of filing the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was February 4, 2000.

2. Pursuant to Sections 228, 242 and 245 of the DGCL the text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is CocoCommerce, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 9 East Lookerman Street, in the City of Dover, County of Kent 19901. The name of its registered agent at such address is National Registered Agents, Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH: The amount of the total authorized capital stock of this Corporation shall be 9,333,333 shares. The preferences, qualifications, limitations, restrictions and special or relative rights in respect of the shares of each class of capital stock are as set forth in Sections A and B of this Article Fourth.

Section A. Common Stock.

1. Authorized Shares. The Corporation shall have authority to issue 8,400,000 shares of common stock, \$0.01 par value per share (the "Common Stock").
2. Voting. The holders of Common Stock shall be entitled to one vote in person or by proxy for each share of stock held, and shall be entitled to notice of any stockholders' meeting in accordance with the By laws of the Corporation, and shall be entitled to vote upon such matters and in such manner as shall be provided by law.
3. Dividends. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

Section B Preferred Stock.

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1. Authorized Shares and Designation. The Corporation shall have authority to issue 933,333 shares of preferred stock at a par value of \$0.01 all of which shall be designated as Class A Preferred Stock (the "Class A Preferred Stock").
2. Voting Rights. Each holder of shares of Class A Preferred Stock shall (i) have the right to one vote for each share of Common Stock into which such holder's shares of Class A Preferred Stock could then be converted, with full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, except as required by law or as expressly provided herein, including the Protective Provisions in paragraph 6 below; (ii) be entitled to notice of any stockholders' meeting in accordance with the By Laws of the Corporation; and (iii) be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as expressly provided herein.
3. Dividends. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Class A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.
4. Conversion. The holders of Class A Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):
 - (a) Right to Convert. Each share of Class 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 with respect to each share of Class A Preferred Stock by dividing the original issue price of \$0.75 (the "Original Class A Issue Price") by the conversion price calculated in accordance with the provisions set out below (the "Conversion Price") in effect on the date the certificate is surrendered for conversion.
 - (b) Automatic Conversion. Each share of Class A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price for such series at the time in effect immediately upon the sale of Common Stock in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, with aggregate cash proceeds to the Corporation and selling stockholders therein of at least \$20,000,000 (net of underwriting discounts and commissions) (a "Qualified Offering").
 - (c) Mechanics of Conversion. Before any holder of Class A Preferred Stock shall be entitled 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 the Class A Preferred Stock, and shall give written notice to the Corporation at its principal corporate office of the election to convert the same, and shall state therein the name or names in which the certificate or certificates for shares of

Common Stock are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Class A Preferred Stock or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Class 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 as of such date. If the conversion is in connection with a Qualified Offering the conversion shall 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 Class A Preferred Stock shall not be deemed to have converted such Class A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Class A Preferred Stock Conversion Price Adjustments. The Conversion Price of the Class A Preferred Stock shall be subject to adjustment from time to time as follows:

- (i) (A) If the Corporation shall issue after the Original Class A Issue Date any Additional Stock (each as defined below) without consideration or for a consideration price per share less than the Conversion Price for the Class A Preferred Stock in effect immediately prior to the time of such issue or sale, then immediately upon such issue or sale such Conversion Price for the Class A Preferred Stock will be adjusted to the price determined by multiplying such Conversion Price then in effect by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of additional shares of Common Stock so issued or sold would purchase at the Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue or sale plus the number of additional shares of Common Stock so issued. For example, if there are 500,000 shares of Common Stock deemed outstanding and, after the date hereof, the Corporation issues 1,000,000 shares of Common Stock for a consideration per share of \$0.50, the Conversion Price would be reduced to the price determined by multiplying \$1.00, the hypothetical Conversion Price then in effect, by the following fraction:

$$\frac{500,000 + 500,000}{500,000 + 1,000,000}$$

$$= 0.666$$

resulting in an adjusted Conversion Price of \$0.67 and an adjusted conversion rate of 1.49:1.

(B) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(C) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(D) "Additional Stock" shall mean any shares of Common Stock issued by the Corporation other than:

- (1) Common Stock issuable or issued to employees, consultants, or directors pursuant to a stock option or stock issuance plan approved by the Board of Directors of the Corporation;
- (2) Common Stock issued in connection with lease lines, bank financings, acquisitions of companies, assets or product lines; or
- (3) Common Stock issued upon conversion of the Class A Preferred Stock.

(ii) In the event the Corporation should at any time, or from time to time after the first date of issuance of Class A Preferred Stock (the "Original Class A Issue Date") fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price for the Class A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of Class A Preferred Stock shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iii) If the number of shares of Common Stock outstanding at any time after the Original Class A Issue Date is decreased by a reverse split or combination of the outstanding shares of Common Stock, then, following the record date of such

reverse split or combination, the Conversion Price for the Class A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Class A Preferred Stock shall be decreased in proportion to such decrease in outstanding Common Stock.

(e) Recapitalizations. If at any time or from time to time after the Original Class A Issue Date, there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section B of Article Fourth), provision shall be made so that the holders of the Class A Preferred Stock shall thereafter be entitled to receive upon conversion of their shares of Class A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section B with respect to the rights of the holders of such Class A Preferred Stock after the recapitalization to the end that the provisions of this Section B (including adjustment to the respective Conversion Price then in effect and the number of shares purchasable upon conversion of the Class A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(f) No Impairment. The Corporation will not (by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, 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 B 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 Class A Preferred Stock against impairment.

(g) No Fractional Shares. No fractional shares shall be issued upon the conversion of any share or shares of the Class A Preferred Stock and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share (with .5 being rounded upward). Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of such Class A Preferred Stock which the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

5. Transfers. No transfer, assignment, sale or other disposition of any shares of Class A Preferred Stock shall be valid unless the transferor shall first have notified the Corporation in writing of its intended transfer, together with a full and complete statement of the terms thereof, and the Corporation shall have the right, exercisable by written notice to the intended transferor delivered at any time during the 60 days after receipt of the transferor's notice, to acquire such shares for a price equal to and on terms and conditions substantially similar to the terms and conditions of the proposed transfer.

6. Protective Provisions.

Subject to the rights of series of preferred stock which may from time to time come into existence, so long as any shares of CLASS A Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of greater than two-thirds of the then outstanding shares of Class A Preferred Stock voting as a separate series amend or modify any provision of the Corporation's Certificate of Incorporation so as to affect adversely the rights, preferences or privileges of the Class A Preferred Stock; notwithstanding the foregoing, the authorization or issuance of a series of stock with rights, preferences or privileges pari passu or senior to those of the Class A Preferred Stock shall not be deemed ab initio to constitute an amendment or modification requiring approval under this paragraph 6.

FIFTH: The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of Directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the By laws of the corporation.

SIXTH: The personal liability of all of the Directors of the corporation is hereby eliminated to the fullest extent allowed as provided by DGCL as the same may be supplemented and amended.

SEVENTH: The corporation shall, to the fullest extent legally permissible under the provisions of DGCL, as the same may be supplemented, indemnify and hold harmless any and all persons whom it shall have power to indemnify under said provisions from and against any and all liabilities (including expenses) imposed upon or reasonably incurred by him in connection with any action, suit or other proceeding in which he may be involved or with which he may be threatened, or other matters referred to in or covered by said provisions, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer of the corporation. Such indemnification provided shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By law, Agreement or Resolution adopted by the shareholders entitled to vote thereon after notice.


3. In lieu of a meeting and vote of the stockholders, the stockholders have given their written consent to said amendment and restatement in accordance with Section 228 of the DGCL.

4. The foregoing amendment and restatement has been duly adopted by the Corporation's stockholders in accordance with the provisions of Sections 242, 245 and 228 of the DGCL.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, CocoCommerce, Inc, has caused this Amended and Restated Certificate of Incorporation to be signed and acknowledged by the undersigned this 14th day of June 2001.

COCOCOMMERCE, INC.

By: 

Name: Ariu Levi
Title: President/CEO

Name: Ariu Levi
Title: President/CEO

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RECORDED: 07/12/2001

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