

07-30-2001



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Form **PTO-1594**
(Rev. 03/01)

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

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REGISTRATION FORM COVER SHEET TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

TheTrip.Com, Inc.

07/20/01

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

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

3. Nature of conveyance:

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

Execution Date: September 14, 1999

2. Name and address of receiving party(ies)

Name: Trip.Com, Inc.

Internal Address: _____

Address: _____

Street Address: 6436 S. Racine Circle

City: Englewood State: CO Zip: 80111

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

If assignee is not domiciled in the United States, a domestic representative designation 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):

A. Trademark Application No.(s)
75/843673

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Angelo J. Bufalino

Internal Address: _____

Vedder Price Kaufman & Kammholz

Street Address: _____

222 N. LaSalle Street

City: Chicago State: Illinois Zip: 60601

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:

22-0259

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

DO NOT USE THIS SPACE

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.

Angelo J. Bufalino

Name of Person Signing

Signature

July 18, 2001

Date

18

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

07/27/2001 LNUJELLER 00000119 75843673

01 FC:481

40.00

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002336 FRAME: 0333

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 RESTATED CERTIFICATE OF "THETRIIP.COM, INC.", CHANGING ITS NAME FROM "THETRIIP.COM, INC." TO "TRIP.COM, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF SEPTEMBER, A.D. 1999, AT 1:30 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

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0094318

991496688

AUTHENTICATION:

11-19-99

DATE:

TRADEMARK
REEL: 002336 FRAME: 0334

**RESTATED
CERTIFICATE OF INCORPORATION
OF
THETRIp.COM, INC.**

Roger E. George, Secretary, of TheTrip.com, Inc., a Corporation organized and existing under the General Corporation Law of the State of Delaware, in accordance with the provisions of Section 242 and 245 thereof, DOES HEREBY CERTIFY:

FIRST: The name of this Corporation is TheTrip.com, Inc. (the "Corporation"). The Corporation was originally incorporated under the name The Trip, Inc. and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 22, 1996.

SECOND: That the Amendment and Restatement of the Corporation's Certificate of Incorporation set forth in the following resolution has been approved by the Corporation's Board of Directors and stockholders and was duly adopted in accordance with the provisions of Section 242 and 245 of the General Corporation Law of the State of Delaware.

NOW, THEREFORE, BE IT RESOLVED, that the Certificate of Incorporation of this Corporation be, and it hereby is, restated and further amended to read in its entirety as follows:

"ARTICLE I

The name of this Corporation is Trip.com, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, county of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business and of the purposes to be conducted and promoted by the Corporation are to conduct any lawful business, to promote any lawful purpose, and to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. This Corporation is authorized to issue two classes of shares of stock, to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of authorized shares of Common Stock is 25,000,000 with a par value of \$0.001 per share. The total number of authorized shares of Preferred Stock is 11,263,185 with a par value of \$0.001 per share. The Preferred Stock may be issued in one or more series. Of the Preferred Stock, 4,000,000 shares shall be denominated Series A Preferred Stock ("Series A Preferred"), 2,352,941 shares shall be denominated Series B Preferred Stock ("Series B Preferred"), 2,592,550 shall be denominated Series C Preferred Stock ("Series C Preferred"), and 2,317,694 shall be denominated Series D Preferred Stock ("Series D Preferred").

B. The following is a statement of the designations, preferences, qualifications, limitations, privileges, restrictions and the special or relative rights granted to or imposed upon the shares of capital stock of the Corporation:

1. Dividends.

(a) The holders of the Series A Preferred, the Series B Preferred, the Series C Preferred and the Series D Preferred shall be entitled to receive dividends, prior and in preference to any dividend on Common Stock, at the rate of \$0.135 per share of Series A Preferred, at the rate of \$0.425 per share of Series B Preferred, at the rate of \$0.578 per share of Series C Preferred, and at the rate of \$1.17 per share of Series D Preferred, per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares that occurs after the date of filing of this Restated Certificate), whenever funds are legally available and when and as declared by the Board of Directors. The dividends shall be non-cumulative.

(b) No dividends (other than those payable solely in Common Stock) shall be paid on any Common Stock of the Corporation during any fiscal year of the Corporation until dividends in the total respective amounts set forth above per share of Preferred Stock per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) on the Preferred Stock shall have been paid or declared and set apart during that fiscal year, and no dividends shall be paid on any share of Common Stock unless a dividend (including, for this purpose the amount of any dividends paid pursuant to the above provisions of this Section 1) is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Preferred Stock could then be converted.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of the Series A Preferred, the Series B Preferred, the Series C Preferred, and the Series D Preferred shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common

Stock by reason of their ownership thereof, the amount of \$1.345 per share, \$4.25 per share, \$5.78 per share, and \$11.66 per share, respectively, for each share of Series A Preferred, Series B Preferred, Series C Preferred, and Series D Preferred then held by them (each as adjusted for any stock dividends, combinations or splits with respect to such shares effective after the date of filing of this Restated Certificate) plus all accrued or declared but unpaid dividends on each such share. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred, Series B Preferred, Series C Preferred, and Series D Preferred shall be insufficient to permit the payment to such holders of the full preferential amount, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred, Series B Preferred, Series C Preferred, and Series D Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) After payment has been made to the holders of the Series A Preferred, Series B Preferred, Series C Preferred, and Series D Preferred of the full amounts to which they shall be entitled as provided in Section 2(a), the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed among the holders of Common Stock in proportion to the shares of Common Stock then held by each.

(c) (i) For purposes of this Section IV.B.2., a liquidation or dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include, (A) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation but, excluding any merger effected exclusively for the purpose of changing the domicile of the Corporation); or (B) a sale of all or substantially all of the assets of the Corporation; unless the Corporation's shareholders of record as constituted immediately prior to such acquisition or sale will, immediately after acquisition or sale (by virtue of securities issued as consideration for the Corporation's acquisition or sale or otherwise) hold at least a majority of the voting power of the surviving or acquiring entity.

(ii) In any of such events, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange or through NASDAQ-NMS, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(3) 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 at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock.

(iii) In the event the requirements of this subsection IV.B.2.(c) are not complied with, this Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section IV.B.2. have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection IV.B.2.(e) hereof.

(d) In the event of a liquidation, dissolution or winding up of the Corporation, the holders of shares of Preferred Stock shall have the right to preference upon the distribution of assets as provided in this Section IV.B.2., or alternatively at such holder's election, shall have the right to convert to shares of Common Stock as provided in Section IV.B.4. and receive distribution of assets as holders of Common Stock; provided, in addition, that such election shall not be binding in the event that such holders would receive, upon distribution of assets as holders of Common Stock, an amount less than the preferential amount such holders would receive upon the distribution of assets as provided in this Section IV.B.2.

(e) In the event of any liquidation, dissolution or winding up of the Corporation, the Corporation shall, within ten (10) days after the date the Board of Directors approves such action, or twenty (20) days prior to any stockholders' meeting called to approve such action, or twenty (20) days after the commencement of an involuntary proceeding, whichever is earlier, give each holder of shares of Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of shares of Preferred Stock upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of shares of Preferred Stock of such material change.

(f) The Corporation shall not consummate any liquidation, dissolution or winding up of the Corporation before the expiration of twenty (20) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; provided that

any such 20-day or 10-day period may be shortened upon the written consent of the holders of at least a majority of the outstanding shares of the Preferred Stock voting as a single class.

3. Voting Rights.

(a) Except with respect to the election of directors of the Corporation, the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided herein or as required by law), voting together as a single class, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to a nearest whole number (with one-half being rounded upward).

(b) The Board of Directors of the Corporation shall consist of six (6) members. Notwithstanding Section IV.B.3(a) above, for so long as any shares of Preferred Stock shall be outstanding, election of directors of the Corporation shall be as provided in the remainder of this paragraph. The holders of Series A Preferred shall have the right, voting together as a separate class, to elect one (1) director to the Board of Directors. The holders of the Series B Preferred shall have the right, voting together as a single class, to elect one (1) director to the Board of Directors. The holders of the Series C Preferred shall have the right, voting together as a separate class, to elect the greater of (i) one (1) director or (ii) 20% of the total board of directors rounded to the nearest whole director, to the Board of Directors. The holders of Series D Preferred shall have the right, voting together as a separate class, to elect one (1) director to the Board of Directors. The holders of the Series A Preferred, Series B Preferred, Series C Preferred, Series D Preferred and Common shall have the right, voting together as a separate class, to elect one (1) director to the Board of Directors. One (1) director shall be elected solely by holders of the Common Stock. In the case of any vacancy in the office of a director elected by the holders of a class or series as aforesaid by the other directors, such vacancy shall be filled by the remaining director or directors elected by that class or series, if any, or if no such director remains, by the affirmative vote of the holders of the applicable class or series; however, if the vacant director had been chosen by the other directors, then the vacancy shall be filled by the unanimous consent of the such other directors, subject to applicable contractual obligations, if any. Any director elected by the holders of a class or series of stock may be removed, either with or without cause, by and only by the affirmative vote of the holders of the shares of the class or series of stock which elected such director or directors, and any vacancy thereby created may be filled by the holder of that class or series of stock.

4. Conversion Rights. The holders of the Preferred Stock shall have the conversion rights as follows:

(a) Right to Convert: Each share of the Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share (the "Original Issue

Date"), at the office of this Corporation or any transfer agent for such shares, into such number of fully paid and nonassessable shares of Common Stock determined: (i) in the case of the Series A Preferred, by dividing \$1.345 by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion (the "Series A Conversion Rate"), subject to adjustment as hereinafter provided; (ii) in the case of the Series B Preferred, by dividing \$4.25 by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion (the "Series B Conversion Rate"), subject to adjustment as hereinafter provided; (iii) in the case of the Series C Preferred, by dividing \$5.78 by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion (the "Series C Conversion Rate"), subject to adjustment as hereinafter provided; and (iv) in the case of the Series D Preferred, by dividing \$11.66 by the Conversion Price applicable to such share, determined as hereinafter provided, in effect on the date the certificate is surrendered for conversion (the "Series D Conversion Rate"), subject to adjustment as hereinafter provided. (The Series A Conversion Rate, Series B Conversion Rate, Series C Conversion Rate or Series D Conversion Rate shall be referred to as the "Conversion Rate.") The price at which shares of Common Stock shall be deliverable upon conversion of shares of Preferred Stock (the "Conversion Price") shall initially be, in the case of the Series A Preferred, \$1.345 per share of Common Stock (the "Series A Conversion Price"), in the case of the Series B Preferred, \$4.25 per share of Common Stock (the "Series B Conversion Price"), in the case of the Series C Preferred, \$5.78 per share of Common Stock (the "Series C Conversion Price"), and, in the case of the Series D Preferred, \$11.66 per share of Common Stock (the "Series D Conversion Price"). Each such initial Conversion Price shall be adjusted as hereinafter provided. (The Series A Conversion Price, Series B Conversion Price, Series C Conversion Price or Series D Conversion Price shall be referred to as the "Conversion Price.")

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then-effective Conversion Price 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 (other than a registration relating solely to a transaction under Rule 145 under such Act (or any successor thereto) or to an employee benefit plan of the Company), (i) at a public offering price (prior to underwriter commissions and expenses) equal to or exceeding \$12.00 per share of Common Stock (as adjusted for any stock dividends, combinations or splits with respect to such shares occurring after the date of filing of this Restated Certificate), and with aggregate proceeds to the Corporation (before deduction for underwriter commissions and expenses relating to the issuance, including, without limitation, fees of the Corporation's counsel) of \$15,000,000 or more, or (ii) upon the written consent of the holders of at least 75% of the then-outstanding shares of Preferred Stock voting together as a single class.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he 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 he elects to convert the same and shall state therein 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 Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he 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 surrender of the shares of 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.

(d) Adjustments for Subdivisions or Combinations of or Stock Dividends on Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split or otherwise), into a greater number of shares of Common Stock, or the Company at any time or from time to time after the Original Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock, each Conversion Rate then in effect shall, concurrently with the effectiveness of such subdivision or stock dividend, be proportionately increased based on the ratio of (A) the number of shares of Common Stock outstanding immediately after such subdivision or stock dividend to (B) the number of shares of Common Stock outstanding immediately prior to such subdivision or stock dividend. 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, the Conversion Rate then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately decreased on the same basis.

(e) Adjustments for Recapitalization, Reclassification, Exchange and Substitution. If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by recapitalization, capital reorganization, reclassification or otherwise (other than a subdivision, combination of shares or merger or sale of assets transaction provided for above or in Section 2(c)), then concurrently with the effectiveness of such recapitalization, reorganization or reclassification, the Preferred Stock shall thereafter be convertible into, in lieu of the number of shares of Common Stock which the holders thereof would have been entitled to receive prior to such recapitalization, reorganization or reclassification, a number of shares of such other class or classes of stock equivalent to the number of shares of such other class or classes of stock that a holder of the number of shares of Common Stock into which the Preferred Stock would have been converted immediately before such recapitalization, reorganization or reclassification would have received in connection with such recapitalization, reorganization or reclassification. In addition, to the extent applicable in any reorganization or recapitalization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of the Company or otherwise, to which a holder of the number of shares of Common Stock deliverable upon conversion of the Preferred Stock immediately prior to such recapitalization or reorganization would have been entitled on such reorganization or recapitalization.

(f) Adjustment of Conversion Price for Dividends, Distributions and Common Stock Equivalents. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for 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 (hereinafter referred to as "Common Stock Equivalents") convertible into or entitling the holder thereof to receive additional shares of Common Stock without payment of any consideration by such holder for such Common Stock Equivalents or the additional shares of Common Stock, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents shall be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date. In each such event, the Conversion Price for the Preferred Stock shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by dividing the Conversion Price for such series by a fraction,

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding or deemed to be issued and outstanding immediately prior to the time of such issuance on the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding or deemed to be issued and outstanding immediately prior to the time of such issuance on the close of business on such record date provided, however, (A) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is fully made on the date fixed therefor, the Conversion Price for such series shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for such series shall be adjusted pursuant to this paragraph IV.B.4(f) as of the time of actual payment of such dividends or distribution; (B) if such Common Stock Equivalents provide, with the passage of time or otherwise, for any decrease in the number of shares of Common Stock issuable upon conversion or exercise thereof, the Conversion Price for such series shall, upon any such decrease becoming effective, be recomputed to reflect such decrease insofar as it affects the rights of conversion or exercise of the Common Stock Equivalents then outstanding; and (C) upon the expiration of any rights or conversion or exercise under any unexercised Common Stock Equivalents, the Conversion Price for such series computed upon the original issue thereof shall, upon such expiration, be recomputed as if the only additional shares of Common Stock issued were the shares of such stock, if any, actually issued upon the conversion or exercise of such Common Stock Equivalents.

(g) Adjustment of Conversion Price for Subsequent Sales Below Conversion Price. If the Corporation shall issue, after the date upon which any shares of Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, then such Conversion Price shall be adjusted by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such

issuance would purchase at the Conversion Price in effect immediately prior to the issuance of such Additional Stock and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of such Additional Stock so issued. For purposes of this paragraph IV.B.4(g) and paragraph IV.B.4(f), the shares of issued or issuable Common Stock that are excluded from the definition of Additional Stock will be deemed outstanding.

(i) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, and any adjustments which are not required to be made by reason of this sentence shall not be carried forward nor taken into account in any subsequent adjustment. Except to the limited extent provided for in paragraphs IV.B.4(g)(iv)(3) and IV.B.4(g)(iv)(4), no adjustment of such Conversion Price pursuant to this paragraph IV.B.4(g)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(ii) 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 this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof

(iii) 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.

(iv) In the case of the issuance, whether before, on or after the Purchase Date of such series of Preferred Stock, of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities (which are not excluded from the definition of Additional Stock), the following provisions shall apply:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in paragraphs IV.B.4(g)(ii) and IV.B.4(g)(iii), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the

additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in paragraphs IV.B.4(g)(ii) and IV.B.4(g)(iii).

(3) In the event of any change in the number of shares of Common Stock deliverable or any increase in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of the Preferred Stock obtained with respect to the adjustment at the time it was made upon the issuance of such options, rights or securities, and any subsequent adjustments based thereon, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock obtained with respect to the adjustment which was made upon the issuance of such options, rights or securities or options or rights related to such securities, and any subsequent adjustments based thereon, shall be recomputed to reflect the issuance of only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities. Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, only the number of shares of Common Stock actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities shall continue to be deemed to be issued.

(5) All Common Stock deemed issued pursuant to this paragraph IV.B.4(g)(iv) shall be considered issued only at the time of its deemed issuance and any actual issuance of such stock shall not be an actual issuance or a deemed issuance of the corporation's Common Stock under the provisions of this paragraph IV.B.4(g).

(h) **Additional Stock.** "Additional Stock" shall mean any shares of Preferred Stock or Common Stock issued by this Corporation on or after the Purchase Date other than:

(i) Shares issued or issuable pursuant to a transaction described in paragraphs IV.B.4(d) through IV.B.4(f) hereof for which an adjustment has already been made pursuant to such Section 3;

(ii) up to 1,716,664 shares of Common Stock, as adjusted for stock splits, reclassifications and the like, reserved for issuance to officers, directors, employees and consultants of this Corporation directly or pursuant to a stock option plan or restricted stock plan approved by the shareholders and directors of this Corporation;

(iii) capital stock, or options or warrants to purchase capital stock issued in connection with bona fide equipment lease financings or similar transactions, provided that any such transaction has been unanimously approved by the Corporation's Board of Directors;

(iv) capital stock or warrants or options to purchase capital stock issued to vendors or issued in connection with bona fide acquisitions, strategic licensing transactions, mergers or similar transactions, the terms of which are unanimously approved by the Board of Directors of the Corporation;

(v) capital stock or options or warrants to purchase capital stock the issuance of which is determined to be excluded from the definition of "Additional Stock" upon the written consent of the holders of at least 75% of the then outstanding Preferred Stock (without any requirement of an amendment to this Restated Certificate of Incorporation); and

(vi) shares issued or issuable upon conversion of any series of Preferred Stock.

(i) No Impairment. The Corporation will not, by amendment of its Certificate 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 IV.B.4 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 Preferred Stock against impairment.

(j) Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section IV.B.4, 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 Preferred Stock, as the case may be, a certificate 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 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable 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 such Preferred Stock.

(k) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any security or right convertible into or entitling the holder thereof to receive additional shares of Common Stock, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to the date specified therein, a notice specifying the

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date on which any such record is to be taken for the purpose of such dividend, distribution, security or right, and the amount and character of such dividend, distribution, security or right.

(l) 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 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 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 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 stockholder approval of any necessary amendment to this Certificate.

(m) Fractional Shares. No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of 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 of the Corporation).

(n) Notices. Any notice required by the provisions of this Section IV.B.4 to be given to the holders of shares of 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 appearing on the books of the Corporation.

5. Amendment. Any term relating to the Preferred Stock may be amended and the observance of any term relating to the Preferred Stock may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the vote or written consent of holders of at least a majority of the shares of the Preferred Stock then outstanding and the Corporation. Any amendment or waiver so effected shall be binding upon the Corporation and any holder of shares of the Preferred Stock.

6. Restrictions and Limitations. So long as any shares of Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent by the holders of at least 75% of the then outstanding shares of Preferred Stock voting as a single class except as otherwise required by law:

(a) Alter or change the rights, preferences or privileges of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred;

(b) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock of the Corporation or the total numbers of such shares of Preferred Stock designated Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred;

(c) authorize or issue, or obligate itself to issue, any other equity security senior to or on a parity with the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred as to dividend or redemption rights, liquidation preferences, conversion rights, voting rights or otherwise, or create any obligation or security convertible into or exchangeable for, or having any option rights to purchase, any such equity security which is senior to or on a parity with the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred;

(d) purchase, redeem or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common Stock (or other capital stock or rights to acquire capital stock) of the Corporation, provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from directors, officers, consultants or employees of the Corporation or any subsidiary pursuant to agreements approved by the Corporation's Board of Directors under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including termination of employment or services;

(e) issue dividends or other distributions on any shares of capital stock of the Corporation or redeem or otherwise repurchase any such shares or securities exchangeable, exercisable or convertible into such shares;

(f) effect a reclassification or recapitalization of the outstanding capital stock of the Company;

(g) effect a merger or consolidation with any other entity where the stockholders of the Corporation before such merger or consolidation would hold less than a majority of the surviving entity;

(h) sell, convey, or otherwise dispose of, all or substantially all of the property or business of the Corporation;

(i) issue any capital stock (or rights to acquire capital stock) of the Company for a price that is less than the fair market value thereof as determined in good faith by the Board of Directors; or

(j) amend or waive any provision of this Article IV.

C. Except as provided in Section IV.B., the rights, preferences, privileges, restrictions and other matters relating to the Common Stock of the Corporation are as follows:

1. **Dividends.** Dividends may be paid upon the Common Stock as and when declared by the Board of Directors out of any funds legally available therefor.

2. **Liquidation.** Upon any liquidation, dissolution or winding up of the Corporation, subject to the payment of all amounts due to the holders of Preferred Stock as provided in Section (a) of Article IV.B.2, the holders of Common Stock shall be entitled to receive any and all assets of the Corporation remaining to be paid or distributed.

3. **Voting Rights.** Except as otherwise provided by statute, by any express provision of this Certificate (including Article IV.B.3 herein) or by any agreement to the contrary between the Corporation and its stockholders, all rights to vote and all voting power shall be exclusively vested in the Common Stock and the holders thereof shall be entitled to one vote for each share of Common Stock for the election of directors and upon all other matters.

4. **Registered Owners.** The Corporation shall be entitled to treat the person in whose name any share, right or option is registered as the owner thereof, for all purposes, and shall not be bound to recognize any equitable or other claim to or interest in such share, right or option on the part of any other person, whether or not the Corporation shall have notice thereof, save as may be expressly provided by the laws of the State of Delaware.

ARTICLE V

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

(a) 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 the Board of Directors in the manner provided in the Bylaws. Except as may otherwise be required by law and subject to the terms of any agreement to the contrary between the Corporation and its stockholders, vacancies in the Board of Directors of the Corporation and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director.

(b) The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

ARTICLE VI

The Board of Directors may from time to time make, amend, supplement or repeal the Bylaws except as provided therein; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of the capital stock of the Corporation; and.

provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

ARTICLE VII

A. No director shall have any personal liability to the Corporation or its stockholders for any monetary damages for breach of fiduciary duty as a director, except that this Article shall not eliminate or limit the liability of each director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which such director derived an improper personal benefit.

B. It being the intention of the foregoing provision to eliminate the liability of the Corporation's directors to the fullest extent permitted by Section 102(b)(7) of the General Corporation Law of the State of Delaware, as amended from time to time, any repeal or modification of the foregoing Section VII.A of this Article VII by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

C. If the General Corporation Law of the State of Delaware is amended after approval by the stockholders of this Article VII to authorize corporate action further eliminating or limiting the personal liability of directors, then a director of the Corporation, in addition to the circumstances in which he is not now personally liable, shall be free of liability to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

D. Each director, officer, employee and agent, past or present, of the Corporation, and each person who serves or may have served at the request of the Corporation as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and their respective heirs, administrators and executors, shall be indemnified by the Corporation in accordance with, and to the fullest extent permitted by, the provisions of the General Corporation Law of the State of Delaware as it may from time to time be amended. The provisions of this subparagraph D shall apply to any member of any committee appointed by the Board of Directors as fully as though such person shall have been an officer or director of the Corporation.

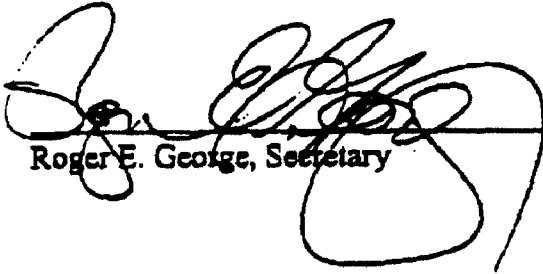
E. The provisions of this Article VII shall be in addition to and not in limitation of any other rights, indemnities, or limitations of liability to which any director or officer may be entitled, as a matter of law or under the Bylaws of the Corporation.

F. The Corporation shall pay expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of any undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Certificate of Incorporation.

G. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any cause of action, suit or claim accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed on behalf of the Corporation by Roger E. George, its Secretary, this 14th day of September, 1999.

THE TRIP.COM, INC.

By:  _____
Roger E. George, Secretary