

08-17-2001



101814374

OVER SHEET
MARKS ONLY

ATTY. DOCKET NO. 279/M, 7, 8, 32, 40, 43, 82, 101, 102, 103

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

1. Name of conveying part(ies)
Rose's Stores, Inc.

8-13-01

- Individual
- General Partnership
- Corporation - Delaware
- Other limited liability company
- 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

Effective Date 06292001

2. Name and address of receiving party(ies)

Name: Variety Stores, Inc.
 Internal Address: same as street address
 Street Address: PO Drawer 947
 City/State/Zip: Henderson, NC 27536

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State North Carolina
- 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 attached? Yes No

4. Application Number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

SEE ATTACHED

Additional numbers attached? Yes No

1399938

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

Name: J. Scott Evans, Esq.
ADAMS LAW FIRM, P.A.
2180 Two First Union Center
301 S. Tryon St.
Charlotte, NC 28282

6. Total Number of applications and registrations involved:

9

7. Total Fee (37 C.F.R. 3.41) \$240.00
 Enclosed
 Authorized to be charged to deposit for deficiencies

8. Deposit Account No. 01-0265

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.

J. Scott Evans, Esq.
Name of Person Signing

Signature

8-7-01
Date

Total number of pages including cover sheet, attachments, and document: 6

08/16/2001 TBIAZ1 00000095 010265 1399938
 01 FC:481 40.00 OP
 02 FC:481 120.00 CH 200.00 OP

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Attn: **BOX ASSIGNMENTS**; Commissioner for Patents and Trademarks, Washington, D.C. 20231 on 08/07/01 of Signature: 08/07/01

Signature:

Our File No	Registration /Serial Number	Mark	Description of Mark
279/8	1,399,938	ROSES	WORD MARK
279/32	1,702,472	SOUTHERN BREEZE	WORD MARK
279/40	1,735,718	PHR (STYLIZED)	PHR in Script
270/43	1,787,520	FUN CLUB BY SOUTHERN CLASSICS (STYLIZED)	The mark consists of the wording "FUN CLUB BY SOUTHERN CLASSICS" appearing in stylized lettering having a star at the beginning and end of the word "FUN."
279/63	921,310	ROSES + OVAL	"ROSES" stylized and set inside an oval
279/82	1,847,503	THE BACKYARD	WORD MARK
279/102	2,281,662	SOUTHERN MOUNTAIN	WORD MARK
279/101	2,305,928	SOUTHERN ACTIVE	WORD MARK
279/103	76/041,443	SCOOTERS	WORD MARK

21 180 9099

SOSID: 0126244
Date Filed: 6/29/2001 2:46 PM
Effective: 6/30/2001
Elaine F. Marshall
North Carolina Secretary of State

ARTICLES OF MERGER
OF
VARIETY STORES, INC.
INTO
ROSE'S STORES, INC.

Rose's Stores, Inc., a corporation organized under the laws of Delaware, as the surviving corporation in a merger, hereby submits the following Articles of Merger:

1. The surviving corporation is Rose's Stores, Inc., a corporation organized under the laws of the State of Delaware, and the merging corporation is Variety Stores, Inc., a corporation organized under the laws of the State of North Carolina. The name of the surviving corporation shall be "Variety Stores, Inc."

2. Attached as Exhibit A hereto and made a part hereof is a copy of the Plan of Merger and Reorganization ("Plan of Merger") that was duly adopted in the manner prescribed by law by the Boards of Directors of each of the corporations participating in the merger.

3. With respect to the surviving corporation, the Plan of Merger was approved by the shareholders of the surviving corporation as required by Sections 251 and 252 of the Delaware General Corporation Law.


4. With respect to the merging corporation, shareholder approval was required for the merger, and the Plan of Merger was approved by the shareholders of the merging corporation as required by Chapter 55 of the North Carolina General Statutes and Sections 251 and 252 of the Delaware General Corporation Law.

5. The merger is permitted by the laws of the State of Delaware, the state of incorporation of the surviving corporation.

6. These articles and the merger will become effective as of 11:59 p.m., Eastern Time, on the 30th day of June, 2001.

This the 29th day of June, 2001.

ROSE'S STORES, INC.

By: 

Name: R. E. Anderson
Title: President

CORP-1061-134-223042-01

PLAN OF MERGER AND REORGANIZATION

THIS PLAN OF MERGER AND REORGANIZATION (the "Plan") dated as of June 29, 2001, has been adopted by Variety Wholesalers, Inc., a North Carolina corporation ("Variety Wholesalers"), Variety Stores, Inc., a North Carolina corporation and a wholly-owned subsidiary of Variety Wholesalers ("Variety Stores") and Rose's Stores, Inc., a Delaware corporation and a wholly-owned subsidiary of Variety Wholesalers ("Rose's Stores").

1. **The Merger.** At the Effective Time (as hereinafter defined), Variety Stores shall be merged with and into Rose's Stores (the "Merger"), the separate corporate existence of Variety Stores shall thereupon cease, and Rose's Stores shall be the surviving corporation in the Merger (the "Surviving Corporation"). The name of the Surviving Corporation shall be "Variety Stores, Inc." The Merger shall be effected pursuant to the provisions of and shall have the effect provided by the North Carolina Business Corporation Act (the "NCBCA") and the Delaware General Corporation Law (the "DGCL"). For federal income tax purposes, it is intended that the Merger will qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

2. **Certificate of Incorporation and Bylaws.** On and subsequent to the Effective Time, the Certificate of Incorporation and Bylaws of Rose's Stores in effect immediately prior to the Effective Time shall continue to be the Certificates of Incorporation and Bylaws of the Surviving Corporation, until duly amended in accordance with the terms thereof and the DGCL, except that the Certificate of Incorporation of Rose's Stores shall be amended by deleting the entire text of Article First thereof and substituting in its place the following:

"FIRST: The name of the corporation is Variety Stores, Inc."

3. **Officers and Directors.** The officers of the Surviving Corporation at and as of the Effective Time shall consist of all the persons who are officers of Rose's Stores immediately prior to the Effective Time until their successors have been duly elected or appointed and qualified in accordance with the Surviving Corporation's Certificate of Incorporation and Bylaws. The Board of Directors of the Surviving Corporation at and as of the Effective Time shall consist of all the persons who are directors of Rose's Stores immediately prior to the Effective Time until their successors have been duly elected or appointed and qualified in accordance with the Surviving Corporation's Certificate of Incorporation and Bylaws.

4. **Effect of the Merger.** At the Effective Time, the corporate existence of Variety Stores shall cease, as provided in the NCBCA and DGCL, and be merged into Rose's Stores, and the Surviving Corporation shall be deemed to continue as an entity with an identity separate of Variety Stores. The Surviving Corporation shall, from and after the Effective Time, possess all the rights, privileges, powers and franchises of whatsoever nature and description, whether public or private in nature, and be subject to all the restrictions, liabilities and duties of Variety Stores; and all rights, privileges, powers and franchises of Variety Stores, and all property, tangible and intangible, real, personal and mixed, and debts due to Variety Stores on whatever account, including stock subscriptions, and all other things in action or belonging to Variety

CORP-1061-134-223952-01

Stores shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectively the property of the Surviving Corporation as they were of Variety Stores prior to the Merger, and the title to any real estate vested by deed or otherwise in any of Variety Stores shall not revert or be in any way impaired by reason of the Merger. All rights of creditors and all liens upon the property of Variety Stores shall be preserved unimpaired, and all debts, liabilities and duties of Variety Stores shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Any claim existing or action or proceeding, whether civil, criminal or administrative, pending by or against Variety Stores may be prosecuted to judgment or decree as if the Merger had not taken place, or the Surviving Corporation may be substituted in such action or proceeding.

5. Conversion and Exchange of Shares. The manner and basis of converting the shares of Variety Stores and the Surviving Corporation participating in the Merger shall be as follows:

a. Each share of common stock of Variety Stores outstanding at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, shall cease to exist at the Effective Time and certificates representing such shares shall be cancelled. No consideration shall be paid or delivered upon surrender and cancellation of the shares of stock in Variety Stores.

b. The issued and outstanding common stock of the Surviving Corporation shall not be converted, exchanged or altered in any manner as a result of the Merger, and each such share will remain outstanding following the Effective Time.

6. Ratification by Stockholders. This Plan shall be submitted to (i) the stockholders of Variety Stores for approval in accordance with applicable laws and the Articles of Incorporation and Bylaws of Variety Stores and the NCBCA, and (ii) the stockholders of Rose's Stores for approval in accordance with applicable laws and the Certificate of Incorporation and Bylaws of Rose's Stores and the DGCL. Variety Stores and Rose's Stores shall proceed expeditiously and cooperate fully in the procurement of any other consents and approvals and the taking of any other action, and the satisfaction of all other requirements prescribed by law or otherwise, necessary for consummation of the Merger on the terms herein provided.

7. Termination. If for any reason the consummation of the Merger is inadvisable in the opinion of the Boards of Directors of Variety Stores or Rose's Stores, this Plan may be terminated at any time before the Effective Time by notice by one or more party to the other. Upon termination by notice as provided in this Section, this Plan shall be void and of no further force or effect.

9. Effective Time. The Merger shall become effective, and the Effective Time of the Merger shall occur at 11:59 p.m., Eastern Time, on June 30, 2001.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have executed this Plan of Merger and Reorganization as of the date first set forth above.


VARIETY STORES, INC.

By: 
Name: James Arthur Pope
Title: Senior Executive Vice-President

ROSE'S STORES, INC.

By: 
Name: R.E. Anderson
Title: President

VARIETY WHOLESALERS, INC.

By: 
Name: James Arthur Pope
Title: Senior Executive Vice-President