

REC
TF

11-28-2001

Docket No.:



101902484

ed original documents or copy thereof.

1. Name of conveying party(ies):

Digital Creations, Inc.

4/21/01

2. Name and address of receiving

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57

Name: Play Technologies

11-21-2001

Internal Address: _____

Street Address: 5900 Hollis Street, Suite R1

City: Emeryville

State: CA ZIP: 94608

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

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

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

3. Nature of conveyance:

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

Execution Date: May 1, 1996

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

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

A. Trademark Application No.(s)

74-651,822

B. Trademark Registration No.(s)

2,198,733

Additional numbers Yes No

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

Name: Karen A. McGee

Internal Address: _____

Street Address: Barnes & Thornburg

750 17th Street, N.W., Suite 900

City: Washington State: DC ZIP: 20006

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

2

7. Total fee (37 CFR 3.41):.....\$ \$65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

02-1010

11/27/2001 OWNED1 00000060 021010 74651822

DO NOT USE THIS SPACE

01 FC:481 40.00 CH
02 FC:482 25.00 CH

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.

Karen A. McGee

Name of Person Signing

Karen A. McGee

Signature

11/20/01

Date

Total number of pages including cover sheet, attachments, and

9

A488462

FILED
The Office of the Secretary of State
of the State of California

FEB 21 1997

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SUN

AGREEMENT OF MERGER


The Secretary of State

This Agreement of Merger is entered into between PLAY INDUSTRIES, a California corporation ("Surviving Corporation"), DIGITAL CREATIONS, INC. a California corporation and PLAY TECHNOLOGIES, a California corporation (Digital Creations and Play Technologies are hereinafter collectively referred to as "Merging Corporations"; Surviving Corporations and Merging Corporations are sometimes referred to collectively as "Constituent Corporations".)

1. Background and Purpose.

1.1. Approval of Merger. The boards of directors of the Constituent Corporations deem it advisable and in the best interest of the Constituent Corporations and in the best interests of the shareholders of the Constituent Corporations that the business and operations of the Constituent Corporations be combined through the merger of the Merging Corporations into Surviving Corporation (the "Merger").

1.2. Reorganization Agreement. The Constituent Corporations have entered into a Reorganization Agreement dated effective March 19, 1996 ("Reorganization Agreement") setting forth certain representations, warranties and agreements in connection with the Merger and the transactions associated therewith.

2. The Merger.

2.1. Shareholder Approval. This Agreement of Merger shall be submitted to the shareholders of each of the Constituent Corporations, as provided in the Reorganization Agreement. If adopted and approved by the vote of the shareholders of the Constituent Corporations, and if all of the conditions precedent to the consummation of the Merger specified in the Reorganization Agreement shall have been satisfied or waived by the party entitled to satisfaction thereof, then unless terminated as provided in the Reorganization Agreement, this Agreement of Merger, along with certificates meeting the requirements of the California General Corporation Law, shall be filed with the Secretary of State of California. At such filing, or as otherwise prescribed by law, the Merger shall become effective ("Effective Time").

2.2. Effective Time. At the Effective Time, Merging Corporations shall each be merged into Surviving Corporation and the separate corporate existence of each Merging Corporation shall cease. Surviving Corporation shall be the surviving corporation and Surviving Corporation's separate corporate existence, with all its purposes, objects, rights, obligations, privileges, powers, immunities and franchises, shall continue unaffected and unimpaired by the Merger.

2.3. Assumption of Assets and Liabilities. Surviving Corporation shall succeed to all of the rights, privileges, powers, immunities and franchises of each of Merging Corporations, all of the properties and assets of Merging Corporations and all of the debts, choses in action and other interests due or belonging to Merging Corporations and shall be subject to, and responsible for, and shall assume, all of the debts, liabilities and obligations of Merging Corporations with the effect set forth in the California General Corporation Law.

2.4. Further Authorization. If, at any time after the Effective Time, Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of Merging Corporations or otherwise to carry out this Agreement of Merger, then the officers and directors of Surviving Corporation are hereby authorized to execute and deliver, in the name and on behalf of the Constituent Corporations or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Constituent Corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Surviving Corporation or otherwise to carry out this Agreement of Merger.

3. Articles of Incorporation; Bylaws. The Articles of Incorporation and Bylaws of the Surviving Corporation in effect immediately prior to the Effective Time shall be the Articles of Incorporation and Bylaws of the Surviving Corporation after the Merger unless and until amended or repealed as provided by law, the Articles of Incorporation or the Bylaws.

4. Officers and Directors. The officers and directors of the Surviving Corporation immediately prior to the Effective Time shall be the officers and directors of the Surviving Corporation after the Merger until their successors shall have been elected and qualified or until otherwise provided by law, the Articles of Incorporation or the Bylaws.

5. Manner and Basis of Converting Shares of Merging Corporations' Capital Stock

5.1. Conversion. At the Effective Time, by virtue of the Merger and without any action on the part of the holders of any shares of Merging Corporations' common stock (except for shares, if any, which shall then or thereafter constitute "dissenting shares" within the meaning of Section 1300 of the California Corporations Code (hereinafter referred to as "Dissenting Shares")), each outstanding share of the common stock of Merging Corporations shall be converted to one (1) share of the common stock of Surviving Corporation.

5.2. Dissenting Shares. If the holders of the common stock of Merging Corporations are entitled to dissenters' rights in connection with the Merger under Section 1300

of the California General Corporation Law, any Dissenting Shares shall not be converted into Surviving Corporations common stock but shall be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to the law of the State of California.

5.3. Share Certificates. As soon as practicable after the Effective Time of the Merger, and after surrender to an agent appointed and compensated by Surviving Corporation (the "Exchange Agent") of any certificate which prior to the Effective Time of the Merger shall have represented any shares of Merging Corporations' Common Stock, Surviving Corporation shall cause to be distributed to the person in whose name such certificate shall have been issued a certificate registered in the name of such person representing the Surviving Corporation Common Stock into which any shares previously represented by the surrendered certificate shall have been converted at the Effective Time of the Merger. Until surrendered as contemplated by the preceding sentence, each certificate which immediately prior to the Effective Time of the Merger shall have represented any shares of Merging Corporations' Common Stock shall be deemed at and after the Effective Time of the Merger to represent only the shares of Surviving Corporation's Common Stock into which they shall have been converted hereunder.

5.4. Surviving Corporation Capital Stock. The outstanding shares of Surviving Corporation shall remain outstanding and are not affected by the Merger.

6. Further Action. Each Merging Corporation shall from time to time as and when requested by Surviving Corporation, execute and deliver all such documents and instruments and take all such action necessary or desirable to evidence or carry out the Merger.

7. Termination and Amendment.

7.1. Termination of Reorganization Agreement. Notwithstanding the approval of this Agreement of Merger by the shareholders of the Constituent Corporations, this Agreement of Merger shall terminate immediately in the event that the Reorganization Agreement shall be terminated as therein provided.


7.2. Amendment. This Agreement of Merger may be amended by the parties hereto at any time before or after approval hereof by the shareholders of the Constituent Corporations but, after any such approval, no amendment which by law requires the further approval of the shareholders of any of the Constituent Corporations may be made without such approval having first been obtained. This Agreement of Merger may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. Without limiting the foregoing, the parties hereto acknowledge and agree that any modification of the manner

or basis of converting Merging Corporations' Common Stock into Surviving Common Stock shall require further approval of the shareholders of the Constituent Corporations.

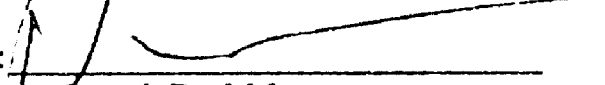
Dated: 5-1-90
0507

SURVIVING CORPORATION

Play Industries, a California corporation

By: 

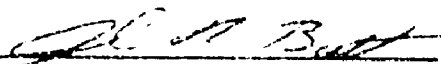
Its: Michael R. Moore
Chairman and Secretary

By: 

Its: Joseph Paul Montgomery
President

MERGING CORPORATIONS

Digital Creations, Inc., a California corporation

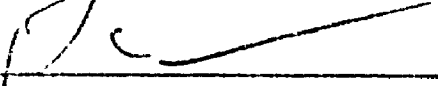
By: 

Its: John R. Botteri
President

By: 

Its: David E. Porter
Secretary

Play Technologies, a California corporation

By: 

Its: Joseph Paul Montgomery
President

By: 

Its: Daniel A. Kaye
Secretary

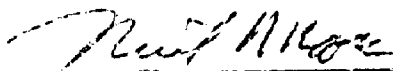
CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

Michael R. Moore and Joseph Paul Montgomery certify that:

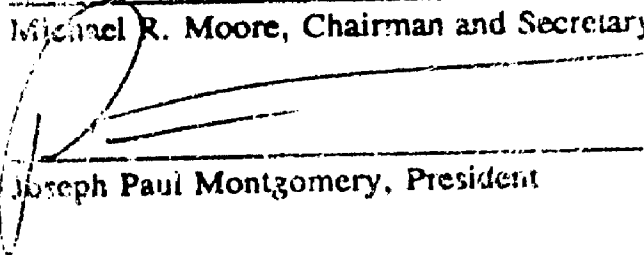
1. They are the secretary and president, respectively of PLAY INDUSTRIES, a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the board of directors and shareholders of the corporation.
3. The shareholder approval was by the holders of more than 50% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 8,000,000.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: 5-1-77



Michael R. Moore, Chairman and Secretary



Joseph Paul Montgomery, President

CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

Joseph Paul Montgomery and Daniel A. Kaye certify that:


1. They are the president and secretary, respectively of PLAY TECHNOLOGIES, a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the board of directors and shareholders of the corporation.
3. The shareholder approval was by the holders of more than 50% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 8,000,000.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: 5-1-96
a.g.f.



Joseph Paul Montgomery, President



Daniel A. Kaye, Secretary

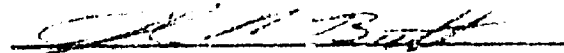
CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

John Botteri and David E. Porter certify that:

1. They are the president and secretary, respectively of DIGITAL CREATIONS, INC., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the board of directors and shareholders of the corporation.
3. The shareholder approval was by the holders of more than 50% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 7,937,240.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: 5/1/77
A.S.C.


John Botteri, President


David E. Porter, Secretary



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CA 94257-0541

TAX CLEARANCE CERTIFICATE

February 21, 1997

EXPIRATION DATE: April 15, 1997

WEINTRAUB GENSHLEA & SPROUL
ATTN: CHRISTOPHER CHEDIAK
400 CAPITOL MALL FL 11
SACRAMENTO CA 95814-4407

ISSUED TO: DIGITAL CREATIONS, INC.
Entity ID 1292990

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid, assumed, or are secured by other means.

If a final return has not been filed, one should be filed within two months and 15 days after the close of the month in which the dissolution or withdrawal takes place. If the corporation was inactive, a statement to that effect should be attached to the tax forms. All returns remain subject to audit until the expiration of the normal statutory period. Failure to file required returns may result in additional assessments.

A copy of this Tax Clearance Certificate has been sent to the Office of the the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA, 95814, or by telephone, (916) 657 5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

By H. Hermansen
Special Audit Unit
Corporation Audit Section
Telephone (916) 845-4124

COPY

RECORDED: 11/21/2001

TRADEMARK
REEL: 002399 FRAME: 0811