

Atty Docket No. **W001-T04059US**

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

**RECORDATION 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):
White Cap Industries Corp.

- Individual(s)
- General Partnership
- Corporation-State
- 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: _____

2. Name and address of receiving party(ies)

Name: White Cap Industries II, Inc.
Internal
Address: _____

Street Address: 3120 Airway Ave.
City: Costa Mesa State: CA Zip: 92626

- 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) _____

B. Trademark Registration No.(s) 1,478,065

Additional number(s) attached Yes No

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

Name: _____

Internal Address: _____

Street Address: SoCal IP Law Group
310 N Westlake Blvd Ste 120

City: Westlake Villag State: CA Zip: 91362

6. Total number of applications and registrations involved: _____

1

7. Total fee (37 CFR 3.41).....\$ 40

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501524

DO NOT USE THIS SPACE

9. Signature.

Steven C Sereboff
Name of Person Signing


Signature

3-23-2004
Date

Total number of pages including cover sheet, attachments, and document: **8**

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

OP \$40.00 1478065

00593659

ACV

0749992 OUT

FILED
In the office of the Secretary of State
of the State of California

MAR 26 1999

Bill Jones
BILL JONES, Secretary of State

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is made and entered into this 31st day of December, 1998 by and between WHITE CAP INDUSTRIES CORP., a California corporation (the "Disappearing Corporation") and WHITE CAP INDUSTRIES II, INC., a Delaware corporation (the "Surviving Corporation").

RECITALS:

- A. The Surviving Corporation has the authority to issue 200,000 shares of common stock, par value \$.01 per share, of which there are 1,000 shares issued and outstanding as of the date hereof.
- B. The Disappearing Corporation has the authority to issue 200,000 shares of common stock, without par value, of which there are 100 shares issued and outstanding as of the date hereof.
- C. The Board of Directors of each of the Surviving Corporation and the Disappearing Corporation (sometimes collectively referred to herein as the "Constituent Corporations") deem it advisable and in the best interest of each of the Constituent Corporations that the Disappearing Corporation be merged into and with the Surviving Corporation as permitted by the California General Corporation Law and the Delaware General Corporation Law, respectively.
- D. This Agreement has been approved by the Board of Directors of each of the Surviving Corporation and the Disappearing Corporation and by the shareholders of each of the Constituent Corporations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Disappearing Corporation and Surviving Corporation agree to merge pursuant to the following terms and conditions:

1. Merger.

1.1 Effect of Merger. As of the Effective Date (defined in Section 1.2), the Disappearing Corporation shall be merged into and with the Surviving Corporation (the "Merger"). The Surviving Corporation shall survive the Merger and the separate corporate existence of the Disappearing Corporation shall cease.

1.2 Effective Date. The date on which the Merger occurs and becomes effective is hereby defined to be and is hereinafter referred to as the Effective Date. The Merger shall occur and be effective on the date that this Agreement and Plan of Merger is filed with the Delaware Secretary of State.

1.3 Surviving Corporation. White Cap Industries II, Inc., as the Surviving Corporation shall continue its corporate existence under the laws of the State of Delaware.

2. Certificate of Incorporation and Bylaws.

The Certificate of Incorporation and Bylaws of the Surviving Corporation, as in effect on the Effective Date, shall be and remain (until amended or repealed as provided by law) the Certificate of Incorporation and Bylaws of the Surviving Corporation.

3. Officers and Directors.

The officers and directors of the Disappearing Corporation immediately prior to the Merger shall be and remain the officers and directors, respectively, of the Surviving Corporation on and after the Effective Date and shall serve until their successors are elected and qualified or until their prior resignation, removal or death.

4. Effect of Merger on Outstanding Shares.

4.1 Disappearing Corporation. On the Effective Date, each share of the common stock of the Disappearing Corporation issued and outstanding immediately prior to the Merger shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation. No certificates for shares of the common stock of the Surviving Corporation will be required to be issued to holders of any outstanding shares of the Disappearing Corporation upon the Merger; provided, however, that, if any share certificate which formerly represented shares of the Disappearing Corporation is presented for exchange or transfer, the Surviving Corporation will cause to be issued in respect thereof a certificate representing the number of shares of the Surviving Corporation into which the common stock of the Disappearing Corporation has been converted by virtue of the Merger. Certificates representing shares of common stock of the Disappearing Corporation shall, upon the Merger, be deemed for all purposes to represent an equal number of shares of the Surviving Corporation. After the Effective Date, whenever certificates which formerly represented shares of the

Disappearing Corporation are presented for exchange or transfer, the Surviving Corporation will cause to be issued in respect thereof certificates representing an equal number of shares of common stock of the Surviving Corporation.

4.2 Surviving Corporation. On the Effective Date, each share of the common stock of the Surviving Corporation issued and outstanding immediately prior to the Merger, shall cease to exist and shall be cancelled.

5. Transfer Provisions.

5.1 Transfer of Assets and Liabilities. On the Effective Date, the rights, privileges, powers, property and franchises and all other interests of each of the Constituent Corporations shall be transferred to, vested in and possessed by the Surviving Corporation, subject to all the liabilities, duties and restrictions of or upon each of the Constituent Corporations; and all debts due to each of the Constituent Corporations on whatever account, and all things in action or belonging to each of the Constituent Corporations shall be transferred to and vested in the Surviving Corporation. All property, rights, privileges, powers and franchises, and every other interest shall thereafter be the property of the Surviving Corporation as they were of the Constituent Corporations, and all title to real property vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger; provided, however, that the liabilities of the Constituent Corporations and the officers and directors shall not be affected, and all rights of creditors, and all liens upon any property of either of the Constituent Corporations, shall be preserved unimpaired, and any claim, action or proceeding existing, or pending by or against either of the Constituent Corporations may be prosecuted to judgment as if such Merger had not taken place except as they may be modified with the consent of such creditors, and all debts, liabilities and duties of or upon each of the Constituent Corporations shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by the Surviving Corporation.

5.2 Further Actions. Each of the parties hereto shall use its best efforts to take all such action as may be necessary or appropriate to effectuate the Merger in accordance with this Agreement. If, at any time after the Effective Date, any further action may be necessary or appropriate to vest, perfect, confirm or assure the Surviving Corporation's title to and possession of all of said property, rights, privileges, immunities, powers and franchises, or otherwise to carry out the intent and purposes of this Agreement, the officers of the Surviving Corporation are fully authorized, in the name and on behalf of each Constituent Corporation or otherwise, to take, and shall take, all such lawful and necessary action.

6. Closing. The closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Rutan & Tucker, LLP, 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626, and shall be effective as of the Effective Date.

7. **Miscellaneous Provisions.**

7.1 **Expenses.** Except as otherwise expressly provided herein, each of the Surviving Corporation and the Disappearing Corporation shall pay all of their own expenses (including attorneys' fees) incurred in connection with the negotiation of this Agreement, the performance of their respective obligations under this Agreement, and the consummation of the transactions contemplated hereby and thereby (whether consummated or not).

7.2 **Governing Law.** This Agreement and the rights and obligations hereunder of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

7.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and is intended as a complete and exclusive statement of the terms of the agreement between the parties hereto with respect thereto and supersedes all prior agreements, representations and understandings, whether written or oral.

7.4 **Headings.** The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

7.5 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original instrument, but all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed by the officers set forth below as of the day and year first above written.

"SURVIVING CORPORATION"

WHITE CAP INDUSTRIES II, INC.,
a Delaware corporation

By: 

Gregory E. Grosch, President

By: 


Dan I. Tsujioka, Secretary

"DISAPPEARING CORPORATION"

WHITE CAP INDUSTRIES CORP.,
a California corporation

By: 

Gregory E. Grosch, President

By: 

Dan I. Tsujioka, Secretary

WHITE CAP INDUSTRIES II, INC..

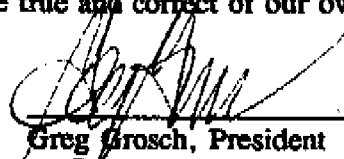
**CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER**

Greg Grosch and Dan Tsujioka certify that:


1. They are the President and the Secretary, respectively, of White Cap Industries II, Inc., a Delaware corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and shareholder of the corporation.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 1,000.

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.

Date: December 31, 1998



 Greg Grosch, President



 Dan Tsujioka, Secretary

WHITE CAP INDUSTRIES CORP..

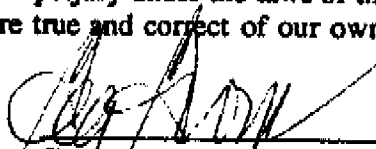
**CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER**

Greg Grosch and Dan Tsujioka certify that:


1. They are the President and the Secretary, respectively, of White Cap Industries Corp., a California corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and shareholder of the corporation.
3. The shareholder approval was by the holders of 100% of the outstanding shares of the corporation.
4. There is only one class of shares and the number of shares outstanding is 100.

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.

Date: December 31, 1998



 Greg Grosch, President



 Dan Tsujioka, Secretary