

10-30-2003



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

RE

102587838

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): ShopKo Stores, Inc. 9-22-03
Individual(s) Association
General Partnership Limited Partnership
Corporation-State Minnesota
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: ShopKo Stores, Inc.
Internal Address: Legal Department
Street Address: 700 Pilgrim Way
City: Green Bay State: WI Zip: 54304
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Wisconsin
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

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: 5/22/98

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 2,132,942
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: James L. Young
Internal Address: KINNEY & LANGE, P.A.
Street Address: THE KINNEY & LANGE BUILDING
312 South Third Street
City: Minneapolis State: MN Zip: 55415

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: 11-0982

DO NOT USE THIS SPACE

9. Signature.
10/29/2003 6TDM11 00000139 2132942 40.00 DP
James L. Young
Name of Person Signing

Signature

Sept. 16, 2003
Date

Total number of pages including cover sheet, attachments, and documents: 13

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



09-22-2003

U.S. Patent & TMOfo/TM Mail RcptDt. #73

TRADEMARK REEL: 002854 FRAME: 0439

State of Minnesota

SECRETARY OF STATE

CERTIFICATE OF MERGER

I, Joan Anderson Grove, Secretary of State of Minnesota, keeper of the Great Seal of the State and custodian of the documents pertaining to businesses governed by the laws of this State, do hereby certify that: the entities listed below have merged under the provisions of Minnesota law and have designated the surviving entity listed below. I further certify that the merger documents indicate the name change shown below and were filed on and are effective on the dates listed below. I further certify that the ability of the non-surviving participating entities to do business ceased as of the effective date of the merger.

PARTICIPATING ENTITIES:

Shopko Stores, Inc. - A Minnesota Corporation and
New ShopKo, Inc. - A Wisconsin Corporation

SURVIVING ENTITY: New ShopKo, Inc.

MERGER FILING DATE: May 21, 1998

NAME CHANGE: ShopKo Stores Inc.

NAME CHANGE FILING DATE: May 21, 1998

This certificate has been issued on May 26, 1998.



Joan Anderson Grove
Secretary of State.

TRADEMARK

ARTICLES OF MERGER
OF
SHOPKO STORES, INC.
INTO
NEW SHOPKO, INC.

These Articles of Merger relate to the merger (the "Merger") of ShopKo Stores, Inc., a Minnesota corporation, with and into New ShopKo, Inc., a Wisconsin corporation.

(A) The Agreement and Plan of Merger, dated as of March 31, 1998 (the "Plan of Merger"), is attached hereto as Exhibit A. As provided in the Plan of Merger, New ShopKo, Inc. shall continue as the surviving corporation following the effective time of the Merger, but its name shall be changed to ShopKo Stores, Inc. at the effective time of the Merger.

(B) The Plan of Merger has been approved by ShopKo Stores, Inc. pursuant to Chapter 302A of the Minnesota Statutes.

(C) The Plan of Merger has been approved by New ShopKo, Inc., and the Merger is permitted, under the laws of the State of Wisconsin, the jurisdiction under which New ShopKo, Inc. is incorporated, pursuant to the Wisconsin Business Corporation Law.

(D) New ShopKo, Inc., the surviving corporation following the Merger (the name of which shall become ShopKo Stores, Inc. at the effective time of the Merger pursuant to the Plan of Merger), hereby agrees:

(1) that it may be served with process in the State of Minnesota in a proceeding for the enforcement of any obligation of either constituent corporation and in any proceeding for the enforcement of the rights of a dissenting shareholder of ShopKo Stores, Inc. against the surviving corporation ~~in the Merger;~~

(2) that the Secretary of State of Minnesota shall be and hereby is irrevocably appointed as its agent to accept service of process in any such proceeding, and the address to which process may be forwarded is 700 Pilgrim Way, P.O. Box 19060, Green Bay, WI 54307, Attn: Vice President Legal Affairs and Secretary; and

(3) that it will promptly pay to the dissenting shareholders of ShopKo Stores, Inc. the amount, if any, to which they are entitled under Section 302A.473 of the Minnesota Statutes.

DATED: May 22, 1998

SHOPKO STORES, INC.

By: Dale P. Kramer

Name: Dale P. Kramer

Title: Chairman, President and
Chief Executive Officer

NEW SHOPKO, INC.

By: Dale P. Kramer

Name: Dale P. Kramer

Title: Chairman, President and
Chief Executive Officer

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of March 31, 1998, by and between ShopKo Stores, Inc., a Minnesota corporation ("ShopKo"), and New ShopKo, Inc., a Wisconsin corporation and a wholly-owned subsidiary of ShopKo (the "Surviving Corporation"). ShopKo and the Surviving Corporation are sometimes hereinafter referred to as the "Constituent Corporations."

WHEREAS, ShopKo, as of the date hereof, has authority to issue 95,000,000 shares of capital stock, of which 75,000,000 are designated as Common Stock, \$.01 par value (the "ShopKo Common Stock"), and 20,000,000 shares are designated as Preferred Stock, \$.01 par value (the "ShopKo Preferred") and, as of the date hereof, 25,946,080 shares of ShopKo Common Stock are issued and outstanding, and no shares of ShopKo Preferred are issued and outstanding; and

WHEREAS, the Surviving Corporation, on or before the Effective Time of the Merger (as defined below), will have authority to issue 95,000,000 shares of capital stock, of which 75,000,000 will be designated as Common Stock, \$.01 par value (the "Surviving Corporation Common Stock"), and 20,000,000 shares will be designated as Preferred Stock, \$.01 par value (the "Surviving Corporation Preferred"); and

WHEREAS, as of the date hereof, 100 shares of Surviving Corporation Common Stock are issued and outstanding, all of which are held by ShopKo, and no shares of Surviving Corporation Preferred are issued and outstanding; and

WHEREAS, ShopKo and the Surviving Corporation desire that ShopKo merge with and into the Surviving Corporation and that the Surviving Corporation shall continue as the surviving corporation in such merger, upon the terms and subject to the conditions set forth herein and in accordance with the laws of the State of Wisconsin and the laws of the State of Minnesota; and

WHEREAS, the respective Boards of Directors of ShopKo and the Surviving Corporation have approved this Agreement and directed that it be submitted to a vote of their shareholders.

Now, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties hereto agree to merge as follows:

ARTICLE 1

MERGER

1.1. *Merger.* Subject to the terms and conditions of this Agreement, ShopKo shall be merged with and into the Surviving Corporation (the "Merger") in accordance with the Wisconsin Business Corporation Law ("WBCL") and Sections 302A.611, 302A.613, 302A.615 and 302A.651 of the Minnesota Business Corporation Act (the "MBCA"), the separate existence of ShopKo shall cease, and the Surviving Corporation shall be the surviving corporation and continue its corporate existence under the laws of the State of Wisconsin.

1.2. *Effect of the Merger.* At the Effective Time of the Merger (as hereinafter defined), the Surviving Corporation shall possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of ShopKo and the Surviving Corporation; all property, real, personal and mixed, and all debts due on any account, including subscriptions for shares, and all other choses in action, and every other interest of or belonging to or due to each of ShopKo and the Surviving Corporation shall vest in the Surviving Corporation without any further act or deed; the title to any real estate or any interest therein vested in ShopKo shall not revert nor in anyway become

impaired by reason of the Merger; the Surviving Corporation shall be responsible and liable for all the liabilities and obligations of each of ShopKo and the Surviving Corporation; a claim of or against or a pending proceeding by or against ShopKo or the Surviving Corporation may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in the place of ShopKo; and neither the rights of creditors nor any liens upon the property of ShopKo or the Surviving Corporation shall be impaired by the Merger.

1.3. *Effective Time of the Merger.* The Merger shall become effective as of the date and time (the "Effective Time of the Merger") the following actions are completed: (a) appropriate duly executed articles of merger are filed in accordance with Section 180.1105 of the WBCL; and (b) appropriate duly executed articles of merger are filed in accordance with Sections 302A.615 and 302A.641 of the MBCA.

ARTICLE 2

NAME, ARTICLES OF INCORPORATION, BYLAWS, DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION

2.1. *Name of Surviving Corporation.* At the Effective Time of the Merger, Article I of the Surviving Corporation's Articles of Incorporation shall be amended to read as follows:

The name of the Corporation is ShopKo Stores, Inc.

2.2. *Articles of Incorporation.* The Articles of Incorporation of the Surviving Corporation, as amended pursuant to Section 2.1 hereof, shall be the Articles of Incorporation of the Surviving Corporation from and after the Effective Time of the Merger by virtue of the Merger and without any further action by the Constituent Corporations, until amended thereafter as provided therein or by law.

2.3. *By-laws.* The By-laws of the Surviving Corporation shall be the By-laws of the Surviving Corporation from and after the Effective Time of the Merger by virtue of the Merger and without any further action by the Constituent Corporations, until amended thereafter as provided therein, in the Surviving Corporation's Articles of Incorporation, or By-laws.

2.4. *Directors and Officers.* The directors and officers of ShopKo immediately prior to the Effective Time of the Merger shall be the directors and officers, respectively, of the Surviving Corporation from and after the Effective Time of the Merger and shall hold office in accordance with the Articles of Incorporation and By-laws of the Surviving Corporation until the expiration of the terms to which they were elected to serve as directors and officers of ShopKo and until their successors are duly elected and qualified.

ARTICLE 3

CONVERSION OF SECURITIES

3.1. *Conversion.* At the Effective Time of the Merger, each of the following transactions shall be deemed to occur simultaneously and this Section 3.1 shall constitute the manner and basis of converting the capital stock of the Constituent Corporations into capital stock of the Surviving Corporation and of consummating the other transactions referred to in this Section 3.1:

(a) Each share of ShopKo Common Stock (other than shares as to which the holder thereof has properly exercised dissenters' rights under the MBCA) issued and outstanding immediately prior to the Effective Time of 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 validly issued, fully paid and non-assessable share of Surviving Corporation Common Stock (except to the extent provided in Section 180.0622(2)(b) of the WBCL).

(b) Each stock option to purchase shares of ShopKo Common Stock granted by ShopKo or any of its subsidiaries under any of the stock option plans of ShopKo and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the terms of the stock option plans, the actions of the Boards of Directors of the Constituent Corporations and the Merger and without any action on the part of the holder thereof, be converted into and become a stock option to purchase, upon the same terms and conditions, the number of shares of Surviving Corporation Common Stock which is equal to the number of shares of ShopKo Common Stock which the optionee would have received had he or she exercised his or her option or right in full immediately prior to the Effective Time of the Merger (whether or not such option or right was then exercisable). The exercise price per share of the Surviving Corporation Common Stock under each of such options or warrants shall be equal to the exercise price per share of ShopKo Common Stock thereunder immediately prior to the Effective Time of the Merger. A number of shares of Surviving Corporation Common Stock shall be reserved for issuance upon the exercise of options equal to the number of shares of ShopKo Common Stock so reserved immediately prior to the Effective Time of the Merger.

(c) Each Right issued by ShopKo under the Rights Agreement with Norwest Bank Minnesota, as agent, dated as of July 3, 1992 (the "Rights Agreement") and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the Rights Agreement, the actions of the Boards of Directors of the Constituent Corporations and the Merger and without any action on the part of the holder thereof, be converted into and become a right to purchase, upon the same terms and conditions, an identical number of shares of the Surviving Corporation's Series B Junior Participating Preferred Stock (the "Series B Preferred Stock") (subject to future adjustments as may be provided in the Rights Agreement). A number of shares of Series B Preferred Stock of the Surviving Corporation shall be reserved for issuance upon the exercise of rights equal to the number of shares of Series B Junior Participating Preferred Stock of ShopKo so reserved immediately prior to the Effective Time of the Merger.

(d) Each share of Surviving Corporation Common Stock issued and outstanding immediately prior to the Effective Time of the Merger (each of which is presently held by ShopKo), without any action on the part of the holder thereof shall be canceled and cease to exist, and no shares of the Surviving Corporation or other securities of the Surviving Corporation shall be issued or other consideration paid in respect thereof.

3.2 *Conversion of Certificates.* (a) Each stock certificate (other than to the extent a stock certificate represented shares as to which the holder thereof has properly exercised dissenters' rights under the MBCA) which, immediately prior to the Effective Time of the Merger, represented issued and outstanding shares of ShopKo Common Stock shall not represent shares of ShopKo Common Stock (which shares shall cease to exist) after the Effective Time of the Merger but instead shall be and become at the Effective Time of the Merger a certificate representing an identical number of shares of Surviving Corporation Common Stock, automatically by virtue of the Merger and without any action on the part of the holder thereof. Upon the surrender or transfer following the Effective Time of the Merger of a stock certificate that represented ShopKo Common Stock immediately prior to the Effective Time of the Merger, but subject to Section 3.2(b) hereof, a stock certificate representing the same number of shares of Surviving Corporation Common Stock shall be reissued to the holder or transferee, as the case may be, thereof, provided that no holder of a stock certificate that represented ShopKo Common Stock immediately prior to the Effective Time of the Merger shall be required to surrender such stock certificate in connection with the Merger and such stock certificate shall represent the same number of shares of Surviving Corporation Common Stock until so surrendered.

(b) If after the Effective Time of the Merger any certificate for shares of Surviving Corporation Common Stock is to be issued in a name other than that in which the certificate which immediately prior to the Effective Time of the Merger represented shares of ShopKo Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and the person requesting such exchange shall pay any transfer and other taxes required by reason of the issuance of certificates for such shares of the Surviving Corporation capital stock in a name other than that of the registered holder of the certificate surrendered, or shall establish to the satisfaction of the Surviving Corporation or its agent that such tax has been paid or is not applicable. Notwithstanding the foregoing, no party hereto shall be liable to a holder of shares of ShopKo capital stock for any shares of Surviving Corporation capital stock or dividends or distributions thereon delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

3.3. *Dissenting Shares.* Notwithstanding anything in this Agreement to the contrary, shares of ShopKo Common Stock that are outstanding immediately prior to the Effective Time of the Merger and are held or beneficially owned by shareholders or eligible beneficial owners who, prior to the vote of the shareholders of ShopKo on the approval of this Agreement, shall have filed with ShopKo a written notice of intent to demand the fair value of their shares of ShopKo Common Stock in the manner provided in Section 302A.473 of the MBCA ("Dissenting Shares") and who shall not have voted such Dissenting Shares in favor of approval of this Agreement or otherwise withdrawn or lost their right to payment for their Dissenting Shares under Section 302A.473 of the MBCA will not be converted into the right to receive shares of Surviving Corporation Common Stock, but the holders or eligible beneficial owners thereof will be entitled to payment of the fair value of such shares of ShopKo Common Stock in accordance with the provisions of such Section 302A.473; provided, however that if any holder or beneficial owner of Dissenting Shares shall fail to establish or perfect his, her or its entitlement to dissenters' rights as provided in such Section 302A.473 or shall fail strictly to comply with any provision of Section 302A.473 of the MBCA or otherwise withdraws or loses such dissenters' rights, the shares of ShopKo Common Stock held by such holder or owned by such beneficial owner shall be automatically converted into shares of Surviving Corporation Common Stock in accordance with Section 3.1(a).

ARTICLE 4

EMPLOYEE BENEFIT AND COMPENSATION PLANS

At the Effective Time of the Merger, any employee benefit plan or incentive compensation plan, including any stock option plan, to which ShopKo is then a party shall be assumed by, and continue to be the plan of, the Surviving Corporation. To the extent any employee benefit plan or incentive compensation plan of ShopKo or any of its subsidiaries provides for the issuance or purchase of, or otherwise relates to, ShopKo capital stock, from and after the Effective Time of the Merger, such plan shall be deemed to provide for the issuance or purchase of, or otherwise to relate to, the Surviving Corporation capital stock.

ARTICLE 5

CONDITIONS

Consummation of the Merger is subject to the satisfaction at or prior to the Effective Time of the Merger of the following conditions:

5.1. *ShopKo Shareholder Approval.* This Agreement and the Merger shall have been adopted and approved by the shareholders of ShopKo in accordance with the Articles of Incorporation of ShopKo and the applicable provisions of the MBCA.

5.2. *Surviving Corporation Shareholder Approval.* This Agreement and the Merger shall have been adopted and approved by ShopKo as the holder of all the outstanding shares of Surviving Corporation capital stock prior to the Effective Time of the Merger.

5.3. *Consents, etc.* Any and all consents, permits, authorizations, approvals and orders deemed in the sole discretion of ShopKo to be material to the consummation of the Merger shall have been obtained.

ARTICLE 6 AGREEMENTS

6.1. *No Preferred Stock.* Prior to the first to occur of the Effective Time of the Merger or the termination of this Agreement, the Surviving Corporation shall not issue Surviving Corporation Preferred.

6.2. *Taking of Necessary Action; Further Action.* Subject to Section 7.1, each of ShopKo and the Surviving Company will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger as promptly as possible. If, at any time after the Effective Time of the Merger, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers, and franchises of the Constituent Corporations, the officers and directors of the Constituent Corporations are fully authorized in the name of their corporation or otherwise to take, and will take, all such lawful and necessary action.

6.3. *Other Agreements.* The Surviving Corporation, from and after the Effective Time of the Merger, agrees that it may be served with process in the State of Minnesota in any proceeding for the enforcement of any obligation of either Constituent Corporation and in any proceeding for the enforcement of the rights of a dissenting shareholder of ShopKo against the Surviving Corporation. The Surviving Corporation irrevocably appoints the Secretary of State of the State of Minnesota as its agent to accept service of process in any such proceeding. The Surviving Corporation will promptly pay to the dissenting shareholders of ShopKo the amounts, if any, to which they will be entitled under Section 302A.473 of the MBCA with respect to the rights of dissenting shareholders, provided that such dissenting shareholders act in strict compliance with the provisions of the MBCA governing rights of dissenting shareholders in the case of a merger. The Surviving Corporation shall comply with all of its obligations under Section 302A.651, Subd. 4, of the MBCA.

ARTICLE 7 GENERAL

7.1. *Termination and Abandonment.* This Agreement may be terminated and the Merger and other transactions herein provided for abandoned at any time prior to the Effective Time of the Merger, whether before or after adoption and approval of this Agreement by the shareholders of ShopKo, by action of the Board of Directors of ShopKo, if the Board of Directors of ShopKo determines that the consummation of the transactions provided for herein would not, for any reason, be in the best interests of ShopKo and its shareholders. In the event of termination of this Agreement, this Agreement shall become void and of no effect and there shall be no liability on the part of either ShopKo or the Surviving Corporation or their respective Boards of Directors or shareholders, except that ShopKo shall pay all expenses incurred in connection with the Merger or in respect of this Agreement or relating thereto.

7.2. *Amendment.* This Agreement may be amended at any time prior to the Effective Time of the Merger with the mutual consent of the Boards of Directors of ShopKo and the Surviving Corporation;

provided, however, that after it has been adopted by the shareholders of ShopKo, this Agreement may not be amended in any manner which, in the judgment of the Board of Directors of ShopKo, would have a material adverse effect on the rights of such shareholders or in any manner not permitted under applicable law; provided further, however, that any amendment of this Agreement after its adoption by the sole shareholder of the Surviving Corporation shall require the prior approval of such shareholder.

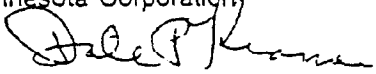
7.3. *Headings.* The headings set forth herein are inserted for convenience or reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

7.4. *Counterparts.* This Agreement may be executed in two counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

7.5. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to the principles of conflicts of law thereof, except to the extent the laws of the State of Minnesota are applicable to ShopKo in respect of the Merger, in which case the laws of the State of Minnesota shall apply without giving effect to the principles of conflicts of law thereof.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf and attested by its officers hereunto duly authorized, all as of the day and year first above written.


SHOPKO STORES, INC.
A Minnesota Corporation,

By: 
Dale P. Kramer,
Chairman, President and
Chief Executive Officer


Attest:


Richard D. Schepp,
Secretary

NEW SHOPKO, INC.
A Wisconsin Corporation,

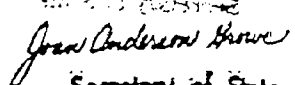
By: 
Dale P. Kramer,
Chairman, President and
Chief Executive Officer

Attest:


Richard D. Schepp,
Secretary

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 22 1998


Joan Anderson Howe
Secretary of State

A-6

TRADEMARK
REEL: 002854 FRAME: 0448

Contact Information

Please address all correspondence to: Susan A. Buckna
Shopko Stores, Inc.
700 Pilgrim Way
Green Bay, WI 54304

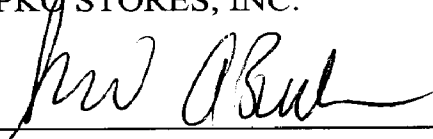
Telephone: 920-429-7428
Facsimile: 920-429-7401


Signature

The undersigned, being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that she is properly authorized to execute this document on behalf of the Owner; and all statements made of her own knowledge are true and that all statements made on information and belief are believed to be true.

SHOPKO STORES, INC.

Dated: 9/8/03

By: 
Susan A. Buckna
Senior Corporate Counsel

I CERTIFY THAT THIS PAPER IS
BEING SENT BY U.S. MAIL, FIRST
CLASS, TO THE COMMISSIONER OF
PATENTS AND TRADEMARKS,
WASHINGTON, D.C. 20331, THIS
16th DAY OF September 2003

ATTORNEY

State of Minnesota

SECRETARY OF STATE

CERTIFICATE OF MERGER

I, Joan Anderson Growe, Secretary of State of Minnesota, keeper of the Great Seal of the State and custodian of the documents pertaining to businesses governed by the laws of this State, do hereby certify that: the entities listed below have merged under the provisions of Minnesota law and have designated the surviving entity listed below. I further certify that the merger documents indicate the name change shown below and were filed on and are effective on the dates listed below. I further certify that the ability of the non-surviving participating entities to do business ceased as of the effective date of the merger.

PARTICIPATING ENTITIES:

Shopko Stores, Inc. - A Minnesota Corporation and
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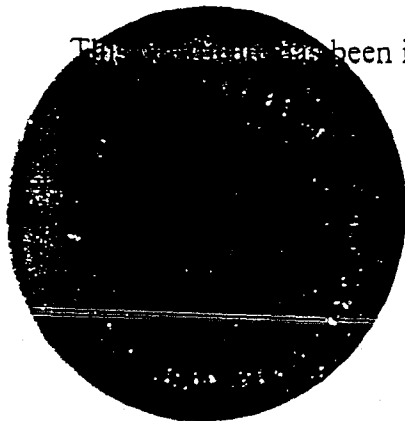
SURVIVING ENTITY: New ShopKo, Inc.

MERGER FILING DATE: May 21, 1998

NAME CHANGE: ShopKo Stores Inc.

NAME CHANGE FILING DATE: May 21, 1998

This certificate has been issued on May 26, 1998.



Joan Anderson Growe
Secretary of State.

TRADEMARK

REEL: 002854 FRAME: 0450

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(B) The Plan of Merger has been approved by ShopKo Stores, Inc. pursuant to Chapter 302A of the Minnesota Statutes.

(C) The Plan of Merger has been approved by New ShopKo, Inc., and the Merger is permitted, under the laws of the State of Wisconsin, the jurisdiction under which New ShopKo, Inc. is incorporated, pursuant to the Wisconsin Business Corporation Law.

(D) New ShopKo, Inc., the surviving corporation following the Merger (the name of which shall become ShopKo Stores, Inc. at the effective time of the Merger pursuant to the Plan of Merger), hereby agrees:

(1) that it may be served with process in the State of Minnesota in a proceeding for the enforcement of any obligation of either constituent corporation and in any proceeding for the enforcement of the rights of a dissenting shareholder of ShopKo Stores, Inc. against the surviving corporation in the Merger;

(2) that the Secretary of State of Minnesota shall be and hereby is irrevocably appointed as its agent to accept service of process in any such proceeding, and the address to which process may be forwarded is 700 Pilgrim Way, P.O. Box 19060, Green Bay, WI 54307, Attn: Vice President Legal Affairs and Secretary; and

(3) that it will promptly pay to the dissenting shareholders of ShopKo Stores, Inc. the amount, if any, to which they are entitled under Section 302A.473 of the Minnesota Statutes.

DATED: May 22, 1998

SHOPKO STORES, INC.

By: Dale P. Kramer

Name: Dale P. Kramer

Title: Chairman, President and
Chief Executive Officer

NEW SHOPKO, INC.

By: Dale P. Kramer

Name: Dale P. Kramer

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WHEREAS, as of the date hereof, 100 shares of Surviving Corporation Common Stock are issued and outstanding, all of which are held by ShopKo, and no shares of Surviving Corporation Preferred are issued and outstanding; and

WHEREAS, ShopKo and the Surviving Corporation desire that ShopKo merge with and into the Surviving Corporation and that the Surviving Corporation shall continue as the surviving corporation in such merger, upon the terms and subject to the conditions set forth herein and in accordance with the laws of the State of Wisconsin and the laws of the State of Minnesota; and

WHEREAS, the respective Boards of Directors of ShopKo and the Surviving Corporation have approved this Agreement and directed that it be submitted to a vote of their shareholders.

Now, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties hereto agree to merge as follows:

ARTICLE 1
MERGER

1.1. *Merger.* Subject to the terms and conditions of this Agreement, ShopKo shall be merged with and into the Surviving Corporation (the "Merger") in accordance with the Wisconsin Business Corporation Law ("WBCL") and Sections 302A.611, 302A.613, 302A.615 and 302A.651 of the Minnesota Business Corporation Act (the "MBCA"), the separate existence of ShopKo shall cease, and the Surviving Corporation shall be the surviving corporation and continue its corporate existence under the laws of the State of Wisconsin.

1.2. *Effect of the Merger.* At the Effective Time of the Merger (as hereinafter defined), the Surviving Corporation shall possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of ShopKo and the Surviving Corporation; all property, real, personal and mixed, and all debts due on any account, including subscriptions for shares, and all other choses in action, and every other interest of or belonging to or due to each of ShopKo and the Surviving Corporation shall vest in the Surviving Corporation without any further act or deed; the title to any real estate or any interest therein vested in ShopKo shall not revert nor in anyway become

impaired by reason of the Merger; the Surviving Corporation shall be responsible and liable for all the liabilities and obligations of each of ShopKo and the Surviving Corporation; a claim of or against or a pending proceeding by or against ShopKo or the Surviving Corporation may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in the place of ShopKo; and neither the rights of creditors nor any liens upon the property of ShopKo or the Surviving Corporation shall be impaired by the Merger.

1.3. *Effective Time of the Merger.* The Merger shall become effective as of the date and time (the "Effective Time of the Merger") the following actions are completed: (a) appropriate duly executed articles of merger are filed in accordance with Section 180.1105 of the WBCL; and (b) appropriate duly executed articles of merger are filed in accordance with Sections 302A.615 and 302A.641 of the MBCA.

ARTICLE 2

NAME, ARTICLES OF INCORPORATION, BYLAWS, DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION

2.1. *Name of Surviving Corporation.* At the Effective Time of the Merger, Article I of the Surviving Corporation's Articles of Incorporation shall be amended to read as follows:

The name of the Corporation is ShopKo Stores, Inc.

2.2. *Articles of Incorporation.* The Articles of Incorporation of the Surviving Corporation, as amended pursuant to Section 2.1 hereof, shall be the Articles of Incorporation of the Surviving Corporation from and after the Effective Time of the Merger by virtue of the Merger and without any further action by the Constituent Corporations, until amended thereafter as provided therein or by law.

2.3. *By-laws.* The By-laws of the Surviving Corporation shall be the By-laws of the Surviving Corporation from and after the Effective Time of the Merger by virtue of the Merger and without any further action by the Constituent Corporations, until amended thereafter as provided therein, in the Surviving Corporation's Articles of Incorporation, or By-laws.

2.4. *Directors and Officers.* The directors and officers of ShopKo immediately prior to the Effective Time of the Merger shall be the directors and officers, respectively, of the Surviving Corporation from and after the Effective Time of the Merger and shall hold office in accordance with the Articles of Incorporation and By-laws of the Surviving Corporation until the expiration of the terms to which they were elected to serve as directors and officers of ShopKo and until their successors are duly elected and qualified.

ARTICLE 3

CONVERSION OF SECURITIES

3.1. *Conversion.* At the Effective Time of the Merger, each of the following transactions shall be deemed to occur simultaneously and this Section 3.1 shall constitute the manner and basis of converting the capital stock of the Constituent Corporations into capital stock of the Surviving Corporation and of consummating the other transactions referred to in this Section 3.1:

(a) Each share of ShopKo Common Stock (other than shares as to which the holder thereof has properly exercised dissenters' rights under the MBCA) issued and outstanding immediately prior to the Effective Time of 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 validly issued, fully paid and non-assessable share of Surviving Corporation Common Stock (except to the extent provided in Section 180.0622(2)(b) of the WBCL).

(b) Each stock option to purchase shares of ShopKo Common Stock granted by ShopKo or any of its subsidiaries under any of the stock option plans of ShopKo and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the terms of the stock option plans, the actions of the Boards of Directors of the Constituent Corporations and the Merger and without any action on the part of the holder thereof, be converted into and become a stock option to purchase, upon the same terms and conditions, the number of shares of Surviving Corporation Common Stock which is equal to the number of shares of ShopKo Common Stock which the optionee would have received had he or she exercised his or her option or right in full immediately prior to the Effective Time of the Merger (whether or not such option or right was then exercisable). The exercise price per share of the Surviving Corporation Common Stock under each of such options or warrants shall be equal to the exercise price per share of ShopKo Common Stock thereunder immediately prior to the Effective Time of the Merger. A number of shares of Surviving Corporation Common Stock shall be reserved for issuance upon the exercise of options equal to the number of shares of ShopKo Common Stock so reserved immediately prior to the Effective Time of the Merger.

(c) Each Right issued by ShopKo under the Rights Agreement with Norwest Bank Minnesota, as agent, dated as of July 3, 1992 (the "Rights Agreement") and outstanding immediately prior to the Effective Time of the Merger shall, by virtue of the Rights Agreement, the actions of the Boards of Directors of the Constituent Corporations and the Merger and without any action on the part of the holder thereof, be converted into and become a right to purchase, upon the same terms and conditions, an identical number of shares of the Surviving Corporation's Series B Junior Participating Preferred Stock (the "Series B Preferred Stock") (subject to future adjustments as may be provided in the Rights Agreement). A number of shares of Series B Preferred Stock of the Surviving Corporation shall be reserved for issuance upon the exercise of rights equal to the number of shares of Series B Junior Participating Preferred Stock of ShopKo so reserved immediately prior to the Effective Time of the Merger.

(d) Each share of Surviving Corporation Common Stock issued and outstanding immediately prior to the Effective Time of the Merger (each of which is presently held by ShopKo), without any action on the part of the holder thereof shall be canceled and cease to exist, and no shares of the Surviving Corporation or other securities of the Surviving Corporation shall be issued or other consideration paid in respect thereof.

3.2 *Conversion of Certificates.* (a) Each stock certificate (other than to the extent a stock certificate represented shares as to which the holder thereof has properly exercised dissenters' rights under the MBCA) which, immediately prior to the Effective Time of the Merger, represented issued and outstanding shares of ShopKo Common Stock shall not represent shares of ShopKo Common Stock (which shares shall cease to exist) after the Effective Time of the Merger but instead shall be and become at the Effective Time of the Merger a certificate representing an identical number of shares of Surviving Corporation Common Stock, automatically by virtue of the Merger and without any action on the part of the holder thereof. Upon the surrender or transfer following the Effective Time of the Merger of a stock certificate that represented ShopKo Common Stock immediately prior to the Effective Time of the Merger, but subject to Section 3.2(b) hereof, a stock certificate representing the same number of shares of Surviving Corporation Common Stock shall be reissued to the holder or transferee, as the case may be, thereof, provided that no holder of a stock certificate that represented ShopKo Common Stock immediately prior to the Effective Time of the Merger shall be required to surrender such stock certificate in connection with the Merger and such stock certificate shall represent the same number of shares of Surviving Corporation Common Stock until so surrendered.

(b) If after the Effective Time of the Merger any certificate for shares of Surviving Corporation Common Stock is to be issued in a name other than that in which the certificate which immediately prior to the Effective Time of the Merger represented shares of ShopKo Common Stock surrendered in exchange therefor is registered, it shall be a condition of such exchange that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and the person requesting such exchange shall pay any transfer and other taxes required by reason of the issuance of certificates for such shares of the Surviving Corporation capital stock in a name other than that of the registered holder of the certificate surrendered, or shall establish to the satisfaction of the Surviving Corporation or its agent that such tax has been paid or is not applicable. Notwithstanding the foregoing, no party hereto shall be liable to a holder of shares of ShopKo capital stock for any shares of Surviving Corporation capital stock or dividends or distributions thereon delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

3.3. *Dissenting Shares.* Notwithstanding anything in this Agreement to the contrary, shares of ShopKo Common Stock that are outstanding immediately prior to the Effective Time of the Merger and are held or beneficially owned by shareholders or eligible beneficial owners who, prior to the vote of the shareholders of ShopKo on the approval of this Agreement, shall have filed with ShopKo a written notice of intent to demand the fair value of their shares of ShopKo Common Stock in the manner provided in Section 302A.473 of the MBCA ("Dissenting Shares") and who shall not have voted such Dissenting Shares in favor of approval of this Agreement or otherwise withdrawn or lost their right to payment for their Dissenting Shares under Section 302A.473 of the MBCA will not be converted into the right to receive shares of Surviving Corporation Common Stock, but the holders or eligible beneficial owners thereof will be entitled to payment of the fair value of such shares of ShopKo Common Stock in accordance with the provisions of such Section 302A.473; provided, however that if any holder or beneficial owner of Dissenting Shares shall fail to establish or perfect his, her or its entitlement to dissenters' rights as provided in such Section 302A.473 or shall fail strictly to comply with any provision of Section 302A.473 of the MBCA or otherwise withdraws or loses such dissenters' rights, the shares of ShopKo Common Stock held by such holder or owned by such beneficial owner shall be automatically converted into shares of Surviving Corporation Common Stock in accordance with Section 3.1(a).

ARTICLE 4

EMPLOYEE BENEFIT AND COMPENSATION PLANS

At the Effective Time of the Merger, any employee benefit plan or incentive compensation plan, including any stock option plan, to which ShopKo is then a party shall be assumed by, and continue to be the plan of, the Surviving Corporation. To the extent any employee benefit plan or incentive compensation plan of ShopKo or any of its subsidiaries provides for the issuance or purchase of, or otherwise relates to, ShopKo capital stock, from and after the Effective Time of the Merger, such plan shall be deemed to provide for the issuance or purchase of, or otherwise to relate to, the Surviving Corporation capital stock.

ARTICLE 5

CONDITIONS

Consummation of the Merger is subject to the satisfaction at or prior to the Effective Time of the Merger of the following conditions:

5.1. *ShopKo Shareholder Approval.* This Agreement and the Merger shall have been adopted and approved by the shareholders of ShopKo in accordance with the Articles of Incorporation of ShopKo and the applicable provisions of the MBCA.

5.2. *Surviving Corporation Shareholder Approval.* This Agreement and the Merger shall have been adopted and approved by ShopKo as the holder of all the outstanding shares of Surviving Corporation capital stock prior to the Effective Time of the Merger.

5.3. *Consents, etc.* Any and all consents, permits, authorizations, approvals and orders deemed in the sole discretion of ShopKo to be material to the consummation of the Merger shall have been obtained.

ARTICLE 6 AGREEMENTS

6.1. *No Preferred Stock.* Prior to the first to occur of the Effective Time of the Merger or the termination of this Agreement, the Surviving Corporation shall not issue Surviving Corporation Preferred.

6.2. *Taking of Necessary Action; Further Action.* Subject to Section 7.1, each of ShopKo and the Surviving Company will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger as promptly as possible. If, at any time after the Effective Time of the Merger, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers, and franchises of the Constituent Corporations, the officers and directors of the Constituent Corporations are fully authorized in the name of their corporation or otherwise to take, and will take, all such lawful and necessary action.

6.3. *Other Agreements.* The Surviving Corporation, from and after the Effective Time of the Merger, agrees that it may be served with process in the State of Minnesota in any proceeding for the enforcement of any obligation of either Constituent Corporation and in any proceeding for the enforcement of the rights of a dissenting shareholder of ShopKo against the Surviving Corporation. The Surviving Corporation irrevocably appoints the Secretary of State of the State of Minnesota as its agent to accept service of process in any such proceeding. The Surviving Corporation will promptly pay to the dissenting shareholders of ShopKo the amounts, if any, to which they will be entitled under Section 302A.473 of the MBCA with respect to the rights of dissenting shareholders, provided that such dissenting shareholders act in strict compliance with the provisions of the MBCA governing rights of dissenting shareholders in the case of a merger. The Surviving Corporation shall comply with all of its obligations under Section 302A.651, Subd. 4, of the MBCA.

ARTICLE 7 GENERAL

7.1. *Termination and Abandonment.* This Agreement may be terminated and the Merger and other transactions herein provided for abandoned at any time prior to the Effective Time of the Merger, whether before or after adoption and approval of this Agreement by the shareholders of ShopKo, by action of the Board of Directors of ShopKo, if the Board of Directors of ShopKo determines that the consummation of the transactions provided for herein would not, for any reason, be in the best interests of ShopKo and its shareholders. In the event of termination of this Agreement, this Agreement shall become void and of no effect and there shall be no liability on the part of either ShopKo or the Surviving Corporation or their respective Boards of Directors or shareholders, except that ShopKo shall pay all expenses incurred in connection with the Merger or in respect of this Agreement or relating thereto.

7.2. *Amendment.* This Agreement may be amended at any time prior to the Effective Time of the Merger with the mutual consent of the Boards of Directors of ShopKo and the Surviving Corporation;

provided, however, that after it has been adopted by the shareholders of ShopKo, this Agreement may not be amended in any manner which, in the judgment of the Board of Directors of ShopKo, would have a material adverse effect on the rights of such shareholders or in any manner not permitted under applicable law; provided further, however, that any amendment of this Agreement after its adoption by the sole shareholder of the Surviving Corporation shall require the prior approval of such shareholder.


7.3. *Headings.* The headings set forth herein are inserted for convenience or reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

7.4. *Counterparts.* This Agreement may be executed in two counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

7.5. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to the principles of conflicts of law thereof, except to the extent the laws of the State of Minnesota are applicable to ShopKo in respect of the Merger, in which case the laws of the State of Minnesota shall apply without giving effect to the principles of conflicts of law thereof.


IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf and attested by its officers hereunto duly authorized, all as of the day and year first above written.

SHOPKO STORES, INC.
A Minnesota Corporation,

By: 
Dale P. Kramer,
Chairman, President and
Chief Executive Officer

Attest: 
Richard D. Schepp,
Secretary

NEW SHOPKO, INC.
A Wisconsin Corporation,

By: 
Dale P. Kramer,
Chairman, President and
Chief Executive Officer

Attest: 
Richard D. Schepp,
Secretary

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 22 1998


Secretary of State

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