

2/22/05

FORM PTO-159+ (modified)
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)
Copyright 1994-97 LegalStar
#M05/REV03

2/22/05

03-10-2005



Docket No.:

N0499-0001

Tab settings

To the Honorable Commissioner of Patents 102956261 attached original documents or copy thereof.

1. Name of conveying party(ies):

Wiman Beverage Company, Inc.

- Individual(s)
- General Partnership
- Corporation-State California
- Other

- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: June 14, 2001

2. Name and address of receiving party(ies):

Name: California Day-Fresh Foods, Inc.

Internal Address: _____

Street Address: 935 West 8th Street

City: Azusa State: CA ZIP: 91702

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

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)

B. Trademark Registration No.(s)

2,281,889
2,186,924
2,243,390

Additional numbers Yes No

OPR/FINANCE
MAY 7 4 11

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

Name: Karin E. Peterka

Internal Address: Buchalter, Nemer, Fields & Younger

Street Address: 601 South Figueroa Street, Suite 2400

City: Los Angeles State: CA ZIP: 90017

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

3

7. Total fee (37 CFR 3.41):.....\$ 90.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DA 500977 - Charge any additional fees to DA.

03/09/2005 ECDOPER 00000076 2281889

DO NOT USE THIS SPACE

01 FC:8521
02 FC:8522

40.00 OP
50.00 OP

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.

Karin E. Peterka

Name of Person Signing

Karin E. Peterka

Signature

Feb. 18, 2005

Date

Total number of pages including cover sheet, attachments, and

TRADEMARK

REEL: 003132 FRAME: 0045

A0566226

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 14 2001

BILL JONES, Secretary of State

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of June 14, 2001, among California Day-Fresh Foods, Inc., a California corporation (the "Company"), Wiman Beverage Company, Inc., a California corporation ("Wiman"), and Ultimate Juice Co., a Delaware corporation and the sole shareholder of the Company and Wiman ("UJC").

RECITALS

A. The parties hereto desire for Wiman to merge with and into the Company, on the terms and conditions set forth herein, with the Company being the surviving corporation (sometimes referred to herein as the "Surviving Corporation" and such transaction, the "Merger").

B. The board of directors of each of the Company, Wiman and UJC have each approved this Agreement and the transactions contemplated hereby and desire for the Merger to be consummated as soon as practicable in accordance with the California Corporation Code (the "CCC").

The parties agree as follows:

ARTICLE I

MERGER

1.1 Merger; Issuance of Shares.

(a) Merger. Upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the CCC, at the Effective Time, Wiman shall be merged with and into the Company and the separate corporate existence of Wiman shall cease. After the Merger, the Company shall continue as the Surviving Corporation and shall continue to be governed by the laws of the State of California. The Merger shall have the effect as provided in the applicable provisions of the CCC. Without limiting the generality of the foregoing, upon the Merger, all the rights, privileges, immunities, powers and franchises of Wiman and the Company shall vest in the Surviving Corporation and all restrictions, obligations, duties, debts and liabilities of Wiman and the Company shall be the obligations, duties, debts and liabilities of the Surviving Corporation.

(b) Issuance of Shares. At the Effective Time, each common share of Wiman, with no par value (the "Wiman Common Shares"), issued and outstanding immediately

prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the Company or UJC, be cancelled without consideration.

(c) Stock Book. At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no transfers on the stock transfer books of the Surviving Corporation of shares of Wiman Common Shares that were outstanding immediately prior to the Effective Time.

1.2 Effective Time. On the Closing Date, the Company and Wiman will cause the appropriate Officers' Certificate (the "Merger Certificate") to be executed and filed with the Secretary of State of the State of California (the "California Secretary of State") in such form and executed as provided in Section 1103 of the CCC. The Merger shall become effective on the date and time on which the Merger Agreement together with the Merger Certificates have been duly filed with the office of the California Secretary of State in accordance with CCC Section 1103 (the "Effective Time").

1.3 Articles of Incorporation; By-Laws.

(a) Articles of Incorporation. The articles of incorporation of the Company as in effect immediately prior to the Effective Time shall, in accordance with the terms thereof and the applicable provisions of the CCC, be the articles of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof and the applicable provisions of the CCC.

(b) By-laws. The by-laws of the Company, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended as provided by applicable law, the articles of incorporation of the Surviving Corporation and such by-laws.

1.4 Directors and Officers of the Surviving Corporation.

(a) Directors. The directors of the Company immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's articles of incorporation and by-laws.

(b) Officers. The officers of the Company immediately prior to the Effective Time shall be, from and after the Effective Time, the officers of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

1.5 Closing of Merger and Capital Contribution.

(a) Time and Place of Closing. The closing of the Merger (the "Closing") shall take place at the offices of Debevoise & Plimpton, 875 Third Avenue, as soon as practicable after the date hereof. The "Closing Date" shall be the date the Closing occurs.

(b) Transactions at Closing. At the Closing, subject to the terms and conditions of this Agreement:

(i) UJC will deliver to the Surviving Corporation, a certificate or certificates representing all of the issued and outstanding Wiman Common Shares;

(ii) The Surviving Corporation shall cancel the Wiman Common Shares.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the others as follows:

2.1 Authorization, etc. Such party has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite corporate and shareholder action of such party. Such party has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

2.2 Corporate Status, etc.

(a) Organization. Each party is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has full power and authority to own, lease, use and operate its properties and to conduct its business as and in the places where its business is conducted and such properties are owned, leased, used or operated.

(b) Qualification. Each party is duly qualified to do business and in good standing as a foreign corporation in all jurisdictions in which the nature of its business or the properties owned or leased by it makes such qualification necessary, except where the failure to so qualify would not have a material adverse effect on such party.

ARTICLE III

COVENANTS OF WIMAN, UJC
AND THE COMPANY3.1 Further Actions.

(a) From the date hereof to the Effective Time and thereafter, each party agrees to take all actions and to do all things necessary or appropriate to consummate the transactions contemplated hereby as promptly as possible, including, without limitation: (i) filing or supplying all applications, notifications and information required to be filed or supplied by it pursuant to applicable law, (ii) obtaining all consents and governmental approvals necessary or appropriate to be obtained by it in order to consummate transactions contemplated hereby, and (iii) coordinating and cooperating with the other parties in exchanging such information and supplying such reasonable assistance as may be reasonably requested by the other parties.

(b) At all times prior to the Effective Time and thereafter, each party shall promptly notify the other parties in writing of any fact, condition, event or occurrence that will or is reasonably likely to result in the failure of any of the conditions contained in Article IV to be satisfied.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Condition to Obligations of Each Party. The obligation of the parties to consummate the transactions contemplated hereby shall be subject to the fulfillment of the following conditions on or prior to the Closing Date:

(a) No Injunction, etc. Consummation of the transactions contemplated hereby shall not have been restrained, enjoined or otherwise prohibited or made illegal by any applicable law. No governmental authority shall have determined any applicable law to make illegal the consummation of the transactions contemplated hereby, and no proceeding with respect to the application of any such applicable law to such effect shall be pending.

(b) Organizational Proceedings. As of the Closing Date, all corporate proceedings of such party, in connection with this Agreement, and the transactions contemplated hereby, and all documents and instruments incident thereto, shall have been duly adopted and copies of which provided to each other party hereto.

ARTICLE V

TERMINATION

5.1 Termination. This Agreement may be terminated at any time prior to the Effective Time by written agreement of the parties.

5.2 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 5.1, this Agreement shall become void and have no effect, without any liability to any Party in respect hereof or of the transactions contemplated hereby on the part of any party hereto, or any of its directors, officers, employees, agents, consultants, representatives, advisers, stockholders or affiliates.

ARTICLE VI

MISCELLANEOUS

6.1 Notices. All notices and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given if (a) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (b) transmitted by hand delivery, (c) sent by next-day or overnight mail or delivery or (d) sent by fax or telecopy, addressed as follows:

(i) if to Wiman, prior to closing, to:

Wiman Beverage Company, Inc.
c/o North Castle Partners, L.L.C.
183 East Putnam Avenue
Greenwich, CT 06830

Telephone: (203) 862-3200
Fax: (203) 618-1860
Attention: Peter J. Shabecoff

(ii) if to UJC or the Company, to:

Ultimate Juice Co.
c/o North Castle Partners, L.L.C.
183 East Putnam Avenue
Greenwich, CT 06830

Telephone: (203) 862-3200
Fax: (203) 618-1860
Attention: Peter J. Shabecoff

or, in each case, at such other address as may be specified in writing to the other party hereto.

All such notices, requests, demands, waivers and other communications shall be deemed to have been received (w) if by personal delivery on the day of such delivery, (x) if by certified or registered mail, on the seventh business day after the mailing thereof, (y) if by next-day or overnight mail or delivery, on the day delivered, (z) if by fax, on the next day following the day on which such fax was sent, provided that a copy is also sent by certified or registered mail.

6.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

6.3 Governing Law, etc.

THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF NEW YORK.

6.4 Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, subject to Section 6.5. Nothing in this Agreement shall confer any rights upon any person or entity other than the parties hereto and their respective heirs, successors and permitted assigns.

6.5 Assignment. This Agreement shall not be assignable by any party without the prior written consent of the other parties.

6.6 Amendment; Waivers, etc. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Neither the waiver by any of the parties hereto of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. This Agreement may not be amended after the Effective Time.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

WIMAN BEVERAGE COMPANY, INC.

By: *Peter Shabecoff*
Name: Peter Shabecoff
Title: Vice President

By: *L. E. Marinaccio*
Name: Louis E. Marinaccio
Title: Secretary

CALIFORNIA DAY-FRESH FOODS, INC.

By: *Peter Shabecoff*
Name: Peter Shabecoff
Title: Vice President

By: *L. E. Marinaccio*
Name: Louis E. Marinaccio
Title: Secretary

ULTIMATE JUICE CO.

By: *Peter Shabecoff*
Name: Peter Shabecoff
Title: Vice President

By: *L. E. Marinaccio*
Name: Louis E. Marinaccio
Title: Assistant Secretary

**CALIFORNIA DAY-FRESH FOODS, INC.
OFFICER'S CERTIFICATE**

We, Peter J. Shabecoff and Louis E. Marinaccio certify that:

1. We are the Vice President and Secretary of California Day-Fresh Foods, Inc. (the "Company"), a corporation duly organized and existing under the laws of the State of California.

2. The total number of outstanding shares of each class of the Company entitled to vote on the merger is as follows:

<u>Class</u>	<u>Total No. of Shares Entitled to Vote</u>
Common	900

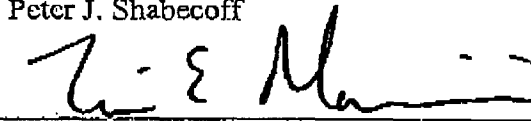
3. The principal terms of the agreement of merger in the form attached were approved by the vote of 100% of the outstanding shares of the Company, by Ultimate Juice Co., a Delaware corporation and the sole shareholder of the Company and by unanimous written consent of the Board of Directors.

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: June 10, 2001



Peter J. Shabecoff



Louis E. Marinaccio

WIMAN BEVERAGE COMPANY, INC.
OFFICER'S CERTIFICATE

We, Peter J. Shabecoff and Louis E. Marinaccio certify that:

1. We are the Vice President and Secretary of Wiman Beverage Company, Inc., a corporation duly organized and existing under the laws of the State of California (the "Company").


2. The total number of outstanding shares of each class of the Company entitled to vote on the merger is as follows:

<u>Class</u>	<u>Total No. of Shares Entitled to Vote</u>
Common	4,601,333

3. The principal terms of the agreement of merger in the form attached were approved by the vote of 100% of the outstanding shares of the Company, by Ultimate Juice Co., a Delaware corporation and the sole shareholder of the Company, and by unanimous written consent of the Board of Directors.

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: June 10, 2001



Peter J. Shabecoff



Louis E. Marinaccio



Schedule 5.17
Intellectual Property

A. MATERIAL OWNED INTELLECTUAL PROPERTY

1. Registered Trademarks and Service Marks and Unregistered Trademarks and Service Marks

<u>Company</u>	<u>Country</u>	<u>Trademark</u>	<u>Application</u>	<u>Registration No.</u>	<u>Filing Date</u>	<u>Registration Date</u>	<u>Classes</u>	<u>Pending/Registered</u>
Wiman Beverage Company, Inc.	United States	As Fresh As The Speed Limit Allows	75/093,488	2,281,889	4/24/96	9/28/99	Fruit Juices and Fruit Juice Concentrate	Registered
Wiman Beverage Company, Inc.	United States	As Fresh As The Speed Limit Will Allow	75/977,506	2,186,924	4/24/96	9/1/98	Wholesale Distributorships Featuring Fruit Juices and Fruit Juice Concentrates	Registered
Wiman Beverage Company, Inc.	State of California	Javalicious	103467	103467	2/25/98	3/2/98	Non-Alcoholic Beverages	Registered
Wiman Beverage Company, Inc.	United States	Juicie Cubes	75/264,498	2,243,390	3/26/97	5/4/99	Frozen Preparations for Making Fruit Juices	Registered



SECRETARY OF STATE

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 9 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUN 15 2001

Bill Jones

Secretary of State

