TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	10/19/2000

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Surfline, Inc.		10/19/2000	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Swell, Inc.
Doing Business As:	DBA Swell.com, Inc.
Street Address:	300 Pacific Coast Highway
Internal Address:	Suite 310
City:	Huntington Beach
State/Country:	CALIFORNIA
Postal Code:	92649
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2370561	SURFLINE

CH $40.00 2370561

CORRESPONDENCE DATA

Fax Number: (214)981-3400
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: 214-981-3300
Email: jchester@sidley.com
Correspondent Name: Julia M. Chester
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ATTORNEY DOCKET NUMBER:	32046-01801

NAME OF SUBMITTER:	Julia M. Chester
Signature:	/Julia M. Chester/
Date:	07/24/2006

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DECLARATION UNDER 37 C.F.R. § 2.20
IN SUPPORT OF TRANSFER RECORD TITLE
OF TRADEMARK REGISTRATION

I, Sean Collins, President of Surfline/Wavetrak, Inc., current owner and registrant SURFLINE, Trademark Registration No. 2,370,561 ("the Mark") which is the subject of Registrant's Sixth Year Affidavit of Use and Incontestability under Section 8 & 15 of the Trademark Act, have personal knowledge of the corporate events that effected the transfer of the Mark to Registrant.

The Mark was registered on July 25, 2000, to Surfline, Inc. On February 16, 1999, Surfline, Inc. assigned the Mark to Sean Collins, an individual. On February 15, 2002, Sean Collins assigned the Mark to Wavetrak Inc. On March 15, 2000, Wavetrak, Inc. was merged into Surfline, Inc. with title to the Mark residing in Surfline, Inc. This chain of title is recorded in the Assignment Branch of the U.S. Trademark Office.

On October 19, 2000, the Mark was subsequently transferred by merger of Surfline, Inc. into Swell, Inc., d/b/a Swell.com, Inc. with the Mark residing in Swell, Inc., d/b/a Swell.com, Inc. Attached hereto as Exhibit A is a true and correct copy of the First Amendment to Agreement and Plan of Merger evidencing that Swell, Inc., d/b/a Swell.com, Inc. was the successor in interest to all right, title and interest in and to The Mark.

On April 5, 2002, Swell, Inc. assigned the Mark to Surfline/Wavetrak, Inc., which assignment is recorded in the U.S. Trademark Office Assignment records.

The undersigned being 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 the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true, and all statements made on information and belief are believed to be true.

SURFLINE/WAVETRAK, INC.

By:
Sean Collins

Its: President

Date: 7/24/06

DAI 359347v1

EXHIBIT A

FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER

THIS FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER (this "Amendment") is entered into as of October 19, 2000 and is by and among Swell.com, Inc., a Delaware corporation ("Parent"), Surfline, Inc., a Delaware corporation and wholly-owned subsidiary of Parent ("Buyer" or "Surviving Corporation"; f/k/a Surf Merger Sub, Inc.), and Sean Collins, an individual (the "Shareholder").

WITNESSETH

WHEREAS, Parent, Buyer, the Shareholder and Wavetrak, Inc., a California corporation (the "Corporation"), are parties to that certain Agreement and Plan of Merger entered into as of February 25, 2000 (the "Merger Agreement");

WHEREAS, upon the Effective Time (as defined in the Merger Agreement), the Corporation merged with and into Buyer, with Buyer as the surviving corporation, and the separate existence of the Corporation ceased;

WHEREAS, at the Closing, Parent and the Surviving Corporation acquired from the Corporation and the Shareholder the Customer database, including all Wavefax and Surfline subscribers, identified in Section V.2. of Exhibit L hereof (the "Acquired Customer Database") and have since made numerous creative enhancements, modifications, improvements and derivative works to the Acquired Customer Database;

WHEREAS, Parent paid the Shareholder $300,000 of the Cash Consideration (as defined in the Merger Agreement) on August 4, 2000;

WHEREAS, Parent has effected or intends to effect a 10 for 1 reverse stock split with regard to its issued and outstanding capital stock and as soon as practicable after such reverse stock split, Parent intends to sell and issue up to 1,997,409 shares of Parent's Series B Convertible Preferred Stock, par value $0.000001 per share (the "Series B Preferred Stock"), at a price of $7.50 per share and warrants (the "Series B Warrants") to purchase an aggregate of up to 1,997,409 shares of Parent's Series B Preferred Stock at an exercise price of $0.10 per share (the "Series B Financing"); and

WHEREAS, Parent, Buyer and the Shareholder hereto wish to amend the Merger Agreement as hereinafter set forth.

NOW, THEREFORE, on the terms and subject to the conditions herein set forth, the Parties, intending to be bound, hereby agree as follows:

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Section 1. Definitions. Unless otherwise indicated, capitalized terms used herein but not otherwise defined herein shall have the respective meanings set forth in the Merger Agreement.

Section 2. Amendment of the Merger Agreement. The Merger Agreement is hereby amended as follows:

(a) Section 2.3 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

2.3 **Deliveries Subsequent to Closing**. Subject to the provisions of Sections 7.3 and 7.4, Parent shall deliver the Future Payments as follows:

(a) On or shortly after the closing of Parent's Series B Financing, Parent shall issue the Shareholder (i) the entire 83,333 share aggregate amount of Future Shares (on a post-stock split basis) and (ii) 110,000 shares of Parent's Series B Preferred Stock and Series B Warrants to acquire up to 110,000 shares of the Parent's Series B Preferred Stock (together, the "Series B Consideration") in lieu of and exchange for $625,000 of the aggregate Future Amount and $200,000 of the Cash Consideration owed the Shareholder by Parent; and

(b) On the second anniversary of the Closing Date, Parent shall deliver (i) the remaining $625,000 of the aggregate Future Amount and (ii) an additional $625,000 (for a total payment of $1,250,000) to the Shareholder (the "Second Anniversary Payment");

provided, however, if at any time prior to the second anniversary of the Closing Date, in the event (i) Parent's IPO (as defined in Section 3.40(h)), (ii) a consolidation or merger of Parent with or into any other corporation (other than a reincorporation merger) in which the stockholders of Parent hold in the aggregate less than twenty percent (20%) of the outstanding voting securities of the surviving entity after such merger, (iii) a sale of all or substantially all of the assets of Parent, (iv) Parent and Buyer together operate less than ten (10) camera locations, or (v) if Jeffrey A. Berg and Nicholas A. Nathanson each transfer or sell more than fifty percent (50%) of the capital stock beneficially owned by them as of the date hereof (each, a "Qualifying Transaction"), the dates of delivery of the Future Payments shall become accelerated and shall be delivered by Parent upon the consummation of the closing of such Qualifying Transaction.

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(b) Section 2.4 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

2.4 **Other Payment**. Parent shall have paid the Shareholder $300,000 of the Cash Consideration on or before August 31, 2000 (the "August Payment"). Parent satisfies in full its obligations to pay the Shareholder the Merger Consideration upon delivering to the Shareholder (i) that amount of the Merger Consideration delivered to the Shareholder at Closing, (ii) the entire 83,333 share (on a post-split basis) aggregate amount of Future Shares, (iii) the August Payment, (iv) the Series B Consideration and (v) the Second Anniversary Payment.

(c) Section 7.1 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

7.1 **Survival**. The representations, warranties, covenants and agreements of the parties made in this Agreement (including statements in the Disclosure Schedule) shall survive (and not be affected in any respect by) the Closing. Notwithstanding the foregoing, the right of indemnification or other claim against an Indemnifying Party (as hereinafter defined) with respect to each representation, warranty, covenant and agreement contained in Section 3.19 of this Agreement or a breach of Section 3.19 of this Agreement shall survive until the expiration of the applicable statute of limitations (the "Survival Date") and the right of indemnification or other claims against an Indemnifying Party with respect to claims made prior to the Survival Date shall continue until final resolution of such claim.

(d) Section 7.2 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

7.2 **Indemnification by Shareholder**.

(a) Shareholder shall indemnify, defend, protect and hold harmless Parent, Buyer, the Surviving Corporation, and each of its respective successors and assigns (each a "Buyer Indemnified Party"), at all times from and after the Closing Date (subject to any limitation on the survival of representations and warranties set forth in Section 7.1) against all losses, claims, damages, liabilities, taxes, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses, excluding any consequential damages, such as loss of profits (including, without limitation,

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reasonable attorneys' fees and expenses of investigation), resulting from any inaccuracy or breach of any representation or warranty of the Corporation or the Shareholder contained in Section 3.19 of this Agreement (which shall be deemed for purposes of this Section 7 to include no materiality qualifications) ("Tax Losses"). The term "Tax Losses" is not limited to matters asserted by third parties against Buyer Indemnified Party, but includes Tax Losses incurred or sustained by a Buyer Indemnified Party in the absence of third party claims.

(b) Shareholder shall not be required to make any indemnification payment unless a claim is initiated prior to the expiration of the applicable Survival Date set forth in Section 7.1.

(c) Section 7.3 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

7.3 **Parent's and Buyer's Right of Offset Against Future Payments**. A Buyer Indemnified Party shall have the right to make one or more claims for indemnification against Tax Losses against Future Payments on or at any time prior to the second anniversary of the Closing Date (the "Expiration Date") by delivering a notice of such claim (a "Claim Notice") to Shareholder prior to such time (the date of such notice, the "Claim Date"). Parent's offsetting Tax Losses against Future Payments shall not in and of itself trigger Shareholder's ability to exercise his rights set forth in Section 9.4 hereof. Following the second anniversary of the Closing Date, and prior to the applicable Survival Date, a Buyer Indemnified Party shall have the right to make one or more claims for indemnification against Tax Losses by delivering a Claim Notice to Shareholder, from which the resulting indemnity obligation shall be paid by Shareholder in cash. Each Claim Notice shall state with particularity (i) sufficient facts relating to the claim so that Shareholder may reasonably evaluate such claim and (ii) the Buyer Indemnified Party's estimate of the indemnifiable amount relating to such claim. If Shareholder disputes either the validity, amount or calculation of the claim, Shareholder shall give written notice of such dispute to Buyer within ten (10) days after delivery of the Claim Notice. If Shareholder does not deliver a notice that the claim is being disputed, the Buyer Indemnified Party may offset such claim against any portion of the Future Payments. If Shareholder delivers a notice that the claim is being disputed, the parties shall meet and endeavor to resolve the dispute, and if the parties are unable to resolve a dispute with respect to a Claim Notice within

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thirty (30) days after delivery by Shareholder of his response to the Claim Notice, the parties agree that such dispute will be resolved in accordance with Section 12.

(f) Section 7.4 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

7.4 **Release of Future Payments**. If Parent or a Buyer Indemnified Party fails to make a claim for Tax Losses on or before the Expiration Date, then promptly after the Expiration Date, Parent shall deliver to Shareholder the remaining portion of the Future Payments that Parent holds in accordance with the provisions of Section 2.3; provided, however, that if Parent fails to deliver such portion of the Future Payments, Shareholder shall have the rights set forth in Section 9.4 hereof. If Parent or a Buyer Indemnified Party has made a claim or claims for indemnity or offset pursuant to this Section 7 on or prior to the Expiration Date and if, upon the Expiration Date, the amount of such claims (whether or nor in dispute) in the aggregate are less than the aggregate amount of the remaining portion of the Future Payments, then Parent shall promptly deliver such remaining portion of the Future Payments to Shareholder. If Parent or a Buyer Indemnified Party has made a claim or claims for indemnity or offset pursuant to this Section 7 on or prior to the Expiration Date and if, upon the Expiration Date, the amount of such claim or claims (whether or not in dispute) in the aggregate are greater or equal to the aggregate amount of the Future Payments, then Parent shall be entitled to retain the remaining amount of the Future Payments until after all claims have been resolved. After resolution of any such outstanding claims, Parent shall promptly deliver any remaining portion of the Future Payments to Shareholder.

(g) Section 7.6 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

7.6 **Limitation**. A Buyer Indemnified Party shall not be entitled to recover for any Tax Losses until such time as the Tax Losses in the aggregate exceed $37,500 (the "Tax Losses Threshold"), at which time a Buyer Indemnified Party shall be entitled to be indemnified and compensated and reimbursed for all such Tax Losses, including Tax Losses included in the Tax Losses Threshold. In no event shall the actual cumulative liability of Shareholder for Tax Losses under this Agreement exceed the amount of the Second Anniversary Payment.

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(h) Section 9.4 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

9.4 **Rights of Shareholder in Certain Events**. Subject to the provisions of Sections 7.3 and 7.4, in the event Parent fails to deliver the Future Payments in accordance with the provisions of Section 2.3 hereof, Shareholder shall have the option to purchase from Parent or the Surviving Corporation, as applicable, the assets specified on Exhibit L hereof (the "Specified Assets") in exchange for a release of Parent's obligation to pay Shareholder any Future Payments not already delivered to Shareholder; provided, however, that, with respect to the Acquired Customer Database only, Shareholder may purchase nothing greater than an undivided joint interest in the Acquired Customer Database, and upon such purchase, Shareholder, Parent and the Surviving Corporation shall jointly own all right, title and interest in the Acquired Customer Database and in or to any enhancements, modifications, improvements or derivative works made to the Acquired Customer Database. Shareholder shall exercise such option by sending written notice to Parent ("Shareholder's Notice") following the date a Future Payment is due and demanding payment of such Future Payment; provided however, that Parent shall have the opportunity to cure such failure to deliver the Future Payments for a period of 60 days following receipt of Shareholder's Notice. After the expiration of the foregoing 60-day cure period if Parent has not cured such failure, Shareholder has 45 days to exercise his option to purchase the Specified Assets by delivering a second written notice (the "Second Notice") to Parent. Should Shareholder fail to deliver the Second Notice to Parent within this 45-day time period, or if Shareholder does not deliver the Shareholder's Notice to Parent by a date which is not later than 60 days following the second anniversary of the Closing Date, Shareholder's right to purchase the Specified Assets shall expire, and Shareholder shall have no further interest in the Specified Assets, but Shareholder may exercise any remedy available to Shareholder to collect Future Payments. Parent's exercise of its right to offset set forth in Sections 7.3 and 7.4 hereof shall in no event be deemed to be a failure to deliver the Future Payments pursuant to this Section 9.4. In the event Shareholder shall exercise its option to acquire the Specified Assets, Parent and Buyer shall execute such instruments of transfer as may be required by Shareholder to transfer title to Specified Assets to Shareholder or his designee in accordance with the terms and conditions of this Merger Agreement, as amended.

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Section 3. Effect. Except as amended hereby, the Merger Agreement shall remain in full force and effect in all respects.

Section 4. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement, it being understood that all of the parties need not sign the same counterpart.

Section 5. Governing Law. This Amendment shall be governed by and construed in accordance with the substantive laws of the State of California, without regard to its conflicts of law provisions.

[*Signatures Next Page*]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by persons thereunto duly authorized as of the date first above written.

PARENT

SWELL.COM, INC.

By: Jeffrey A Berg
Name: Jeffrey A. Berg
Title: Chairman

BUYER

SURFLINE, INC.

By:
Name:
Title:

SHAREHOLDER

Sean Collins

SEAN COLLINS

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by persons thereunto duly authorized as of the date first above written.

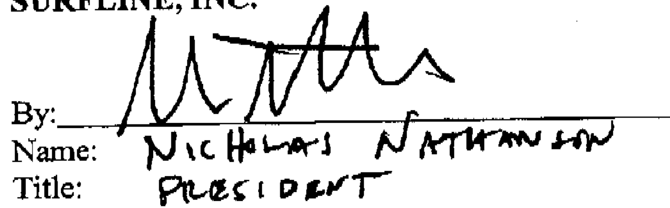
PARENT

SWELL.COM, INC.

By:______________________________
Name:
Title:

BUYER

SURFLINE, INC.



By:______________________________
Name: NICHOLAS NATHANSON
Title: PRESIDENT

SHAREHOLDER

____
SEAN COLLINS

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AGREEMENT AND PLAN OF MERGER

Dated as of February 25, 2000, by and among

SWELL.COM, INC., a
Delaware corporation ("Parent"),

SURF MERGER SUB, INC., a
Delaware corporation ("Buyer"),

WAVETRAK, INC., a
California corporation (the "Corporation"),

and

SEAN COLLINS, an
Individual ("Shareholder")

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EXHIBIT B

AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER, dated as of February ____, 2000 (this "*Agreement*") is by and between Surf Merger Sub, Inc. ("*Merger Sub*"), a Delaware corporation and a wholly-owned subsidiary of Swell.com, Inc., a Delaware corporation ("*Swell.com*"), and Wavetrak, Inc., a California corporation ("*Company*").

The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, $.0001 par value per share (the "*Sub Common Stock*"). All of the outstanding capital stock of Merger Sub is owned by Swell.com.

The authorized capital stock of Company consists of ________ shares of common stock, par value $____ per share (the "*Company Common Stock*").

This Agreement is being entered into pursuant to an Agreement and Plan of Merger (the "*Merger Plan*"), dated as of February _____, 2000, by and among Swell.com, Merger Sub, Sean Collins and Company. The Merger Plan and this Agreement are intended to be construed together in order to effectuate their purposes.

This Agreement has been duly adopted by the sole shareholder of Merger Sub in accordance with the Delaware General Corporation Law and the Certificate of Incorporation and Bylaws of Merger Sub.

This Agreement has been duly adopted by the [majority of] the shareholders of Company in accordance with the California General Corporation Law and the Articles of Incorporation and Bylaws of Company.

Accordingly, in consideration of the premises, and the mutual covenants and agreements contained herein and in the Merger Plan the parties hereto hereby agree, subject to the terms and conditions hereinafter set forth and as set forth in the Merger Plan, as follows:

ARTICLE I.
THE MERGER

1.1 Merger of Merger Sub into Company. At the Effective Time, the Company shall be merged with and into Merger Sub, with Merger Sub as the surviving corporation (the "*Surviving Corporation*"), and the separate existence of the Company shall thereupon cease (the "*Merger*"). The Merger shall have the effects set forth in Sections 1107 and 1108 of the California General Corporation Law (the "*California Code*"). Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all property, rights, powers, privileges and franchises of the Company shall vest in the Merger Sub as the Surviving Corporation, and all debts, liabilities and duties of the Company shall become the debts, liabilities and duties of the Surviving Corporation.

1.2 Effective Time. The parties shall take such steps as may be necessary under the California Code, the Delaware General Corporation Law ("Delaware Code") or otherwise to give effect to this Agreement, including the filing of a copy of this Agreement in the office of the Secretary of State of the

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State of California and a Certificate of Merger in the office of the Secretary of State of the State of Delaware. In accordance with Section 252(c) of the Delaware Code, the Merger shall become effective at the time and date on which the Certificate of Merger is so filed and recorded (the "*Effective Time*").

1.3 Certificate of Incorporation and Bylaws. On and after the consummation of the Merger, the Certificate of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be amended and restated in its entirety to read as Exhibit A attached hereto and shall thereafter be its Certificate of Incorporation until amended as provided therein or under the Delaware Code. The Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be amended and restated in its entirety to read as Exhibit B attached hereto until amended as provided therein or under the Delaware Code.

ARTICLE II.
CONVERSION OF SECURITIES

2.1 Conversion of Shares.

(a) Cancellation of Treasury Stock and Stock Owned by the Company. At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, all shares of Company Common Stock owned by the Company as treasury stock or by its subsidiaries shall be canceled and retired and shall cease to exist and no stock of the Company or other consideration shall be delivered in exchange therefor.

(b) Conversion of Company Common Stock.

[Insert Section 1.6 of Agreement and Plan of Merger here]

(c) Conversion of Merger Sub Common Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid and non-assessable share of common stock of the Surviving Corporation.

2.2 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of Company Common Stock held by a holder who has demanded and perfected dissenters' rights for such shares in accordance with the California Code and who, as of the Effective Time, has not effectively withdrawn or lost such dissenters' rights ("Dissenting Shares") shall not be converted into or represent a right to receive the Per Share Price pursuant to Section 2.1, but the holder thereof shall only be entitled to such rights as are granted by the California Code.

(b) Notwithstanding the provisions of subsection (a) above, if any holder of shares of Company Common Stock who demands purchase of such shares under the California Code shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's dissenters' rights, then, as of the later of (i) the Effective Time or (ii) the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive, subject to Section 2.4, the Per Share Price as provided in Section 2.1, without interest thereon, upon surrender to the Company of the certificate representing such shares in accordance with this Agreement.

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2.3 Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of either the Company or Merger Sub, the officers and directors of the Surviving Corporation are fully authorized to take, and will take, all such lawful and necessary action.

ARTICLE III.
MISCELLANEOUS

3.1 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same agreement. This agreement shall become effective when one or more counterparts has been signed by each of the parties and delivered to each of the other parties.

3.2 Choice of Law. This Agreement shall be governed by and construed, in accordance with the laws of the State of California without reference to choice of law provisions.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Merger to [be d]uly executed and delivered as of the day and year first above written.

SURF MERGER SUB, INC.,
a Delaware corporation

Attest: ______________________
Nicholas A. Nathanson,
Secretary

By: ______________________
Nicholas A. Nathanson,
President

WAVETRAK, INC.,
a California corporation

Attest: ______________________
Name:
Title:

By: ______________________
Name:
Title:

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CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

______________ and ______________ state and certify that:

1. They are the ______________ and ____________, respectively, of Wavetrak, Inc., a California corporation (the "*Corporation*").

2. The Agreement of Merger dated February _____, 2000 to which this Certificate is attached ("*Agreement of Merger*"), was duly approved by the Board of Directors and shareholders of the Corporation.

3. [The Corporation has one class of shares outstanding, Common Stock, no par value. The total number of shares of Common Stock entitled to vote on the Agreement of Merger was __________ shares.]

4. The percentage vote required for the aforesaid approval was the affirmative vote of a majority of the outstanding shares of the Corporation's Common Stock entitled to vote.

5. The principal terms of the Agreement of Merger were approved by the Corporation by a vote of the number of shares which equaled or exceeded the vote required.

the date set forth below, in the City of __________ in the State of ____________, each of the signed does hereby declare under penalty of perjury under the laws of the State of California that he the foregoing certificate in the official capacity set forth beneath his signature, and that the ments set forth in said certificate are true as of his own knowledge.

ed on February ____, 2000.

____
Name:
Title:

____
Name:
Title:

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CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

Nicholas A. Nathanson states and certifies that:

1. He is both the President and Secretary of Surf Merger Sub, Inc., a Delaware corporation (the "*Corporation*").

2. The Agreement of Merger dated February ____, 2000 to which this Certificate is attached ("*Agreement of Merger*"), was duly approved by the Board of Directors and sole stockholder of the Corporation.

3. The Corporation has one class of shares outstanding, Common Stock, par value $.0001. The total number of shares of Common Stock entitled to vote on the Agreement of Merger was 100 shares.

4. The percentage vote required for the aforesaid approval was the affirmative vote of a majority of the outstanding shares of the Corporation's Common Stock entitled to vote.

5. The principal terms of the Agreement of Merger were approved by the Corporation by a vote of the number of shares which equaled or exceeded the vote required.

6. No vote of the stockholders of Swell.com, Inc., the parent of the Corporation, was required for approval of the Agreement of Merger.

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On the date set forth below, in the City of San Francisco in the State of California, each of the undersigned does hereby declare under penalty of perjury under the laws of the State of California that he signed the foregoing certificate in the official capacity set forth beneath his signature, and that the statements set forth in said certificate are true as of his own knowledge.

Signed on February ____, 2000.

Nicholas A. Nathanson,
President and Secretary

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RECORDED: 07/24/2006 REEL: 003354 FRAME: 0106