

10-14-1998



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New **10.05.98**

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Effective Date
Month Day Year
03 27 1998

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year
03 27 1998

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

10/04/1998 JSHADAZZ 00000139 1953831

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

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75.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 1798 FRAME: 0569

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Jack M. Platt, Attorney for Merged Corporation

Name of Person Signing

Signature

9/25/98

Date Signed

State of New York }
Department of State } ^{SS:}

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

SEP 22 1998



A handwritten signature in black ink, appearing to read "J. Clark", written over a horizontal line.

Special Deputy Secretary of State

980417000644 004

CERTIFICATE OF MERGER
OF
B.E. ACQUISITION CORP.
INTO
BREATHE EASY, INC.

UNI-37

Under Section 907 of the
Business Corporation Law of the State of New York

The undersigned, DAVID A. SMITH and PATRICK HYLAND, being, respectively, the President and the Vice President of B.E. ACQUISITION CORP., a corporation duly organized and existing under and by virtue of the laws of the State of New York, and DAVID A. SMITH and PATRICK HYLAND, being, respectively, the President and Vice President of BREATHE EASY, INC., a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, do hereby certify and set forth as follows:

FIRST: The name of each constituent corporation (and the name under which it was formed) is as follows:

B.E. Acquisition Corp.
Breathe Easy, Inc.

SECOND: The name of the surviving corporation is Breathe Easy, Inc., a corporation of the State of Delaware.

THIRD: The designation, number and voting rights of the outstanding shares of each class and series of each constituent corporation is as follows:

B.E. ACQUISITION CORP.

CLASS	NUMBER ISSUED
Common Stock, \$.01 par value per share	1,000 (voting)
Preferred Stock, \$.01 par value per share	1,600 (non-voting)

BREATHE EASY, INC.

CLASS	NUMBER ISSUED
Common Stock, \$.01 par value per share	1,000 (voting)
Preferred Stock, \$.01 par value per share	1,600 (non-voting)

- FOURTH: The Certificate of Incorporation of B.E. Acquisition Corp. was filed by the Department of State on February 4, 1998.
- FIFTH: The jurisdiction of incorporation of Breathe Easy, Inc. is the State of Delaware, and the date of its incorporation is March 13, 1998.
- SIXTH: An application of authority for Breathe Easy, Inc. to do business in the State of New York has not been filed, and said corporation shall not do business in the State of New York until such application has been filed by the Department of State.
- SEVENTH: The merger was authorized by (i) the written consent of all of the directors of B.E. Acquisition Corp., (ii) the written consent of all of the shareholders of B.E. Acquisition Corp. (in accordance with the provisions of Section 903(a) of the Business Corporation Law), (iii) the written consent of all of the directors of Breathe Easy, Inc.; and (iv) the written consent of all of the shareholders of Breathe Easy, Inc.
- EIGHTH: The surviving corporation hereby agrees that it may be served with process in this state in any action or special proceeding for the enforcement of any liability or obligation of any domestic corporation or of any foreign corporation, previously amenable to suit in this state, which is a constituent corporation in such merger, and for the enforcement of the right of shareholders of any constituent domestic corporation to receive payment for their shares against the surviving corporation.

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- NINTH: The surviving corporation hereby agrees that, subject to the provisions of Section 623 of the Business Corporation Law, it will promptly pay to the shareholders of the constituent domestic corporation the amount, if any, to which they shall be entitled under the provisions of Article 9 of the Business Corporation Law relating to the right of shareholders to receive payment for their shares.
- TENTH: The surviving corporation hereby designates the Secretary of State of the State of New York as the agent of the corporation upon whom process against it may be served in the manner set forth in Section 306 of the Business Corporation Law in any action or special proceeding. The post-office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is 10560 Newkirk Street, Suite 408, Dallas, Texas 75220.
- ELEVENTH: The merger is permitted by the laws of the State of Delaware, the jurisdiction of the constituent foreign corporation, and is in compliance therewith.
- TWELFTH: All fees and taxes (including penalties and interest) administered by the Department of Taxation and Finance of the State of New York which are now due and payable by each constituent domestic corporation have been paid and a cessation franchise tax report (estimated or final) through the anticipated date of merger has been filed by each constituent domestic corporation. The said report, if estimated, is subject to amendment. The surviving foreign corporation agrees that it will within 30 days after the filing of the certificate of merger file the cessation tax report, if an estimated report was previously filed, and promptly pay to the Department of Taxation and Finance of the State of New York all fees and taxes (including penalties and interest), if any, due to the Department of Taxation and Finance by each constituent domestic corporation.


IN WITNESS WHEREOF, the undersigned hereby affirm that the statements made herein are true under the penalties of perjury, this 21 day of March 1998.

B.E. ACQUISITION CORP.


BREATHE EASY, INC.



David A. Smith, President



David A. Smith, President



Patrick Hyland, Vice President



Patrick Hyland, Vice President

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CERTIFICATE OF MERGER

OF

B. E. ACQUISITION CORP.
INTO

BREATHE EASY, INC.

Under Section 907 of the Business Corporation
Law of the State of New York

RECEIVED

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ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED

APR 17 1998

TAXES

BY: JAW

Office of Jack Platt, Esq.
One Rockefeller Plaza
New York, New York 10020

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