

03-08-2001

FORM PTO-1594  
(Rev. 6-93)

RECOF



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

2.73'01

101629716

To the Honorable Commissioner of Patents & Trademarks  
thereof.

Attached original documents or copy

1. Name of conveying party(ies):

Webvan Group, Inc.  
1241 E. Hillsdale Boulevard  
Suite 210  
Foster City, California 94404-1214

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

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

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

Execution Date: September 13, 1999

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

Name: Webvan Group, Inc.

Internal Address:

Street Address: 310 Lakeside Drive

City: Foster City State: CA ZIP 94404

- Individual(s) citizenship
- Association
- General Partnership
- Limited Liability Company
- Corporation - Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  
 Yes  No

(Designation must be a separate document from Assignment).  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)

75/410,340  
75/410,498  
75/607,808

03/07/2001 GTOM11 00000218 75410340

01 FC 481  
02 FC 482

40.00 DP  
50.00 DP

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

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

Name: Cooley Godward LLP

Internal Address: Debbi R. Stern, Esq.

Street Address: 5 Palo Alto Square  
3000 El Camino Real

City: Palo Alto State: CA ZIP 94306

6. Total number of applications and registration involved:

3

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

03-3118 Att.: W2210-201

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

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

Debbi Stern 2/20/01  
Debbi R. Stern Date

Total number of pages including cover sheet, attachments, and document: 11

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

TRADEMARK  
REEL: 002246 FRAME: 0408

Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WEBVAN GROUP, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTY-FIRST DAY OF AUGUST, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



A handwritten signature in cursive script, reading "Edward J. Freel".

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Edward J. Freel, Secretary of State

3084106 8300

001441215

AUTHENTICATION: 0650237

DATE: 08-31-00

TRADEMARK  
REEL: 002246 FRAME: 0409

Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AGREEMENT OF MERGER, WHICH MERGES:

"WEBVAN GROUP, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "WEBVAN GROUP, INC." UNDER THE NAME OF "WEBVAN GROUP, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF SEPTEMBER, A.D. 1999, AT 4:30 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

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Edward J. Freel, Secretary of State

AUTHENTICATION: 0650236

DATE: 08-31-00

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TRADEMARK  
REEL: 002246 FRAME: 0410

93099

**AGREEMENT AND PLAN OF MERGER OF  
WEBVAN GROUP, INC., A DELAWARE CORPORATION,  
AND WEBVAN GROUP, INC., A CALIFORNIA CORPORATION**

THIS AGREEMENT AND PLAN OF MERGER dated as of September 30, 1999 (the "Agreement") is between Webvan Group, Inc., a Delaware corporation ("Webvan Delaware"), and Webvan Group, Inc., a California corporation ("Webvan California"). Webvan Delaware and Webvan California are sometimes referred to herein as the "Constituent Corporations."

**RECITALS**

A. Webvan Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 1,050,272,220 shares, \$0.0001 par value, of which 800,000,000 shares are designated Common Stock and 250,272,220 shares are designated Preferred Stock. The Preferred Stock is divided into 112,635,168 shares of Series A Preferred Stock, 41,814,000 shares of Series B Preferred Stock, 34,601,616 shares of Series C Preferred Stock, 25,610,718 shares of Series D-1 Preferred Stock, 25,610,718 shares of Series D-2 Preferred Stock and 10,000,000 shares of which are undesignated as to series. As of September 30, 1999, 1,000 shares of Common Stock of Webvan Delaware were issued and outstanding, all of which are held by Webvan California.

B. Webvan California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 1,050,272,220 shares, of which 800,000,000 shares are designated Common Stock and 250,272,220 shares are designated Preferred Stock. The Preferred Stock is divided into 112,635,168 shares of Series A Preferred Stock, 41,814,000 shares of Series B Preferred Stock, 34,601,616 shares of Series C Preferred Stock, 25,610,718 shares of Series D-1 Preferred Stock, 25,610,718 shares of Series D-2 Preferred Stock and 10,000,000 shares of which are undesignated as to series. As of September 30, 1999, 90,303,949 shares of Common Stock, 112,635,168 shares of Series A Preferred Stock, 39,113,304 shares of Series B Preferred Stock, 32,491,200 shares of Series C Preferred Stock and 21,670,605 shares of Series D-2 Preferred Stock were issued and outstanding.

C. The Board of Directors of Webvan California has determined that, for the purpose of effecting the reincorporation of Webvan California in the State of Delaware, it is advisable and in the best interests of Webvan California and its shareholders that Webvan California merge with and into Webvan Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors and shareholders or stockholders of Webvan Delaware and Webvan California have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Webvan Delaware and Webvan California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

**ARTICLE I**

**MERGER**

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California General Corporation Law, Webvan California shall be merged with and into Webvan Delaware (the "Merger"), the separate existence of Webvan California shall cease, Webvan Delaware

shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Webvan Group, Inc.

1.2 Filing and Effectiveness. The Merger shall become effective when the following actions shall have been completed:

- (a) This Agreement and the Merger shall have been adopted and approved by the shareholders or stockholders of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California General Corporation Law;
- (b) All of the conditions precedent to the consummation of the Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof;
- (c) An executed Agreement of Merger or an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware; and
- (d) An executed Agreement of Merger or an executed counterpart of this Agreement meeting the requirements of the California General Corporation Law shall have been filed with the Secretary of State of the State of California.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date of the Merger."

1.3 Effect of the Merger. Upon the Effective Date of the Merger, the separate existence of Webvan California shall cease, and Webvan Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date of the Merger, (ii) shall be subject to all actions previously taken by its and Webvan California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Webvan California in the manner as more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date of the Merger, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Webvan California in the same manner as if Webvan Delaware had itself incurred them, all as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California General Corporation Law.

## ARTICLE II

### CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Webvan Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Webvan Delaware as in effect immediately prior to the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of Webvan California immediately prior to the Effective Date of the Merger shall be the directors and officers of the Surviving Corporation until their successors

shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

## ARTICLE III

### MANNER OF CONVERSION OF STOCK

3.1 Webvan California Common Stock. Upon the Effective Date of the Merger, each share of Webvan California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.0001 par value, of the Surviving Corporation.

3.2 Webvan California Preferred Stock. Upon the Effective Date of the Merger, (i) each share of Webvan California Series A Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series A Preferred Stock, \$0.0001 par value, of the Surviving Corporation; (ii) each share of Webvan California Series B Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series B Preferred Stock, \$0.0001 par value, of the Surviving Corporation; (iii) each share of Webvan California Series C Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series C Preferred Stock, \$0.0001 par value, of the Surviving Corporation; (iv) each share of Webvan California Series D-1 Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series D-1 Preferred Stock, \$0.0001 par value, of the Surviving Corporation; and (v) each share of Webvan California Series D-2 Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of Series D-2 Preferred Stock, \$0.0001 par value, of the Surviving Corporation.

3.3 Webvan California Plans and Options; Warrants. Upon the Effective Date of the Merger, the Surviving Corporation shall assume and continue each of the 1997 Stock Plan and 1999 Nonstatutory Stock Option Plan of Webvan California. Each outstanding and unexercised option or warrant issued under either such plan or otherwise by Webvan California convertible into Webvan California Common Stock shall become an option or warrant convertible into the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each share of Webvan California Common Stock issuable pursuant to any such option or warrant on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Webvan California option or warrant at the Effective Date of the Merger.

A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options and warrants equal to the number of shares of Webvan California Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.4 Webvan Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.0001 par value, of Webvan Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Webvan Delaware, the holder of such shares or any other person, be cancelled and returned to the status of authorized but unissued shares.

3.5 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Webvan California capital stock may, at such stockholder's option, surrender the same for cancellation to the exchange agent designated by the Surviving Corporation (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the appropriate class and series of the Surviving Corporation's capital stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Webvan California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of Webvan California capital stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of capital stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing capital stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Webvan California so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

If any certificate for shares of Webvan Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of the issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of Webvan Delaware that such tax has been paid or is not payable.

**ARTICLE IV**

**GENERAL**

4.1 Covenants of Webvan Delaware. Webvan Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

- (a) Qualify to do business as a foreign corporation in the State of California and in connection therewith irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law;
- (b) File any and all documents with the California Franchise Tax Board necessary for the assumption by Webvan Delaware of all of the franchise tax liabilities of Webvan California; and
- (c) Take such other actions as may be required by the California General Corporation Law.

4.2 Further Assurances. From time to time, as and when required by Webvan Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Webvan California such deeds and other instruments, and there shall be taken or caused to be taken by Webvan Delaware and Webvan California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or confirm of record or otherwise by Webvan Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Webvan California and otherwise to carry out the purposes of this

Agreement, and the officers and directors of Webvan Delaware are fully authorized in the name and on behalf of Webvan California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

4.3 Abandonment. At any time before the Effective Date of the Merger, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Webvan California or Webvan Delaware, or both, notwithstanding the approval of this Agreement by the shareholders of Webvan California or by the sole stockholder of Webvan Delaware, or by both.

4.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the shareholders or stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would materially adversely affect the holders of any class of shares or series thereof of such Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801, County of New Castle, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

4.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 1241 E. Hillsdale Blvd., Suite 210, Foster City, California 94404 and copies thereof will be furnished to any shareholder or stockholder of either constituent Corporation, upon request and without cost.

4.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California General Corporation Law.

4.8 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.





**Webvan Group, Inc.**  
**(Surviving Corporation)**

**OFFICERS' CERTIFICATE**

Mark X. Zaleski and J. Robert Suffoletta certify that:

1. They are the Senior Vice President, Area Operations and the Assistant Secretary, respectively, of Webvan Group, Inc., a corporation organized under the laws of the State of Delaware.

2. The corporation has authorized capital of 1,050,272,220 shares, \$0.0001 par value, of which 800,000,000 shares are designated Common Stock and 250,272,220 shares are designated Preferred Stock. The Preferred Stock is divided into 112,635,168 shares of Series A Preferred Stock, 41,814,000 shares of Series B Preferred Stock, 34,601,616 shares of Series C Preferred Stock, 25,610,718 shares of Series D-1 Preferred Stock, 25,610,718 shares of Series D-2 Preferred Stock and 10,000,000 shares which are undesignated as to series.

3. There were 1,000 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). There were no shares of Preferred Stock outstanding.

4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of 100% of the outstanding shares of Common Stock of Webvan Delaware.

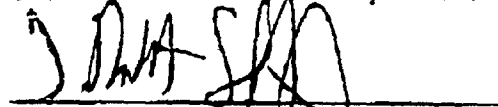
5. The percentage vote required was (i) greater than 50% of the votes entitled to be cast by holders of Common Stock, voting together as a separate class; and (ii) greater than 50% of the votes entitled to be cast by the holders of Preferred Stock, voting together as a separate class.

6. Mark X. Zaleski and J. Robert Suffoletta further declare under penalty of perjury under the laws of the State of Delaware that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Foster City, California on September 30, 1999.



Mark X. Zaleski,  
Senior Vice President, Area Operations



J. Robert Suffoletta, Assistant Secretary


Webvan Group, Inc.  
(California Corporation)

## OFFICERS' CERTIFICATE

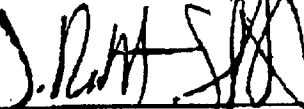
Mark X. Zaleski and J. Robert Suffoletta certify that:

1. They are the Senior Vice President, Area Operations and the Assistant Secretary, respectively, of Webvan Group, Inc., a corporation organized under the laws of the State of California.
2. The corporation has authorized capital of 1,050,272,220 shares of which 800,000,000 shares are designated Common Stock and 250,272,220 shares are designated Preferred Stock. The Preferred Stock is divided into 112,635,168 shares of Series A Preferred Stock, 41,814,000 shares of Series B Preferred Stock, 34,601,616 shares of Series C Preferred Stock, 25,610,718 shares of Series D-1 Preferred Stock, 25,610,718 shares of Series D-2 Preferred Stock and 10,000,000 shares which are undesignated as to series.
3. There were 87,898,187 shares of Common Stock, 112,635,168 shares of Series A Preferred Stock, 39,113,304 shares of Series B Preferred Stock, 32,491,200 shares of Series C Preferred Stock and 21,670,605 shares of Series D-2 Preferred Stock issued and outstanding as of the date of the shareholders' written consent approving the Agreement and Plan of Merger attached hereto (the "Merger Agreement"). All shares of Common Stock and Preferred Stock outstanding were entitled to vote on the merger.
4. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of a number of shares of each class of stock which equaled or exceeded the vote required.
5. The percentage vote required was (i) greater than 50% of the votes entitled to be cast by holders of Common Stock, voting together as a separate class; and (ii) greater than 50% of the votes entitled to be cast by the holders of Preferred Stock, voting together as a separate class.
6. Mark X. Zaleski and J. Robert Suffoletta further declare under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents thereof and that the same is true of their own knowledge.

Executed in Foster City, California on September 30, 1999.



Mark X. Zaleski,  
Senior Vice President, Area Operations



J. Robert Suffoletta, Assistant Secretary