

10-18-2001

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Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Wavetrak, Inc.

10/09/01

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- 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: March 15, 2000

2. Name and address of receiving party(ies)

Name: Surflife, Inc.

Internal

Address: Sean Collins, President

Street Address: 300 Pacific Coast Highway
Suite 310
Huntington
City: Beach State: CA Zip: 92548

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75/846572

B. Trademark Registration No.(s) 2,397,847
1,894,138
2,370,561

Additional number(s) attached Yes No

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

Name: Catherine L. Donohue, Esq.

Internal Address: Gibson, Dunn & Crutcher
LLP

Street Address: Jamboree Center
4 Park Plaza

City: Irvine State: CA Zip: 92614-8557

6. Total number of applications and registrations involved:

4

7. Total fee (37 CFR 3.41).....\$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501408

(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.

David A. Segal, Esq.

Name of Person Signing

Signature

October 5, 2001

Date

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

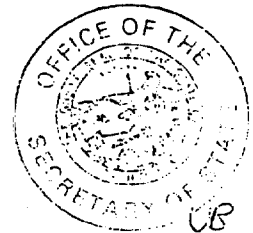
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10/17/2001 DBYRNE 00000175 501408 75846572

All documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20230

01 FC:481 40.00 CH
02 FC:482 75.00 CH

TRADEMARK
REEL: 002384 FRAME: 0852



SECRETARY OF STATE

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

That the attached transcript of 5 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



APR 10 2000

Secretary of State

State of Delaware
Office of the Secretary of State

ENDORSED - FILED
In the Office of the Secretary of State
of the State of California

MAR 28 2000

BILL JONES, Secretary of State

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 MERGER, WHICH MERGES:
"WAVETRAK, INC.", A CALIFORNIA CORPORATION,
WITH AND INTO "SURF MERGER SUB, INC." UNDER THE NAME OF
"SURFLINE, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE
LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS
OFFICE THE SEVENTEENTH DAY OF MARCH, A.D. 2000, AT 1 O'CLOCK
P.M.



Edward J. Freel

Edward J. Freel, Secretary of State

3173142 8100M
001136371

AUTHENTICATION: 0322389
DATE: 03-17-00

TRADEMARK
REEL: 002384 FRAME: 0854

CERTIFICATE OF MERGER

OF

WAVETRAK, INC.,
a California corporation,

AND

SURF MERGER SUB, INC.,
a Delaware corporation

It is hereby certified that:

1. The constituent business corporations participating in the merger herein certified are:
 - (i) Wavetrak, Inc., which is incorporated under the laws of the State of California ("Wavetrak"); and
 - (ii) Surf Merger Sub, Inc., which is incorporated under the laws of the State of Delaware ("Merger Sub").
2. An Agreement and Plan of Merger (the "Merger Agreement") has been approved, adopted, certified, executed and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of subsection (c) of Section 252 of the General Corporation Law of the State of Delaware, to wit, by Wavetrak in accordance with the laws of the State of its incorporation and by Merger Sub in the same manner as is provided in Section 251 of the General Corporation Law of the State of Delaware.
3. The name of the surviving corporation in the merger herein certified is Surf Merger Sub, Inc., which will continue its existence as said surviving corporation under the name Surfline, Inc. upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.
4. The Certificate of Incorporation of Merger Sub is to be amended and changed by reason of the merger herein certified by striking out Article I thereof, relating to the name, and by substituting in lieu thereof the following article:

"ARTICLE I

NAME

The name of the corporation (the "Corporation") is Surfline, Inc."

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STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:00 PM 03/17/2000
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5. The executed Merger Agreement between the aforesaid constituent corporations is on file at the principal place of business of the aforesaid surviving corporation, the address of which is as follows:

Surflite, Inc.
c/o Swell.com, Inc.
402 Eighth Avenue, Suite 207
San Francisco, CA 94102

6. A copy of the aforesaid Merger Agreement will be furnished by the aforesaid surviving corporation, on request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

7. The authorized capital stock Wavetrak, Inc. consists of 250,000 shares of Common Stock, without par value.

8. This Certificate of Merger shall become effective at the time of filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, this Certificate of Merger is hereby signed on behalf of each of the constituent corporations parties hereto.

Dated: March 15, 2000

WAVETRAK, INC.,
a California corporation

By: Sean Collins
Sean Collins,
President

SURF MERGER SUB, INC.,
a Delaware corporation

By: Nicholas Nathanson
Nicholas Nathanson,
President

SF_DOCS\224499.2 (W97)

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IN WITNESS WHEREOF, this Certificate of Merger is hereby signed on behalf of each of the constituent corporations parties hereto.

Dated: March 15, 2000

WAVETRAK, INC.,
a California corporation

By: _____
Sean Collins,
President

SURF MERGER SUB, INC.,
a Delaware corporation

By: *Nicholas Nathanson*
Nicholas Nathanson,
President

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TRADEMARK
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AGREEMENT OF MERGER

THIS AGREEMENT OF MERGER, dated as of March 17, 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 the Company consists of 250,000 shares of common stock, without 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 25, 2000, by and among Swell.com, Merger Sub, Sean Collins, an individual and the Company's sole shareholder (the "Sole Shareholder"), and the 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 Swell.com, the sole stockholder 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 Sole Shareholder of the Company in accordance with the California General Corporation Law and the Articles of Incorporation and Bylaws of the 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 the 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 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 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 the Certificate of Incorporation of the Surviving Corporation, except that Article I thereof, relating to the name of the corporation, is hereby amended and changed so as to read as follows:

"ARTICLE I

NAME

The name of the corporation (the "Corporation") is Surflin, Inc."

and said Certificate of Incorporation as herein amended and changed shall continue in full force and effect until further amended and changed in the manner prescribed by the provisions of the Delaware Code. The Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation 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. At the Effective Time, by virtue of the Merger and without any action on the part of Swell.com, Merger Sub, the Company or the Surviving Corporation, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time, shall be canceled and retired and shall be converted into the right to receive the following:

(i) subject to adjustment as provided in Section 1.9 of the Merger Plan, an amount of cash determined by dividing (x) \$4,250,000, less the Net Working Capital Adjustment (as defined in Section 1.9(d) of the Merger Plan) and less the Surflin Payments (as defined below) by (y) the number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time; and

(ii) a number of shares of Swell.com's Common Stock determined by dividing (x) 5,666,664 shares by (y) the number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time.

"Surflin Payments" shall mean (a) the \$40,000 payment to be made to The Surf Hotline under the Sale and Joint Venture Agreement dated January 3, 2000 between Surflin, a California general partnership, and The Surf Hotline plus; (b) the payment in the amount of \$30,000 otherwise due

on or before June 30, 2000 from the Company to Jerry Arnold, in connection with that certain Agreement for Purchase and Sale of Stock dated as of December 3, 1998 between the Company, Jerry Arnold and Surflin, Inc.; plus (c) payments made in connection with the full pay-off of outstanding business credit lines from the Bank of America to the Company and Surflin, Inc. under outstanding Advantage Business Credit Line/Loan Agreements with such bank; plus (d) payments aggregating \$100,000 representing amounts paid by Company to certain employees of the Company; minus (e) \$50,000. Prior to the Merger, Swell.com shall pay to the Company an amount in cash equal to the Surflin Payments less \$50,000.

No fractional shares of Swell.com Common Stock shall be delivered to the Sole Shareholder. In lieu thereof, fractional shares shall be rounded up to the nearest whole share.

(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.

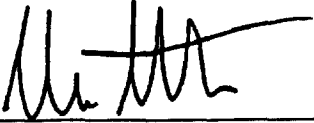
2.3 Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of either 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

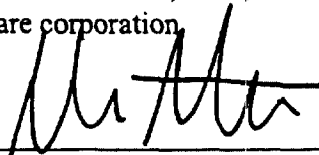
3.1 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same agreement. This agreement shall become effective when one or more counterparts has been signed by each of the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

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

Attest: 

Nicholas A. Nathanson,
Secretary

SURF MERGER SUB, INC.,
a Delaware corporation
By: 

Nicholas A. Nathanson,
President

Attest: _____
Sean Collins
Secretary

WAVETRAK, INC.,
a California corporation
By: _____
Sean Collins,
President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Merger to be duly 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: Sean Collins
Sean Collins
Secretary

By: Sean Collins
Sean Collins
President

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 March 17, 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 1,000 shares.

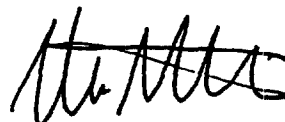
4. The percentage vote required for the aforesaid approval was the affirmative vote of a majority of the outstanding shares of the Corporation's Common Stock entitled to vote.

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.

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 March 8, 2000.



Nicholas A. Nathanson,
President and Secretary

CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

Sean Collins states and certifies that:

1. He is the President and Secretary of Wavetrak, Inc., a California corporation (the "Corporation").
2. The Agreement of Merger dated March 17, 2000 to which this Certificate is attached ("*Agreement of Merger*"), was duly approved by the Board of Directors and sole shareholder of the Corporation.
3. The Corporation has one class of shares outstanding, Common Stock, without par value. The total number of shares of Common Stock entitled to vote on the Agreement of Merger was 10,000 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.

On the date set forth below, in the City of Los Angeles in the State of California, 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 March 8, 2000.



Sean Collins
President and Secretary