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12-23-2003



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Docket No.:

047027-00006

Tab settings

12/19/03

To the Director of the United States Patent and Trademark Office

original documents or copy thereof.

1. Name of conveying party(ies):

Alabama Dairy Queen, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: November 11, 2003

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

Name: The Barber Companies, Inc.

Internal Address:

Street Address: 27 Inverness Center Parkway

City: Birmingham State: AL ZIP: 35242

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

964,758

Additional numbers

Yes No

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

Name: Timothy A. Bush, Esq.

Internal Address:

Street Address: 2311 Highland Avenue South

12/22/2003 ECOOPER 00000208 501346 964758

01 FC:0521 40.00 DA

City: Birmingham State: AL ZIP: 35205

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

1

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501346

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.

Timothy A. Bush, Esq.

Name of Person Signing

Signature

12/16/2003

Date

Total number of pages including cover sheet, attachments, and

6

Mail documents to be recorded with required cover sheet information to:
Mail Stop Recordation Services
Director of the United States Patent and Trademark Office
P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK
REEL: 002884 FRAME: 0378

STATE OF ALABAMA)
JEFFERSON COUNTY)

--FILED--		--EFFECTIVE--	
NOV 13 2003		NOV 30 2003	
TIME		TIME	

AGREEMENT AND ARTICLES OF MERGER
SECRETARY OF STATE

THIS AGREEMENT AND ARTICLES OF MERGER, dated this 11th day of November, 2003, made by and between **ALABAMA DAIRY QUEEN, INC.**, a corporation organized and existing under the laws of the State of Alabama since August 14, 1986 (hereinafter referred to as the "Merging Corporation"), and **THE BARBER COMPANIES, INC.**, a corporation organized and existing under the laws of the State of Alabama (hereinafter referred to as the "Surviving Corporation");

WITNESSETH:

WHEREAS, the Board of Directors of each of the corporations parties hereto, in consideration of the mutual agreements of each corporation as set forth herein, does deem it advisable, and generally for the welfare of each of the corporations and their respective shareholders, that the Merging Corporation merge itself into the Surviving Corporation, as authorized by the Alabama Business Corporation Act, under and pursuant to the terms and conditions hereafter set forth;

NOW, THEREFORE, the corporations parties to this agreement, by and between their respective Boards of Directors, in consideration of the mutual covenants, agreements and provisions hereinafter contained, have agreed and do agree each with the other that the Merging Corporation merge itself into the Surviving Corporation, pursuant to the applicable provisions of the Alabama Business Corporation Act, and do hereby agree upon and prescribe the terms and conditions of the merger and of carrying the same into effect, as follows:

1. PLAN OF MERGER. Effective November 30, 2003, the Merging Corporation hereby merges itself into the Surviving Corporation, and the Surviving Corporation shall be the surviving corporation resulting from the merger.

Until altered, amended or repealed, as therein provided, the Bylaws of the Surviving Corporation in effect as of the date of this Agreement and Articles of Merger, shall continue to be the Bylaws of the Surviving Corporation.

The principal office of the Surviving Corporation shall be the principal office of the Surviving Corporation as of the date of this Agreement and Articles of Merger.

The Surviving Corporation shall pay all the expenses of carrying this Agreement and Articles of Merger into effect and of accomplishing the merger.

Upon the date when this Agreement and Articles of Merger shall become effective, the separate existence of the Merging Corporation shall cease, and the Merging Corporation shall be merged into the Surviving Corporation, which shall possess all the rights, privileges, powers and franchises, and be subject to all of the restrictions, liabilities and duties of each of the corporations parties to this Agreement, and all and singular, the rights, privileges, powers and franchises of each of the corporations, and all property, real, personal and mixed, and all debts due to each of the corporations shall be vested in the Surviving Corporation; and all property, rights and privileges, powers and franchises, and all and every other interest, shall thereafter be as effectively the property of the Surviving Corporation as they were of the respective constituent corporations, and the title to any real estate, whether by deed or otherwise, vested in any of the corporations parties hereto, shall not revert or be in any way impaired by

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SECRETARY OF STATE

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otherwise, vested in any of the corporations parties hereto, shall not revert or be in any way impaired by reason of this merger, provided that all the rights of creditors and all liens upon the property of any of the corporations parties hereto shall be preserved unimpaired, and all debts, liabilities and duties of the Merging Corporation shall attach to the Surviving Corporation and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

If, at any time, the Surviving Corporation shall consider or be advised that any further actions are necessary or desirable to vest in the Surviving Corporation, according to the terms hereof, the title to any property or rights of the Merging Corporation, the proper officers and directors of the Surviving Corporation shall and will execute and make all such proper assignments and assurances, and do all things necessary or proper to vest title in such property or rights in the Surviving Corporation, and otherwise to carry out the purposes of this Agreement and Articles of Merger.

The Surviving Corporation shall be governed by the laws of the State of Alabama.

The manner of converting the outstanding capital shares of the Merging Corporation into the shares or securities of the Surviving Corporation shall be as follows:

1.1 Immediately prior to the filing and recording of this Agreement, the holders and owners of all the issued and outstanding common capital shares of each of the corporations parties to this Agreement were as follows:

The Merging Corporation:

<u>Shareholder</u>	<u>No. Shares Owned</u>
George W. Barber, Jr.	1,000

The Surviving Corporation:

<u>Shareholder</u>	<u>No. Shares Owned</u>
George W. Barber, Jr.	10,000

1.2 Upon the effective date of the merger, all of the shares of common capital stock of the Merging Corporation shall be canceled.

1.3 Upon the effective date of the merger all of the shares of stock of the Surviving Corporation owned by the above shareholders immediately prior to the merger shall remain issued and outstanding.

2. OUTSTANDING SHARES. Pursuant to the Articles of Incorporation of the Merging Corporation and the Surviving Corporation, the following common shares are authorized, having the following par value per share; and there are presently outstanding the following common shares, which represent the only shares of each of the corporations which are now outstanding:

MERGING CORPORATION

<u>CLASS</u>	<u>AUTHORIZED SHARES</u>	<u>PAR VALUE PER SHARE</u>	<u>SHARES OUTSTANDING</u>
Common	1,000	\$1.00	1,000

SURVIVING CORPORATION

<u>CLASS</u>	<u>AUTHORIZED SHARES</u>	<u>PAR VALUE PER SHARE</u>	<u>SHARES OUTSTANDING</u>
Common	10,000	\$1.00	10,000

3. VOTING OF SHARES. The Articles of Merger contained in this Agreement, after having been first duly approved unanimously by the Board of Directors of the Merging Corporation and the Board of Directors of the Surviving Corporation, were submitted to and duly approved by the written consent of the sole shareholder of the Merging Corporation who owns all of the 1,000 outstanding common shares required to vote thereon, and by the written consent of the sole shareholder of the Surviving Corporation who owns all of the 10,000 outstanding common shares required to vote thereon.

4. FILING DATE OF ARTICLES OF INCORPORATION. The Articles of Incorporation of the Merging Corporation were filed in Jefferson County, Alabama, and the Articles of Incorporation of the Surviving Corporation were filed in Jefferson County, Alabama.

5. TERMINATION. This Agreement and Articles of Merger may be terminated by the Board of Directors of either corporation a party hereto at any time prior to the filing of this Agreement with the Secretary of State of Alabama.

{This space intentionally left blank.}

IN WITNESS WHEREOF, the parties to this Agreement and Articles of Merger, pursuant to the authority duly given by the respective Boards of Directors, have caused these presents to be executed by their Presidents, and the corporate seals affixed on this the 11th day of November, 2003.

THE BARBER COMPANIES, INC.
(the "Surviving Corporation")

By: B. Austin Cunningham
B. Austin Cunningham
Its President

(CORPORATE SEAL)

ALABAMA DAIRY QUEEN, INC.
(the "Merging Corporation")

By: B. Austin Cunningham
B. Austin Cunningham
Its President

(CORPORATE SEAL)

[Faint, illegible text and a signature are visible in the bottom right corner of the page.]

NANCY L. WORLEY
SECRETARY OF STATE



First Floor, State Capitol
Suite S-105
600 Dexter Avenue
P.O. Box 5616
Montgomery, Alabama 36103-5616

State of Alabama

November 17, 2003

Cathy Crittenden
Sirote & Permutt
PO Box 55727
Birmingham AL 35255-5727

Re: Articles of Merger merging Alabama Dairy-Queen, Inc., into The Barber Companies, Inc., both Alabama corporations
EFFECTIVE: November 30, 2003

Dear Sir or Madam:

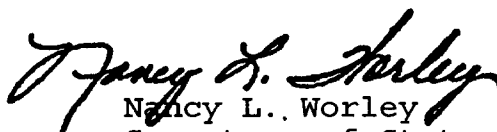
This will acknowledge receipt of your recent letter enclosing original and two copies of the above captioned merger and your checks in the amounts of \$ 50.00 made payable to the Secretary of State and \$25.00 made payable to the Jefferson County Probate Judge.

Please be advised that said instrument is being filed in this office as of November 13, 2003 with an effective date November 30, 2003.

I am forwarding a certified copy of merger and your check in the amount of \$25.00 to the Judge of Probate of Jefferson county.

If this office may be of further assistance in this or any other matter, please contact Sharon Viox in the Corporation Division at (334)242-5328.

Sincerely,


Nancy L. Worley
Secretary of State

NLW:slv

cc: Judge of Probate Jefferson County

OFFICE (334) 242-7206, FAX (334) 242-4993, E-MAIL sos@sos.AL.GOV • ELECTIONS (334) 242-7210, FAX (334) 242-2444
CORPORATIONS (334) 242-5324, FAX (334) 240-3138 • UCC (334) 242-5231, FAX (334) 353-8269 • LEGAL (334) 242-7202, FAX (334) 353-9155
LANDS & TRADEMARKS (334) 242-5325, FAX (334) 240-3138 • PUBLIC INFORMATION (334) 242-7224, FAX (334) 353-8993

RECORDED: 12/19/2003

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