

11-22-2002

Docket No.:

FORM PTO-1595 (Modified)
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)
Copyright 1996-97 LegalStar
P08A/REV02

HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



102289738

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):

Worldwide Magnifi, Inc.

11-13-02

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

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

Name: Emmperative Marketing, Inc.

Address: 104 Cooper Court

City: Los Gatos

State/Prov.: CA

Country: U.S.

ZIP: 95032

Additional name(s) & address(es) Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other

Execution Date: July 10, 2001

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

If this document is being filed together with a new application, the execution date of the application is:

Patent Application No.

Filing date

B. Patent No.(s)

5,903,892	6,370,543
5,983,176	6,374,260
6,282,549	
6,289,118	

Additional numbers Yes No

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

Name: Miriam Claire Beezy

Registration No.

Address: 1900 Avenue of the Stars

Suite 2100

City: Los Angeles

State/Prov.: CA

Country: U.S.

ZIP: 90067

6. Total number of applications and patents involved: 6

7. Total fee (37 CFR 3.41):.....\$ 240.00

- Enclosed - Any excess or insufficiency should be credited or debited to deposit account
- Authorized to be charged to deposit account

8. Deposit account number:

50-1833

11/21/2002 LHOELLER 0000305 501833 5903892

DO NOT USE THIS SPACE

01 FC:0021 240.00 CH

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.

Miriam Claire Beezy

Name of Person Signing

Miriam Claire Beezy

Signature

11/6/02

Date

Total number of pages including cover sheet, attachments, and

13

0568082

NCTO

FILED
in the Office of the Secretary of State
of the State of California

1960385 SURV

JUL 10 2001 RCS

B. Jones
BILL JONES, Secretary of State

**AGREEMENT OF MERGER
OF PROJECT EMM MERGER SUB, INC.,
A CALIFORNIA CORPORATION
AND
WORLDWIDE MAGNIFI, INC.,
A CALIFORNIA CORPORATION**

This Agreement of Merger (the "Agreement"), is made and entered into as of July 10, 2001 by and between worldwide magnifi, inc., a California corporation ("Magnifi"), Project EMM Merger Sub, Inc., a California corporation ("Merger Sub" and, together with Magnifi, the "Constituent Corporations"), and Emperative Marketing Holdings, Inc., a Delaware corporation ("Parent"). Merger Sub is a wholly owned subsidiary of Parent.

RECITALS

A. Parent, Magnifi, Merger Sub and certain others named therein have entered into that certain Formation Agreement, dated as of January 26, 2001 (the "Formation Agreement"), which provides for, among other things, the execution and filing of this Agreement of Merger and the merger of Merger Sub with and into Magnifi upon the terms set forth in the Formation Agreement and this Agreement (the "Merger").

B. The respective Boards of Directors of each of the Constituent Corporations deem it advisable and in the best interests of each of such corporations and their respective shareholders that Merger Sub be merged with and into Magnifi, and the Boards of Directors of the Constituent Corporations have approved the Formation Agreement, this Agreement and the Merger.

C. The Formation Agreement, this Agreement and the Merger have been approved by the shareholders of Magnifi and by the sole shareholder of Merger Sub.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, each of the Constituent Corporations hereby agrees that Merger Sub shall be merged with and into Magnifi in accordance with this Agreement and the provisions of the laws of the State of California, upon the terms and subject to the conditions set forth as follows:

**ARTICLE I.
THE CONSTITUENT CORPORATIONS**

1.1 Magnifi. Magnifi is a corporation duly organized and existing under the laws of the State of California and, immediately prior to the Merger, has an authorized capital of 47,000,000 shares of Common Stock, \$0.001 par value (the "Magnifi Common Stock"), of which 3,488,155 shares are issued and outstanding, and 34,112,087 shares of Preferred Stock, par value \$0.001 per share, of which 22,887,252 shares are issued and outstanding and convertible into 24,659,007 shares of Magnifi Common Stock. Magnifi was incorporated under the laws of the State of California on February 15, 1996.

SV_DOC\578657.2 [W97]

1.2 Merger Sub. Merger Sub is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 1,000 shares of Common Stock (the "Merger Sub Common Stock"). As of the date of this Agreement, 1,000 shares of Merger Sub Common Stock are outstanding and held by Parent. Merger Sub was incorporated under the laws of the State of California on January 22, 2001.

ARTICLE II. THE MERGER

2.1 The Merger. At the Effective Time (as defined in Section 2.2 hereof) and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the General Corporation Law of the State of California ("California Law"), Merger Sub shall be merged with and into Magnifi, the separate corporate existence of Merger Sub shall cease and Magnifi shall continue as the surviving corporation and as a wholly owned subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to hereinafter as the "Surviving Corporation."

2.2 Filing and Effectiveness. This Agreement, together with the officers' certificates of each of the Constituent Corporations required by California Law (the "Officers' Certificates"), shall be filed with the Secretary of State of the State of California at the time specified in the Formation Agreement. The Merger shall become effective upon the filing of this Agreement and the Officers' Certificates with the Secretary of State of the State of California (the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of California Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all the property, rights, privileges, powers and franchises of Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

2.4 Articles of Incorporation. At the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be amended in full to read as set forth on Exhibit A attached hereto.

2.5 Effect of Merger on the Capital Stock of the Constituent Corporations.

(a) Definitions. For all purposes of this Agreement, the following terms shall have the following meanings:

(i) "Dissenting Shares" shall mean any shares of Magnifi Stock issued and outstanding immediately prior to the Effective Time held by a holder who has the right to demand an appraisal of such shares in accordance with California Law and who, as of the Effective Time, has not failed to perfect or otherwise lost such appraisal right.

(ii) "Magnifi Options" shall mean all unexpired and unexercised outstanding options, whether vested or unvested or exercisable in accordance with their respective terms, to purchase shares of Magnifi Common Stock previously granted by Magnifi under any stock

option or other stock-based incentive plan, program or arrangement of Magnifi, including, without limitation, the Magnifi's 1996 Stock Plan, as amended.

(iii) "Magnifi Preferred Stock" shall mean the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock of Magnifi.

(iv) "Magnifi Stock" shall mean the Magnifi Common Stock and Magnifi Preferred Stock.

(v) "Magnifi Warrants" shall mean warrants to purchase Magnifi stock or other convertible or exchangeable securities granted by Magnifi.

(vi) "Parent Stock" shall mean shares of Common Stock, par value \$0.0001 per share, and Preferred Stock, par value \$0.0001 per share, of Parent.

(b) Capital Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any further action of the parties or the holders of any of the following securities, each issued and outstanding share of Merger Sub Common Stock shall be converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation (the "Surviving Corporation Common Stock"). Each certificate representing outstanding shares of Merger Sub Common Stock shall at the Effective Time represent a number of shares of Surviving Corporation Common Stock determined by multiplying the number of shares of Merger Sub Common Stock represented by such certificate immediately prior to the Effective Time by one.

(c) Capital Stock of Magnifi. At the Effective Time, by virtue of the Merger and without any further action of the parties or the holders of any of the following securities,

(i) Each share of Magnifi Common Stock issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive one share of Parent Common Stock.

(ii) Each share of Series A Preferred Stock, par value \$.001 per share, of Magnifi issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive 1.0228 share of Series A Preferred Stock, par value \$0.0001 per share, of Parent.

(iii) Each share of Series B Preferred Stock, par value \$0.001 per share, of Magnifi issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive 1.0644 share of Series B Preferred Stock, par value \$0.0001 per share, of Parent.

(iv) Each share of Series C Preferred Stock, par value \$0.001 per share, of Magnifi issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive 1.0955 share of Series C Preferred Stock, par value \$0.0001 per share, of Parent.

(v) Each share of Series D Preferred Stock, par value \$0.001 per share, of Magnifi issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive 1.0979 share of Series D Preferred Stock, par value \$0.0001 per share, of Parent.

(vi) Each share of Series E Preferred Stock, par value \$0.001 per share, of Magnifi issued and outstanding immediately prior to the Effective Time (excluding any Dissenting Shares) shall be converted into the right to receive one share of Series E Preferred Stock, par value \$0.0001 per share, of Parent.

(d) Assumption of Magnifi Options. As of the Effective Time, Parent shall assume the Magnifi Stock Option Plans (as defined in the Formation Agreement) and each Magnifi Option shall be deemed assumed by Parent automatically and without any action or investment decision on the part of the holder thereof (an "Assumed Option"). After the Effective Time, each Assumed Option shall be exercisable upon the same terms and conditions as were applicable to the related Magnifi Option immediately prior to the Effective Time, except that (i) each Assumed Option will be exercisable for a number of shares of Parent Common Stock equal to the number of shares of Magnifi Common Stock that were issuable upon exercise of such Assumed Option immediately prior to the Effective Time, and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such Assumed Option will be equal to the exercise price per share of Magnifi Common Stock at which such Assumed Option was exercisable immediately prior to the Effective Time.

(e) Assumption of Magnifi Warrants. As of the Effective Time, the Magnifi Warrants shall be deemed assumed by Parent automatically and without any action or investment decision on the part of the holder thereof (the "Assumed Warrants"). After the Effective Time, the Assumed Warrants shall be exercisable upon the same terms and conditions as were applicable to the Magnifi Warrants immediately prior to the Effective Time, except that (i) each Assumed Warrant to purchase Magnifi Common Stock (the "Common Warrants") or Magnifi Series E Preferred Stock (the "Series E Warrants") will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Magnifi Common Stock or Magnifi Series E Preferred Stock that were issuable upon exercise of such Assumed Warrant immediately prior to the Effective Time, multiplied by one; (ii) each Assumed Warrant to purchase Magnifi Series A Preferred Stock (the "Series A Warrants") will be exercisable for that number of whole shares of Parent Series A Preferred Stock equal to the product of the number of shares of Magnifi Series A Preferred that were issuable upon exercise of such Assumed Warrant immediately prior to the Effective Time multiplied by 1.0228, rounded down to the nearest whole number of shares of Parent Series A Preferred Stock; (iii) each Assumed Warrant to purchase Magnifi Series B Preferred Stock (the "Series B Warrants") will be exercisable for that number of whole shares of Parent Series B Preferred Stock equal to the product of the number of shares of Magnifi Series B Preferred Stock that were issuable upon exercise of such Assumed Warrant immediately prior to the Effective Time multiplied by 1.0644, rounded down to the nearest whole number of shares of Parent Series B Preferred Stock; (iv) each Assumed Warrant to purchase Magnifi Series C Preferred Stock (the "Series C Warrants") will be exercisable for that number of whole shares of Parent Series C Preferred Stock equal to the product of the number of shares of Magnifi Series C Preferred Stock that

were issuable upon exercise of such Assumed Warrant immediately prior to the Effective Time multiplied by 1.0955, rounded down to the nearest whole number of shares of Parent Series C Preferred Stock ; (v) each Assumed Warrant to purchase Magnifi Series D Preferred Stock (the "Series D Warrants") will be exercisable for that number of whole shares of Parent Series D Preferred Stock equal to the product of the number of shares of Magnifi Series D Preferred Stock that were issuable upon exercise of such Assumed Warrant immediately prior to the Effective Time multiplied by 1.0979, rounded down to the nearest whole number of shares of Parent Series D Preferred Stock ; and (vi) the per share exercise price for the shares of Parent Stock issuable upon exercise of each such Assumed Warrant will be equal to the quotient determined by dividing the exercise price per share of Magnifi Stock at which such Assumed Warrant was exercisable immediately prior to the Effective Time by (a) one, in the case of Common Warrants and Series E Warrants; (b) 1.0228, in the case of Series A Warrants; (c) 1.0644, in the case of Series B Warrants; (d) 1.0955, in the case of Series C Warrants; and (e) 1.0979, in the case of Series D Warrants, rounded up to the nearest whole cent.

(f) Fractional Shares. No certificates representing fractional shares of Parent Stock shall be issued in connection with the Merger, and such fractional share interests will be canceled and thereafter will not entitle the owner thereof to vote or to any rights as a stockholder of Parent. All shares of Parent Stock (including fractions thereof) issuable upon conversion of more than one share of Magnifi Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in any fractional share.

2.6 Dissenting Shares.

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Magnifi Stock issued and outstanding immediately prior to the Effective Time held by a stockholder of Magnifi immediately prior to the Effective Time (if any) who has the right to demand an appraisal of such shares in accordance with California Law shall not be converted into a right to receive shares of Parent Stock (but shall have the rights set forth in California Law) unless such holder fails to perfect or otherwise loses such holder's appraisal right, if any.

(b) Notwithstanding the provisions of Section 2.6(a) hereof, if any holder of Dissenting Shares shall withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under the applicable provisions of California Law, after the Effective Time, such holder's shares shall automatically be converted into and represent only the right to receive Parent Stock in accordance with the terms of this Agreement.

2.7 Surrender and Delivery of Certificates. At and after the Effective Time, Parent shall make available, and each shareholder of Magnifi immediately prior to the Effective Time shall be entitled to receive, upon surrender to Parent or its representatives of any certificates evidencing such shares of Magnifi Stock (the "Certificates") for cancellation and a letter of transmittal in customary form (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to Parent or its designated representative and shall be in such form and have such other provisions as Parent shall reasonably specify) (the "Transmittal Letter"), the aggregate shares of Parent Stock into which such shares have been converted in the

Merger, and upon such surrender of each Certificate and delivery by Parent of the shares of Parent Stock in exchange therefor, such Certificates shall be cancelled. Until so surrendered, each Certificate shall be deemed for all corporate purposes to evidence only the right to receive upon such surrender the aggregate number of shares of Parent Stock into which such shares represented thereby shall have been converted.

2.8 No Further Ownership Rights in Magnifi Stock. The shares of Parent Stock delivered upon the surrender for exchange of Magnifi Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares, and there shall be no further registration of transfers of such which were outstanding immediately prior to the Effective Time on the records of the Surviving Corporation. If, after the Effective Time, the Certificates are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged for the Merger Shares as provided in this Article II.

2.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, Parent shall deliver in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, such shares of Parent Stock as may be required pursuant to Section 2.5; provided, however, that Parent may, in its reasonable discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver an indemnity or bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.10 Tax and Accounting Consequences.

(a) The parties hereby intend that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

(b) The parties hereto agree to prepare, or cause to be prepared, all federal and state tax returns, other governmental filings and applicable books and records in accordance with such treatment and to take such other actions as may be necessary so that such transactions will be so treated.

2.11 Taking of Necessary Action; 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 and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Magnifi, Parent, Merger Sub, and the officers and directors of Magnifi, Parent and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE III.
MISCELLANEOUS

3.1 Termination by Mutual Agreement. Notwithstanding the approval of this Agreement by the shareholders of Merger Sub and Magnifi, this Agreement may be terminated at any time prior to the Effective Time by mutual agreement of the Board of Directors of Merger Sub and Magnifi.

3.2 Termination of Formation Agreement. Notwithstanding the approval of this Agreement by the shareholders of Merger Sub and Magnifi, this Agreement shall terminate forthwith at any time prior to the Effective Time in the event that the Formation Agreement shall be terminated as therein provided.

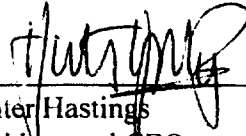
3.3 Amendment. This Agreement may be amended by the parties hereto at any time prior to the Effective Time before or after approval hereof by the shareholders of either Merger Sub or Magnifi, but, after any such approval, no amendment will be made which, under the applicable provisions of California Law, requires the further approval of shareholders without obtaining such further approval. This Agreement shall not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

3.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

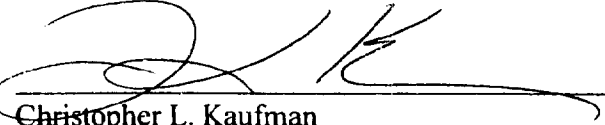
3.5 Governing Law. This Agreement shall be governed in all respects, including validity, interpretation and effect by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

WORLDWIDE MAGNIFI, INC.

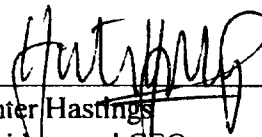
By: 

Hunter Hastings
President and CEO

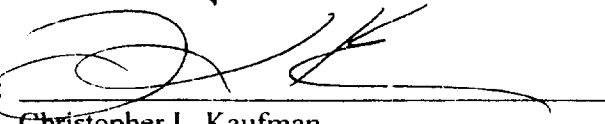
By: 

Christopher L. Kaufman
Secretary

PROJECT EMM MERGER SUB, INC.

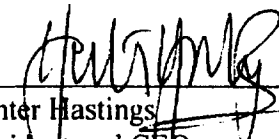
By: 

Hunter Hastings
President and CEO

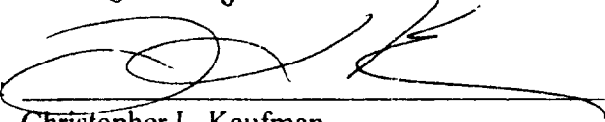
By: 

Christopher L. Kaufman
Secretary

EMMPERATIVE MARKETING HOLDINGS, INC.

By: 

Hunter Hastings
President and CEO

By: 

Christopher L. Kaufman
Secretary

[SIGNATURE PAGE TO AGREEMENT OF MERGER]

SV_DOCS\78657.2 [W97]

WORLDWIDE MAGNIFI, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

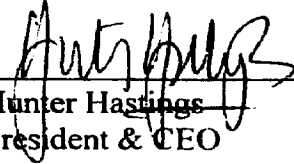
The undersigned, Hunter Hastings and Christopher Kaufman, hereby certify that:

1. They are the President and Secretary, respectively, of worldwide magnifi, inc., a California corporation (the "Company").
2. The principal terms of the Agreement of Merger in the form attached (the "Merger Agreement") providing for the merger (the "Merger") of Project EMM Merger Sub, Inc., a California corporation, with and into the Company were duly approved by the Board of Directors and shareholders of the Company.
3. The authorized capital stock of the Company consists of 47,000,000 shares of Common Stock and 34,112,087 shares of Preferred Stock. 3,488,155 shares of Company Common Stock were issued and outstanding and entitled to vote upon the Merger. 22,887,252 shares of Preferred Stock were issued and outstanding and entitled to vote on the Merger. The votes of more than 50% of the outstanding shares of Company Common Stock, more than 50% of the outstanding shares of Company Preferred Stock, more than 50% of the outstanding Series A Preferred Stock, more than 50% of the outstanding Series B Preferred Stock, more than 50% of the outstanding Series C Preferred Stock, more than 50% of the outstanding Series D Preferred Stock, and more than 50% of the outstanding Series E Preferred Stock were required to approve the Merger and the principal terms of the Agreement of Merger.
4. The principal terms of the Merger Agreement were approved by the votes of the holders of a majority of the outstanding shares of Company Common Stock and a majority of the outstanding shares of Company Preferred Stock, voting together as a single class, by the votes of the holders of a majority of the outstanding shares of Company Common Stock and Company Preferred Stock, each voting separately as a single class, and by the votes of the holders of a majority of the outstanding shares of each series of Company Preferred Stock, each voting separately as a separate class, which votes exceeded the votes required.

* * * *

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of his own knowledge.

Date: JULY 10 , 2001

Signature: 

Hunter Hastings
President & CEO

Signature: 

Christopher L. Kaufman
Secretary

PROJECT EMM MERGER SUB, INC.

OFFICERS' CERTIFICATE OF APPROVAL OF MERGER

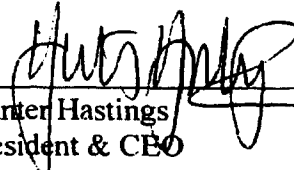
The undersigned, Hunter Hastings and Christopher L. Kaufman, hereby certify that:

1. They are the President and Secretary, respectively, of Project EMM Merger Sub, Inc., a California corporation ("Merger Sub").
2. The principal terms of the Agreement of Merger in the form attached (the "Merger Agreement") providing for the merger (the "Merger") of Merger Sub with and into Worldwide Magnifi, Inc., a California corporation, was duly approved by the Board of Directors and by the sole shareholder of Merger Sub.
3. The authorized capital stock of Merger Sub consists of 1,000 shares of Common Stock. There were 1,000 shares of Merger Sub Common Stock issued and outstanding and entitled to vote upon the Merger. A vote of more than 50% of the outstanding shares of Merger Sub Common Stock was required to approve the Merger.
4. The principal terms of the Merger Agreement and the Merger were approved by the consent of Merger Sub's sole shareholder, holding 100% of the Company's issued and outstanding shares, which vote exceeded the vote required.
5. No vote of the stockholders of Emperative Marketing Holdings, Inc., a Delaware corporation and the sole shareholder of Merger Sub, was required to approve the Merger Agreement or the Merger.

Each of the undersigned further declares under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of his own knowledge.

Date: JULY 10 , 2001

Signature: _____


Hunter Hastings
President & CEO

Signature: _____

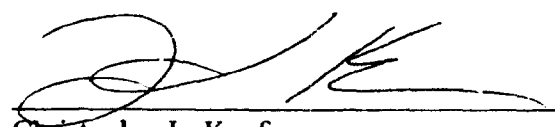

Christopher L. Kaufman
Secretary

EXHIBIT A

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
WORLDWIDE MAGNIFI, INC.**

ARTICLE I

The name of this corporation is "Emmperative Marketing, Inc." (this "Corporation").

ARTICLE II

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

The Corporation is authorized to issue one class of shares of stock, to be designated Common Stock, and the total number of shares which the Corporation is authorized to issue is one thousand (1,000) shares.

ARTICLE IV

The Board of Directors of the Corporation shall consist of seven (7) members.

ARTICLE V

(a) The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

(b) The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its stockholders through bylaw provision or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code.

(c) Any repeal or modification of the foregoing provisions of this Article V by the shareholders of this Corporation shall not adversely affect any right of indemnification or limitation of an agent of this Corporation relating to acts or omissions occurring prior to such repeal or modification.

SV_DCS\78657.2 {W97}