

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	08/09/2010		
CONVEYING PARTY DATA			
Name		Execution Date	
TRIA Beauty, Inc. (CA)		08/09/2010	
RECEIVING PARTY DATA			
Name:	TRIA Beauty, Inc. (DE)		
Street Address:	4160 Dublin Blvd.		
Internal Address:	Suite 200		
City:	Dublin		
State/Country:	CALIFORNIA		
Postal Code:	94568		
PROPERTY NUMBERS Total: 4			
Property Type	Number		
Patent Number:	7118563		
Patent Number:	7250045		
Patent Number:	7413567		
Patent Number:	D535746		
CORRESPONDENCE DATA			
Fax Number:	(512)457-2100		
Phone:	(512) 457-2123		
Email:	trosson@kslaw.com		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Correspondent Name:	Todd Rosson (TRIA Beauty)		
Address Line 1:	King & Spalding L.L.P.		
Address Line 2:	401 Congress Avenue #3200		
Address Line 4:	Austin, TEXAS 78701		

CH \$160.00 7118563

ATTORNEY DOCKET NUMBER:	16591.105015
NAME OF SUBMITTER:	Todd Rosson
<p>Total Attachments: 14</p> <p>source=Merger_Tria#page1.tif</p> <p>source=Merger_Tria#page2.tif</p> <p>source=Merger_Tria#page3.tif</p> <p>source=Merger_Tria#page4.tif</p> <p>source=Merger_Tria#page5.tif</p> <p>source=Merger_Tria#page6.tif</p> <p>source=Merger_Tria#page7.tif</p> <p>source=Merger_Tria#page8.tif</p> <p>source=Merger_Tria#page9.tif</p> <p>source=Merger_Tria#page10.tif</p> <p>source=Merger_Tria#page11.tif</p> <p>source=Merger_Tria#page12.tif</p> <p>source=Merger_Tria#page13.tif</p> <p>source=Merger_Tria#page14.tif</p>	

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, 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:

"TRIA BEAUTY, INC.", A CALIFORNIA CORPORATION,

WITH AND INTO "TRIA BEAUTY, INC." UNDER THE NAME OF "TRIA BEAUTY, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINTH DAY OF AUGUST, A.D. 2010, AT 8:36 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4850361 8100M

100810315



You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8159331

DATE: 08-09-10

PATENT
REEL: 027563 FRAME: 0199

AGREEMENT AND PLAN OF MERGER OF
TRIA BEAUTY, INC., A DELAWARE CORPORATION
AND
TRIA BEAUTY, INC., A CALIFORNIA CORPORATION

THIS AGREEMENT AND PLAN OF MERGER dated as of August 9, 2010 (the "Agreement") is between TRIA Beauty, Inc., a Delaware corporation ("TRIA Delaware"), and TRIA Beauty, Inc., a California corporation ("TRIA California"). TRIA Delaware and TRIA California are sometimes referred to herein as the "Constituent Corporations."

RECITALS

A. TRIA Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has an authorized capital of 124,316,792 shares, 67,839,248 of which are designated "Common Stock", \$0.001 par value, and 56,477,544 of which are designated "Preferred Stock," \$0.001 par value. Of such authorized shares of Preferred Stock, 3,000,000 shares are designated "Series A Preferred Stock," 5,450,000 shares are designated "Series B Preferred Stock," 6,250 shares are designated "Series B-1 Preferred Stock", 4,999,968 shares are designated "Series C Preferred Stock," 3,000 shares are designated "Series C-1 Preferred Stock," 14,388,328 shares are designated "Series D Preferred Stock," 5,504,998 shares are designated "Series D-1 Preferred Stock" and 23,125,000 shares are designated "Series E Preferred Stock." As of the date of this Agreement, 100 shares of Common Stock were issued and outstanding, all of which were held by TRIA California, and no shares of Preferred Stock were outstanding.

B. TRIA California is a corporation duly organized and existing under the laws of the State of California and has an authorized capital of 124,316,792 shares, 67,839,248 of which are designated "Common Stock", no par value, and 56,477,544 of which are designated "Preferred Stock," no par value. Of such authorized shares of Preferred Stock, 3,000,00 shares are designated "Series A Preferred Stock," 5,450,000 shares are designated "Series B Preferred Stock," 6,250 shares are designated "Series B-1 Preferred Stock", 4,999,968 shares are designated "Series C Preferred Stock," 3,000 shares are designated "Series C-1 Preferred Stock," 14,388,328 shares are designated "Series D Preferred Stock," 5,504,998 shares are designated "Series D-1 Preferred Stock," and 23,125,000 shares are designated "Series E Preferred Stock." As of the date of this Agreement, 3,694,322 shares of Common Stock, 3,000,000 shares of Series A Preferred Stock, 5,443,750 shares of Series B Preferred Stock, 6,250 shares of Series B-1 Preferred Stock, 4,996,968 shares of Series C Preferred Stock, 3,000 of Series C-1 Preferred Stock, 8,883,330 shares of Series D Preferred Stock, 5,504,998 shares of Series D-1 Preferred Stock and 18,866,490 shares of Series E Preferred Stock were issued and outstanding.

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

D. The respective Boards of Directors of TRIA Delaware and TRIA California have approved this Agreement and have directed that this Agreement be submitted to a vote of their respective shareholders and executed by the undersigned officers.

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

I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the Delaware General Corporation Law and the California Corporations Code, TRIA California shall be merged with and into TRIA Delaware (the "Merger"), the separate existence of TRIA California shall cease and TRIA Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be TRIA Beauty, 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 of each Constituent Corporation in accordance with the requirements of the Delaware General Corporation Law and the California Corporations Code;

(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; and

(c) An executed Agreement and Plan of Merger meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

(d) An executed Agreement and Plan of Merger meeting the requirements of the California Corporations Code 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 TRIA California shall cease and TRIA 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 the respective Boards of Directors of the Constituent Corporations, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of TRIA California in the manner more fully set forth in Section 259 of the Delaware General Corporation Law, (iv) shall continue to be subject to all of the debts, liabilities and obligations of TRIA Delaware 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 TRIA California in the same manner as if TRIA Delaware had itself incurred them, all

as more fully provided under the applicable provisions of the Delaware General Corporation Law and the California Corporations Code.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of TRIA 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 TRIA 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 TRIA 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 as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 TRIA California Common Shares. Upon the Effective Date of the Merger, each share of TRIA California Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, by the holder of such shares or by any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation. No fractional share interests of the Surviving Corporation's Common Stock shall be issued. In lieu thereof, any fractional share interests to which a holder would otherwise be entitled shall be aggregated.

3.2 TRIA California Preferred Shares.

(a) Upon the Effective Date of the Merger, each share of Series A Preferred Stock, Series B Preferred Stock Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series E Preferred Stock of TRIA California, no par value, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of TRIA California Common Stock as set forth in the TRIA California Articles of Incorporation, as amended, shall, by virtue of the Merger and without any action by the Constituent Corporations, by the holder of such shares or by any other person, be converted into or exchanged for one fully paid and nonassessable share of Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock, Series D Preferred Stock, Series D-1 Preferred Stock and Series E Preferred Stock, \$0.001 par value, of the Surviving Corporation, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Preferred Stock shall be convertible into the same number of shares of the Surviving Corporation's Common Stock, \$0.001 par value, as such share of TRIA California Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger,

subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

3.3 TRIA California Options, Warrants, Stock Purchase Rights and Convertible Securities.

(a) Upon the Effective Date of the Merger, the Surviving Corporation shall assume the obligations of TRIA California under, and continue, the 2004 Stock Option Plan and all other employee benefit plans of TRIA California, and shall also assume the obligations of TRIA California under outstanding warrants exercisable for TRIA California Common Stock. Each outstanding and unexercised option or other right to purchase, or security convertible into, TRIA California Common Stock or TRIA California Preferred Stock (a "Right") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each share of TRIA California Common Stock or Preferred Stock, as the case may be, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such TRIA California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to TRIA California Common Stock or Preferred Stock. Such Common Stock and Preferred Stock are subject to paragraphs 3.1 and 3.2 respectively, hereof.

(b) A number of shares of the Surviving Corporation's Common Stock and Preferred Stock shall be reserved for issuance upon the exercise of options, stock purchase rights, warrants and convertible securities equal to the number of shares of TRIA California Common Stock and TRIA California Preferred Stock so reserved immediately prior to the Effective Date of the Merger.

(c) The assumed Rights shall not entitle any holder thereof to a fractional share upon exercise or conversion (unless the holder was entitled to a fractional interest immediately prior to the Merger). In lieu thereof, any fractional share interests to which a holder of an assumed Right (other than an option issued pursuant to TRIA California's 2004 Stock Option Plan) would otherwise be entitled upon exercise or conversion shall be aggregated (but only with other similar Rights which have the same per share terms). To the extent that after such aggregation the holder would still be entitled to a fractional share with respect thereto upon exercise or conversion, the holder shall be entitled upon the exercise or conversion of all such assumed Rights pursuant to their terms (as modified herein) to one full share of Common Stock or Preferred Stock, as the case may be, in lieu of such fractional share. With respect to each class of such similar Rights, no holder will be entitled to more than one full share in lieu of a fractional share upon exercise or conversion.

Notwithstanding the foregoing, with respect to options issued under the TRIA California 2004 Stock Option Plan, that are assumed in the Merger, the number of shares of Common Stock to which the holder would be otherwise entitled upon exercise of each such assumed option following the Merger shall be rounded down to the nearest whole number and the exercise price shall be rounded up to the nearest whole cent. In addition, no "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionees pursuant to the assumption of their options.

3.4 TRIA Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, \$0.001 par value, of TRIA Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by TRIA Delaware, the holder of such shares or any other person, be canceled 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 TRIA California Common Stock or Preferred Stock may be asked to surrender the same for cancellation to an exchange agent, whose name will be delivered to such holders prior to any requested exchange (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 Surviving Corporation's Common Stock or Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of TRIA California Common Stock or Preferred Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock or Preferred Stock, respectively, into which such shares of TRIA California Common Stock or Preferred Stock, as the case may be, 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 Common Stock or Preferred Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock or Preferred 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 TRIA 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 the Surviving Corporation's 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 comply with applicable securities laws and that the person requesting such transfer pay to the Exchange Agent any transfer or other taxes payable by reason of 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 the Surviving Corporation that such tax has been paid or is not payable.

IV. GENERAL

4.1 Covenants of TRIA Delaware. TRIA 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 Corporations Code.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by TRIA Delaware of all of the franchise tax liabilities of TRIA California.

(c) Take such other actions as may be required by the California Corporations Code.

4.2 Further Assurances. From time to time, as and when required by TRIA Delaware or by its successors or assigns, there shall be executed and delivered on behalf of TRIA California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by TRIA Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of TRIA California and otherwise to carry out the purposes of this Agreement, and the officers and directors of TRIA Delaware are fully authorized in the name and on behalf of TRIA 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 TRIA California or of TRIA Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of TRIA California or by the sole stockholder of TRIA 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 Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (a) 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, (b) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of either Constituent Corporation.

4.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801, 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 4160 Dublin Blvd., Suite 200, Dublin, CA 94568, and copies thereof will be furnished to any shareholder 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 Corporations Code.

4.8 FIRPTA Notification. (a) On the Effective Date of the Merger, TRIA California shall deliver to TRIA Delaware, as agent for the shareholders of TRIA California, a properly executed statement (the "Statement") substantially in the form attached hereto as Exhibit A. TRIA Delaware


shall retain the Statement for a period of not less than seven years and shall, upon request, provide a copy thereof to any person that was a shareholder of TRIA California immediately prior to the Merger. In consequence of the approval of the Merger by the shareholders of TRIA California, (i) such shareholders shall be considered to have requested that the Statement be delivered to TRIA Delaware as their agent and (ii) TRIA Delaware shall be considered to have received a copy of the Statement at the request of the TRIA California shareholders for purposes of satisfying TRIA Delaware's obligations under Treasury Regulation Section 1.1445-2(c)(3).

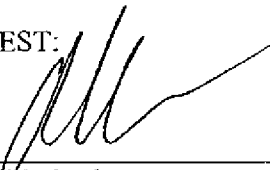
(b) TRIA California shall deliver to the Internal Revenue Service a notice regarding the Statement in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2).

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement having first been approved by the Boards of Directors of Tria Delaware and Tria California is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.


TRIA BEAUTY, INC.
a Delaware corporation

By: 
Kevin Appelbaum
President & Chief Executive Officer


ATTEST: 

David J. Saul
Secretary

TRIA BEAUTY, INC.
a California corporation

By: 

Kevin Appelbaum
President & Chief Executive Officer

ATTEST: 

David J. Saul
Secretary

EXHIBIT A

TO THE SHAREHOLDERS OF TRIA BEAUTY, INC.:

In connection with the reincorporation (the "Reincorporation") in Delaware of TRIA Beauty, Inc., a California corporation (the "Company"), pursuant to the Agreement and Plan of Merger (the "Agreement") dated as of August 9, 2010 between the Company and TRIA Beauty, Inc., a Delaware corporation and wholly-owned subsidiary of the Company ("TRIA Delaware"), your shares of Company stock will be replaced by shares of stock in TRIA Delaware.

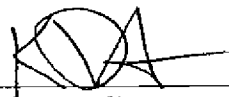
In order to establish that (i) you will not be subject to tax under Section 897 of the Internal Revenue Code of 1986 as amended (the "Code"), in consequence of the Reincorporation and (ii) TRIA Delaware will not be required under Section 1445 of the Code to withhold taxes from the TRIA Delaware stock that you will receive in connection therewith, the Company hereby represents to you that, as of the date of this letter, shares of Company stock do not constitute a "United States real property interest" within the meaning of Section 897(c) of the Code and the regulations issued thereunder.

A copy of this letter will be delivered to TRIA Delaware pursuant to Section 4.8 of the Agreement.

Under penalties of perjury, the Undersigned officer or the Company hereby declares that, to the best knowledge and belief of the undersigned, the facts set forth herein are true and correct.

Sincerely,

Tria Beauty, Inc. a California corporation



Kevin Appelbaum
President & Chief Executive Officer

TRIA BEAUTY, INC.

A Delaware Corporation

OFFICERS' CERTIFICATE

Kevin Appelbaum and David J. Saul certify that:

1. They are the President and Chief Executive Officer and the Secretary, respectively, of Tria Beauty, Inc., a corporation organized under the laws of the State of Delaware.
2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. There are authorized seven series of Preferred Stock, designated "Series A Preferred Stock," "Series B Preferred Stock," "Series B-1 Preferred Stock," "Series C Preferred Stock," "Series C-1 Preferred Stock," "Series D Preferred Stock," "Series D-1 Preferred Stock" and "Series E Preferred Stock," respectively.
3. There are 100 shares of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto. There are no shares of Preferred Stock outstanding.
4. The principal terms of the Agreement and Plan of Merger were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.
5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

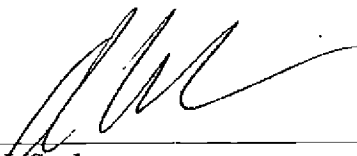
(The remainder of this page is intentionally left blank.)

Kevin Appelbaum and David J. Saul further declare under penalty of perjury under the laws of the States of Delaware and California that they have read the foregoing certificate and know the contents and that the same is true of their own knowledge.

Executed on August 9, 2010.



Kevin Appelbaum
President and Chief Executive Officer



David J. Saul
Secretary

TRIA BEAUTY, INC.

A California Corporation

OFFICERS' CERTIFICATE

Kevin Appelbaum and David J. Saul certify that:

1. They are the President and Chief Executive Officer and the Secretary, respectively, of Tria Beauty, Inc., a corporation organized under the laws of the State of California.

2. The corporation has authorized two classes of stock, designated "Common Stock" and "Preferred Stock," respectively. There are authorized seven series of Preferred Stock, designated "Series A Preferred Stock," "Series B Preferred Stock," "Series B-1 Preferred Stock," "Series C Preferred Stock," "Series C-1 Preferred Stock," "Series D Preferred Stock," "Series D-1 Preferred Stock" and "Series E Preferred Stock," respectively.

3. There are 3,694,322 shares of Common Stock, 3,000,000 shares of Series A Preferred Stock, 5,443,750 shares of Series B Preferred Stock, 6,250 shares of Series B-1 Preferred Stock, 4,996,968 shares of Series C Preferred Stock, 3,000 shares of Series C-1 Preferred Stock, 8,883,330 shares of Series D Preferred Stock, 5,504,998 shares of Series D-1 Preferred Stock and 18,866,490 shares of Series E Preferred Stock outstanding and entitled to vote on the Agreement and Plan of Merger attached hereto.

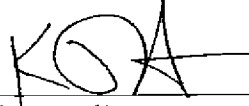
4. The principal terms of the Agreement and Plan of Merger were approved by the Board of Directors and by the vote of a number of shares of each class and series of stock which equaled or exceeded the vote required.

5. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock and more than 50% of the votes entitled to be cast by holders of outstanding shares of Preferred Stock.

(The remainder of this page is intentionally left blank.)

Kevin Appelbaum and David J. Saul further declare under penalty of perjury under the laws of the States of California and Delaware that they have read the foregoing certificate and know the contents thereof and that the same is true of their own knowledge.

Executed on August 9, 2010.

A handwritten signature in black ink, appearing to be 'KOA' with a horizontal line extending from the end.

Kevin Appelbaum
President and Chief Executive Officer

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

David J. Saul
Secretary