

ESTTA Tracking number: **ESTTA704576**

Filing date: **10/26/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221844
Party	Plaintiff Haggar Clothing Co.
Correspondence Address	PAUL J REILLY BAKER BOTTS LLP 2001 ROSS AVENUE, SUITE 600 DALLAS, TX 75201-2980 UNITED STATES paul.reilly@bakerbotts.com, tyler.beas@bakerbotts.com, cecily.porterfield@bakerbotts.com, daltmdept@bakerbotts.com
Submission	Reply in Support of Motion
Filer's Name	Paul J. Reilly
Filer's e-mail	paul.reilly@bakerbotts.com, elizabeth.stanley@bakerbotts.com, cecily.porterfield@bakerbotts.com, daltmdept@bakerbotts.com
Signature	/Paul J. Reilly/
Date	10/26/2015
Attachments	Reply re MSJ with Exhibits (Part 1).pdf(2945744 bytes) Reply re MSJ with Exhibits (Part 2).pdf(5825034 bytes)

already made in support of “Opposer’s Motion for Summary Judgment and Brief In Support Thereof” (“**Haggar’s Motion**”), that *res judicata* or claim preclusion bars registration of MUSTANG (Stylized), which is the subject of Application Serial No. 79/104,357 (hereinafter, “**Opposed MUSTANG Mark**”). Rather, Haggar will focus on the following few points which must be brought to the Board’s attention: (1) Applicant is a native of Turkey and its claim that it cannot verify the contents of the publication of the Trade Registry Gazette of Turkey demonstrating that Merve Optik Sanayi Ve Ticaret Limited Sirketi and Merve Optik Sanayi Ve Ticaret Anonim Sirketi are in privity with one another, because this document is in the Turkish language is specious, especially given that Applicant more likely than not has a copy of this document in its possession; still, Haggar submits a translation of the document to assist the Board and Applicant; (2) Applicant misrepresents that the prior opposition proceeding, Opposition No. 91185522, was dismissed, when in fact it was sustained on the merits following Haggar’s submission of an uncontested motion for summary judgment; (3) contrary to Applicant’s arguments, case law clearly supports the “offensive” application of *res judicata*, which lies in the sound discretion of this Board; and (4) Applicant misapplies the law concerning *res judicata* by relying on insignificant differences in verbiage and stylization in the at-issue applications in a baseless attempt to argue that the same transactional facts are not present, when in fact mere, slight and minor changes to a mark or the goods and services, as is the case here, does not obviate Haggar’s Motion. For these reasons as discussed in greater detail below, Haggar respectfully requests that its Motion be granted.

ARGUMENT

1) **Merve Optik’s Lack of Knowledge About Its Relationship With The Prior Applicant Is Without Merit - There is Identity of The Parties or Their Privies**

Incredibly, Merve Optik argues that it cannot ascertain whether it is the same party as or in privity with the applicant Merve Optik Sanayi Ve Ticaret Limited Sirketi in Opposition Proceeding No. 91185522 (“**Prior Opposition**”). Applicant does not dispute that these entities have the same address or overlapping executives. (*See* Opposition Memo, p. 3). Nor does Applicant assert that it is not in privity with or legally equivalent to Merve Optik Sanayi Ve Ticaret Limited Sirketi, the applicant in the Prior Opposition. Applicant merely posits that it cannot determine the validity of Haggar’s claim of privity because the document supporting Haggar’s claim is written in Turkish. (*See id.*; *see also* Stanley Reply Decl., Ex. A, ¶ 2). Applicant, however, is a Turkish company with executives who reside in Turkey and, in all likelihood, can speak and read Turkish documents. Further, Applicant likely has the actual documents or copies of such documents effecting the change in its corporate structure from a limited company to a joint stock company.

Notwithstanding the less than credible assertions by Applicant who should be fully aware of the relationship between these two entities, Haggar submits an English translation of the at-issue document. (*See* Stanley Reply Decl., Ex. A, ¶ 3). This excerpt from the Trade Registry Gazette of Turkey confirms that “Merve Optik Sanayi Ve Ticaret Limited Sirketi” (the named applicant in the Prior Opposition) is the prior trade name or business name used by the Applicant in the instant proceeding. (*See id.*; *see also* Cengiz Decl., Ex. B, ¶¶ 2-4). Unambiguously, this document demonstrates that on or about December 15, 2010, “Merve Optik Sanayi Ve Ticaret Limited Sirketi” converted from a limited company to a joint stock company, and is now trading

under the name “Merve Optik Sanayi Ve Ticaret Anonim Sirketi.” (*See id.*) This document manifests that Applicant is identical, legally equivalent to or at the very least, in privity with the applicant in the Prior Opposition for purposes of claim preclusion. (*See Hagggar’s Motion*, pp. 9-10; Cengiz Decl., Ex. B, ¶ 4); *see also Calavo Growers, Inc. v. Luis Calvo Sanz S.A.*, 2007 WL 1144944, at *2 (TTAB Apr. 11, 2007) (considering claim preclusion, Board held that the instant opposition involved the same parties or their privies given opposer’s claims that it was the successor-in-interest of the plaintiff in the prior opposition and acquired all right, title, and interest of the prior plaintiff pursuant to a merger and reorganization of the companies; applicant failed to rebut claims); *Blvd Supply, LLC v. Juan Chen*, 2015 WL 2441551, at *3 (TTAB Apr. 28, 2015) (cancellation proceeding; prior action filed by BLVD Supply, present proceeding filed by BLVD Supply, LLC; companies in privity for claim preclusion given the overlapping principals).² Accordingly, there can be no genuine dispute as to any material fact with regard to the first factor of the *res judicata* analysis. The parties are the same for purposes of *res judicata*.

**2) The Prior Opposition Was Not “Dismissed” -
There Exists an Earlier Final Judgment on Merits Against Applicant**

Applicant misrepresents that the Prior Opposition was “dismissed by the Board”. (*See Opposition Memo*, p. 4). As it is clear in the record, the Prior Opposition was sustained by the Board. Specifically, pursuant to and in accordance with Trademark Rule 2.127(a) and FED. R. CIV. P. 56, the Board: (i) granted Hagggar’s Motion for summary judgment on priority and likelihood of confusion as conceded; (ii) entered judgment in favor of Hagggar; and (iii) refused registration of Application Serial No. 77,201,372, for the mark MUSTANG (Stylized). Notwithstanding Applicant’s mischaracterization of the disposition of the Prior Opposition,

² Complete copies of the unpublished decisions referenced herein are attached hereto to the Declaration of Elizabeth K. Stanley. (*See Stanley Reply Decl.*, Ex. A, ¶ 6).

Applicant acknowledges that the decision in the Prior Opposition may serve as the basis of claim preclusion. (*See* Opposition Memo, p. 4, wherein Applicant states, in part, as follows: “The previous '522 opposition was dismissed by the Board, because the Opposer's Motion for Default Judgment was granted as conceded. Although such a decision by the Board can serve as the basis upon which claim preclusion may rest,....”) (citations omitted). Thus, there is no genuine issue of material fact as to the second element of claim preclusion and the Board’s judgment in the Prior Opposition operates as final judgment on the merits for purposes of claim preclusion.

3) The Board’s Offensive Application of *Res Judicata* is Proper

Applicant overplays the Supreme Court’s decision in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979) as cautioning against the offensive use of *res judicata*. (*See* Opposition Memo, p. 4). While the Supreme Court in *Parklane Hosiery Co. v. Shore*, did recognize that the application of offensive collateral estoppel or issue preclusion may be unfair in some instances, the Court clearly held that “the preferable approach for dealing with these problems in the federal courts is not to preclude the use of offensive collateral estoppel, but to grant trial courts broad discretion to determine when it should be applied.” *Id.* at 332 (emphasis added); *see also Jean Alexander Cosmetics, Inc. v. L’Oreal USA Creative, Inc.*, 2004 WL 1942062, at *3 (TTAB Aug. 9, 2004) (Board has discretion to consider and apply claim preclusion). Indeed, failing to apply claim preclusion in this case would be unfair to Haggar. Requiring Opposer to re-litigate this matter by expending time, effort and resources in combating Applicant’s second unlawful attempt to register MUSTANG (Stylized) would be unfair and detrimental to Haggar, as well as burdensome to the Board and a waste of its precious resources. The Board will be on firm ground when applying the principal of *res judicata* in the instant Opposition so as to bar

Applicant from obtaining registration of the Opposed MUSTANG Mark and to preserve the valuable resources of the Board from having to rehear the case.

4) Merve Optik’s Allegations Concerning Insignificant Differences Between the Marks and Goods Fails To Overcome The Application of *Res Judicata* - The Oppositions Involve The Same Set of Transactional Facts

(i) *The Mark in the Prior Application and the Opposed MUSTANG Mark Are the Same.*

Applicant asserts that the mark in the Prior Opposition is “wholly different” from the Opposed MUSTANG Mark in terms of appearance and commercial impression. (*See* Opposition Memo, p. 6). In support of this claim, Applicant attempts to rely on the slight differences in the stylizations of the marks. The marks are pictured below for the Board’s convenience.

Prior Application - Serial No. 77/201,372	Current Application - Serial No. 79/104,357
	

Applicant misapplies the law of *res judicata*. These changes are insufficient and do not rise to the level of a new mark under the standards of claim preclusion (*See* Haggar’s Motion, p. 12-13). Instead, these minor and trivial differences in the stylizations utilized by the marks - block lettering stylization vs. a cursive stylization - do not render these designations distinct in terms of appearance and commercial impression and are not enough to prevent the application of claim preclusion. Clearly, the literal element MUSTANG dominates the commercial impression in each of the applications such that the changes in stylization are immaterial and cannot command the Board to re-litigate the issue. *See e.g., L.C. Licensing, Inc. v. Cary Berma*, 86 U.S.P.Q.2d 1883, 2008 WL 835278, at *3 (TTAB 2008) (“it is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used

by purchasers to request the goods”); *In re Viterra Inc.*, 671 F.3d 1358, 1366 (Fed. Cir. 2012) (“the verbal portion of a word and design mark likely will be the dominant portion”).

(ii) *The Goods are Identical or Legally Equivalent*

Applicant further claims that the application involved in the Prior Opposition is “wholly different” from the Opposed MUSTANG Mark on the basis that the “the identification of goods for the respective marks is not the same.” (*See* Opposition Memo, p. 6). However, this argument misses the mark and Applicant improperly applies the law of *res judicata*. This is not the test for determining whether the applications involve the same set of transactional facts. Instead, the Board should consider “whether the goods in the involved application are identical to or could be encompassed by the goods in the prior application.” *Schering Corp. v. Diagnostic Test Group, LLC*, 2008 WL 2515108, at *4 (TTAB 2008) (emphasis added).

While the description of the goods in the current application for the Opposed MUSTANG Mark is perhaps somewhat different in terminology from the wording of the description in the prior MUSTANG application, the goods are identical to or captured by the goods in the prior application. Below is a chart which compares the goods claimed in the two applications.

Comparison of Identical or Equivalent Goods	
At-Issue Application - Serial No. 79/104,357	Prior MUSTANG Application, Serial No. 77/201,372
Spectacle frames	Frames for spectacles and sunglasses
optical goods, namely, eye glasses,	Spectacles
optical goods, namely, ... eyeglass lenses,	Spectacles
optical goods, namely, sunglasses,	Sunglasses
optical goods, namely, lenses for sunglasses,	Sunglasses
optical goods, namely, eyeglass cases,	Spectacle cases
optical goods, namely, eyeglass chains	Eyewear accessories, namely, ... spectacle chains.

Comparison of Identical or Equivalent Goods	
At-Issue Application - Serial No. 79/104,357	Prior MUSTANG Application, Serial No. 77/201,372
optical goods, namely, eyeglass ... cords.	Eyewear accessories, namely, straps, neck cords and head straps which restrain eyewear from movement on a wearer ...

This chart serves as a good reference point in demonstrating how the prior application’s description of goods encompasses those claimed in the new application. For example, “eyeglasses” and “spectacles” are synonyms or equivalent terms used to describe “frames bearing lenses worn in front of the eyes used for vision correction.” (*See Stanley Reply Decl., Ex. A, ¶ 4*). The term “spectacles” is also sometimes defined as “eyeglasses, especially with pieces passing over or around the ears for holding them in place”. (*See Stanley Reply Decl., Ex. A, ¶ 5*). As evidenced by the chart above, the goods claimed in the prior MUSTANG application are broad and certainly capture the goods claimed in the application for the Opposed MUSTANG Mark.

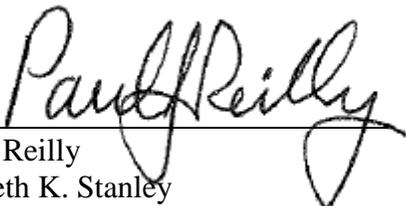
The Board should not allow Merve Optik to side step the final judgment in the Prior Opposition by merely making semantic and simplistic changes to its description of goods and trivial changes to its mark. Applicant’s baseless attempt to pass off this new application as “different” from the prior application by arguing that the same transactional facts are not present in the instant application falls short. Applicant cannot circumvent the law of *res judicata* in this manner. Accordingly, Applicant’s insignificant changes to its description of goods and minor changes to the mark are not enough to avoid the preclusive effect of the Board’s decision in the Prior Opposition and the third element of claim preclusion is satisfied.

CONCLUSION

There can be no dispute that the oppositions involve the same parties, concern the same transactional facts, and that a final judgment on the merits was previously rendered against Applicant. Accordingly, Hagggar respectfully requests that its Motion be granted on the grounds of claim preclusion; that the Opposition be sustained in Hagggar's favor; that registration of the Opposed MUSTANG Mark, namely U.S. Application Serial No. 79/104,357 be denied; and that the Board grant all further relief to Hagggar that is necessary and just in these circumstances.

Respectfully submitted this the 26th day of October, 2015.

By:



Paul J. Reilly
Elizabeth K. Stanley
Tyler M. Beas
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
Telephone: (214) 953-6500
E-mail: daltmdept@bakerbotts.com
paul.reilly@bakerbotts.com
elizabeth.stanley@bakerbotts.com

**ATTORNEYS FOR
HAGGAR CLOTHING CO.**

CERTIFICATE OF SERVICE

I hereby certify that on this the 26th day of October, 2015, a true and correct copy of the foregoing *Opposer's Reply to Applicant's Response to Opposer's Motion for Summary Judgment and Brief in Support Thereof* was served, via First Class Mail to:

John S. Egbert
Egbert Law Offices PLLC
1314 Texas, 21st Floor
Houston, Texas 77002



Paul J. Reilly

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HAGGAR CLOTHING CO.,

Opposer,

vs.

MERVE OPTIK SANAYI VE TICARET
ANONIM SIRKETI,

Applicant.

§
§
§
§
§
§
§
§
§
§
§
§

Opposition No. 91221844

Mark: **MUSTANG (Stylized)**

MUSTANG

(Serial No: 79/104,357)

Publication Date: January 6, 2015

DECLARATION OF ELIZABETH K. STANLEY

I, Elizabeth K. Stanley, declare as follows:

1. I am an attorney associated with the law firm of Baker Botts L.L.P., representing Hagggar Clothing Co. ("**Hagggar**") in the above-captioned matter. I am licensed to practice law in the state of Texas and have been admitted to practice before the United States Patent and Trademark Office, and the United States District Courts for the Northern, Southern, Eastern and Western Districts of Texas. I submit this Declaration and the exhibits attached hereto, which are incorporated herein by reference, for the purpose of identifying documentary material being submitted in support of Hagggar's Reply to Applicant, Merve Optik Sanayi Ve Ticaret Anonim Sirketi's Response to Hagggar's Motion for Summary Judgment and Brief in Support Thereof.

2. Attached hereto and incorporated by reference herein as "**Exhibit A-1**" is a true and correct copy of the excerpt from the Trade Registry Gazette of Turkey, which was previously submitted as "Exhibit A-8" in support of Hagggar's Motion for Summary Judgment. The excerpt attached hereto includes the second page of the document which was inadvertently omitted from Exhibit A-8. However, the conversion of "Merve Optik Sanayi Ve Ticaret Limited

Sirketi” to “Merve Optik Sanayi Ve Ticaret Anonim Sirketi” is clear on the face of the first page of the excerpt.

3. Attached hereto and incorporated by reference herein as “**Exhibit A-2**,” is a true and correct copy of an English translated version of the excerpt from the Trade Registry Gazette of Turkey, and a certification in support thereof.

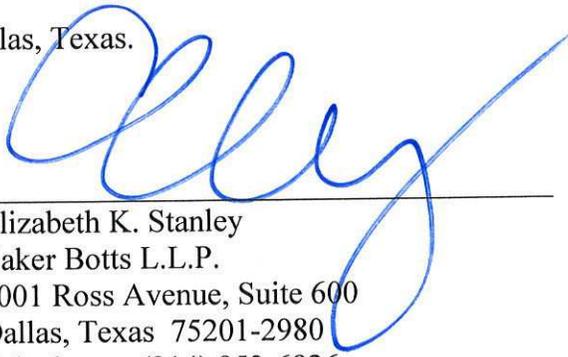
4. Attached hereto and incorporated by reference herein as “**Exhibit A-3**”, is a true and correct copy of the website page located at the domain <https://en.wikipedia.org/wiki/Glasses>, which was last accessed and printed on 10/22/2015.

5. Attached hereto and incorporated by reference herein as “**Exhibit A-4**”, is a true and correct copy of the website page located at the domain <http://dictionary.reference.com/browse/spectacles>, which was last accessed and printed on 10/22/2015.

6. Attached hereto and incorporated by reference herein as “**Exhibit A-5**” are complete copies of the unpublished decisions referenced in Haggar’s Reply.

Pursuant to 28 U.S. Code § 1746, I, Elizabeth K. Stanley, declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 26th day of October, 2015 in Dallas, Texas.



Elizabeth K. Stanley
Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
Telephone: (214) 953-6926
Fax: (214) 661-4899

EXHIBIT A-1

(Başaralı 498. Sayfada)
3 (üç) yıl için Atahan Kısacıkoğlu
şirket müdürü seçilmiştir.

Temsil
Madde: 9

Şirketi müdürler temsil ve ilzam ederler. Şirketi temsil ve ilzam edecek imzalar ortaklar kurul, tarafından tespit, tescil ve ilan ettirilir. İlk 3 (Üç) yıl için müdür seçilen Atahan Kısacıkoğlu münferit imzaları ile şirketi temsil ve ilzama yetkili kılınmıştır.

Hesap Dönemi
Madde: 10

Şirketin hesap yılı 1 Ocak – 31 Aralık tarihleri arasıdır. İlk hesap yılı tescil tarihinden itibaren 31 Aralık gününe kadardır.

Yedek Akçe
Madde: 11

Safî kârdan her yıl öncelikle % 5 ihtiyat akçesi ayrılır. İhtiyat akçesi şirket ödenmiş sermayesinin % 20'sine çıkıncaya kadar ayrılır. Kanuni ve ihtiyari yedek akçeler, kanun ve bu ana sözleşme hükümlerine göre ayrılması gereken miktar safî kârdan ayrılmadıkça hissedarlara kâr dağıtılmaz.

Karın Dağıtım
Madde: 12

Şirketin safî karı, şirket adına yapılmış her türlü masrafların çıkarılmasından sonra kalan miktardır.

Kanuni yedek akçe ayrıldıktan sonra kalan miktar ortaklar kurulunca alınacak karara göre hissedarlara hisseler, oranında dağıtılır. Ödenmiş sermayenin %5'i nispetinde ilk temettü ayrılır.

Kanuni Hükümler
Madde: 13

Bu ana sözleşmede bulunmayan hususlar hakkında T.T.K. hükümleri uygulanır.

Ortak
Timuçin Paköz imza

Ortak
Atahan Kısacıkoğlu imza

(5/A)(4/3176)

KOOPERATİFLER

İSTANBUL

İstanbul Ticaret Sicili
Memurluğundan

Sicil Numarası: 408201

Ticaret Ünvanı
TASFİYE HALİNDE S.S.
EKŞİOĞLU AKASYA EVLERİ
KONUT YAPI KOOPERATİFİ

Ticari Merkezi: İstanbul Tuzla İstasyon Mah.Hatboyu Cad. Ekşioğlu Çamlıkent Sit.No.126

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan Kooperatifin 8.12.2010 tarihli

olağan genel kurul kararının, İ.İ.K.nün 44.maddesine göre düzenlenmiş mal beyannamesinin tescil ve ilanı istenmiş olmakla, 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 31.12.2010 tarihinde tescil edildiği ilan olunur.

Genel Kurul Tutanağı

Tasfiye Halinde Sınırlı Sorumlu Ekşioğlu Akasya Evleri Konut Yapı Kooperatifinin 2009 hesap yılı olağan ve Kapanış genel kurul toplantısı yapılmak üzere 08/12/2010 günü, saat 17.00 de İstasyon Mah. Hatboyu Cad. Ekşioğlu Çamlıkent Sit. No: 126 Tuzla/İstanbul adresinde Sanayi ve Ticaret Bakanlığı Temsilcisi Aysun Hafizoğlu'nun gözetiminde toplanıldı.

Genel kurul toplantısına başlamadan önce yapılan incelemelerde;

a) Ortaklara gündemi içeren çağrı mektuplarının 10.11.2010 tarihinde Hazirunda kayıtlı 7 ortağa elden tebliğ edildiği tespit edilmiştir.

b) Yönetim Kurulunca 1163 sayılı Kooperatifler Kanununun 26. maddesindeki niteliklere ve Ortaklar Kayıt Defterindeki kayıtlara uygunluğu onaylanarak hazırlanan ve ortakların incelemesine sunulan Ortaklar Listesinde kayıtlı 7 ortaktan 7 ortağın asaleten toplantıda hazır bulunduğu, ana sözleşme gereği aranan yasal toplantı nisabının mevcut olduğu, toplantının yapıldığına ve ortaklık durumlarına herhangi bir itirazın olmadığı görüldükçe toplantı yönetim kurulu başkanı tarafından açıldı.

Gündem Maddeleri:

Madde 1: Açılış yoklama yapıldı.

2.- Divan Başkanlığına Gökhan Hızır Ekşioğlu Yazmanlığa Adil Tüfekçi Oy sayım Memurluğuna Hasan Dağlı oy birliği ile seçildiler.Toplantı Tutanaklarını imzalama yetkisi oy birliği ile verildi.

3.- Atatürk ve Türk Büyüklere için saygı duruşunda bulundular.

4.- Yönetim Kurulu faaliyet raporu ve Denetleme Kurulu raporu okundu.

5.- 31.12.2009 tarihli bilanço okundu. Raporlar ve bilanço müzakereye açıldı. Söz alan olmadığından Divan Başkanı raporlar ve bilançooyu genel kurulun oyuna sundular, oy birliği ile kabul edildi.

6.- Yönetim,denetim ve tasfiye kurulları ayrı ayrı oybirliği ile ibra edildiler.

7.- Kooperatiften alacaklı bulunan üçüncü şahıslar belgeleri ile birlikte bir yıl içinde müracaat etmeleri gerektiğine dair 24 Temmuz 2009 tarih ve 7361 sayılı 394 sayfada ilan fesih ve tasfiye

1.İlan 29 Temmuz 2009 tarih, sayfa 638 sayı 7364 2.İlan 05 Ağustos 2009 tarih sayfa 638 sayı 7369 3.İlan 12 Ağustos 2009 tarih,sayfa 638 sayı 7374 ticaret sicil gazetesinde ilan tescili yapılmıştır.

Kooperatif aktif mal mevcudu, borcu, alacağı bulunmamaktadır. İşlemleri tamamlayan tasfiye memurları Ali Ekşi ve Eyüp Ekşi oy birliği ile ibra edildi. Kanunen saklanması gereken evrak, defter, beyanname ve diğer evrakların Kurtköy Narin Sok. No: 9 Pendik/İstanbul adresinde muhkim T.C. uyruklu Tasfiye Memuru Ali Ekşi tarafından T.T.K. 68. maddesi hükümlerine göre saklanması oy birliği ile kabul edildi.

Kooperatif amaç ve gayesini yerine getirdiğinden kooperatifin tasfiye ile ilgili işlemler tamamlanmış olduğundan kooperatifin kesin kayıtlarının Ticaret Sicil Memurluğundan, ticaret odası ve diğer resmi kuruluşlardan terkin edilmesine oy birliği karar verilmiştir.

8.- Toplantıya itiraz olmadığından Divan Başkanı toplantıyı 18.00'da kapatıldı. İş bu tutanak toplantı mahallinde düzenlendi,okunarak imzalandı.

Divan Başkanı
Gökhan Hızır Ekşioğlu imza

Yazman
Adil Tüfekçi imza

Oy Sayım Memuru
Hasan Dağlı imza

Bakanlık Temsilcisi
Aysun Hafizoğlu imza

Tasfiye Halinde S.S. Ekşioğlu Akasya Evleri Konut Yapı Kooperatifi İcra İflas Kanunu'nun 44. Maddesi Gereğince Yapılan 08/12/2010 Tarihli Mal Beyanı

Aktif: Yoktur.
Pasif: Yoktur.

Firmanın üçüncü kişilere karşı alacağı ve borcu yoktur.
Kaşe ve imza

(5/A)(4/6997)

STATÜ TADİLLERİ

İSTANBUL

İstanbul Ticaret Sicili
Memurluğundan

Sicil Numarası: 238262

Eski Ticaret Ünvanı
MERVE OPTİK SANAYİ VE
TİCARET LİMİTED ŞİRKETİ

Yeni Ticaret Ünvanı
MERVE OPTİK SANAYİ VE
TİCARET ANONİM ŞİRKETİ

Ticari Merkezi: İstanbul Fatih Eminönü Şeyh Mehmet Geylani Mah.Mimar Kemalettin Cad.No: 22- 24 K.4/62

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan

Şirketin Nevi değişikliği nedeniyle tanzim edilen Bakırköy 15.noterliğince 14, 12, 2010 tarih 45730 sayı ile düzenlenen anonim şirket esas mukavelesinin tescil ve ilanı istenmiş ve aynı noterliğin 08, 12, 2010 tarih 44819 sayı ile onaylı imza beyannamesi memuriyetimize verilmiş olmakla 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 15.12.2010 tarihinde tescil edildiği ilan olunur.

Merve Optik Sanayi Ve Ticaret Anonim Şirketi Esas Mukavelesi

Kuruluş
Madde 1-

Aşağıda adları, soyadları, ikametgahları ve uyrukları yazık kurucular arasında Türk Ticaret Kanununun Anonim Şirketlerin anı surette kurulmaları hakkındaki hükümleri ve İstanbul Ticaret Sicili Memurluğu'nun 238262 Sicil numarasında kayıtlı Merve Optik Sanayi Ve Ticaret Limited Şirketi ünvanlı şirketin Türk Ticaret Kanununun 152 nci maddesine göre nevi değiştirerek bir Anonim Şirket kurulmuştur.

- Ali Demirel, Şenlikköy Mahallesi Fuatpaşa Sokak No: 15A/8 Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29449538554)

- Arif Mahmut Demirel, Beykoz Acarkent Sitesi 59.Sokak 10. Cadde B- 699 Beykoz- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29443538772)

- Ömer Fahrettin Demirel, Şenlikköy Mahallesi Beyazkent Sitesi C Blok No: 5/7 Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29452538480)

- Hikmet Demirel, Basınköy Mahallesi Gülistan Sokak No: 12/B Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29461538198)

- Mücteba Fatih Demirel, Basınköy Mahallesi Gülistan Sokak No: 12/B Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29434539054)

Şirketin Ünvanı
Madde 2-

Şirketin Ünvanı Merve Optik Sanayi ve Ticaret Anonim Şirketi'dir.

Amaç Ve Konu
Madde 3-

Şirketin amaç ve konusu başlıca şunlardır.

A- Optik Ürünler Ve Hediyeelik Eşya

1- Her nevi optik emtia,alet cihaz ve makineleri, kontrol ölçü cihazları, gözlük, gözlük çerçeveleri, gözlük camı, güneş gözlükleri, kayak gözlükleri, optik camlar, güneş camları ve diğer gözlük aksamları, muhafaza gözlükleri, sanayi gözlükleri, gözlükçülük malzemeleri, vitrin süs ve dekorları, gözlük

aksesuarları ile sap, vida, menteşe, kılıf ve silme bezleri, teşhir çantaları, lens ve lens yardımcı malzemelerinin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını, tamir bakım ve montaj işlerini yapabilir veya fason olarak başkalarına yaptırabilir.

2- Şirket her nevi dereceli, dinlendirici ve güneş gözlüklerinin, optik, kolormatik, renkli lens, kontak lens, lens solüsyonu, antirefleli gözlük cam ve çerçeveleri ile bunlara ait her türlü malzemelerin imalatını, alımı, satımı, ithalatını, ihracatını toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

3- Her nevi, görme kusurunun giderilmesine mahsus olan ve olmayan gözlük camları ve kontak lenslerin, göz içi lenslerinin, optik çerçevelerin, güneş gözlüklerinin ve bunlara ait malzemelerin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, pazarlamasını ve dağıtımını yapmak.

4- Her nevi optik malzemelerinin, her marka gözlük ve makinelerin, bunların hammadde yarı mamul ve mamul malzemelerinin bunların aksesuarlarının imalatı, alımı, satımı, ithalatı, ihracatı toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

5- Şirket konusu ile ilgili her nevi organik, inorganik maddelerin imalatı, ithali, ihracatını yapmak. Yurt içinde bunların toptan veya perakende satışını yapmak.

6- Konuları ile ilgili olan, her türlü malzemenin, ekipmanın ve ürünlerin ithalatını, ihracatını, alım, satımını yapmak.

7- Şirket konusu ile ilgili olarak resmi veya özel kurum ve kuruluşların açmış olduğu ihalelere katılabilir. Konusu ile ilgili taahhütlerde bulunabilir.

8- Şirket, her türlü saat, mücevherat ve aksesuarlarının ithali, ihracı, toptan veya perakende ticareti ve mümessilliğini yapmak,

9- Saat ile ilgili her türlü hammadde, yardımcı madde, makine, aksesuar yedek parça ithalatı, ihracatı, ticareti ve mümessilliğini yapmak,

10- Şirket faaliyetleri ile ilgili her türlü işletmecilik, komisyonculuk, mümessillik ve acentelik faaliyetlerinde bulunmak,

11- Her türlü pil, saat kordonları, saat kordonları ve diğer malzemelerin alımı, satımı, ithalatı ve ihracatını yapmak,

12- Konusu ile ilgili olarak Müşavirlik ve organizasyon hizmetlerinde bulunmak.

13- Her türlü bay, bayan, çocuk kol saatleri bunların aksesuarları, malzemeleri, alet ve edevatlarının, alımını, satımını ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak. Bayilik almak, bayilik vermek.

14- Her türlü saatleri, duvar saatleri, şehir saat sistemleri, çalar saatler, cami saatleri ve her türlü Saat düzenekleri kordonları, askılıkları, pilleri, camları ve aksesuarlarının, malzemelerinin alımını, satımını, ithalatını

(Devamı 500 . Sayfada)

(Başarılı 499. Sayfada)
ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak, bununla ilgili bayilikler almak ve bayilikler vermek.

15- Her türlü saatlerin tamirini, bakım onarımını ve montajını yapmak, bununla ilgili gerekli malzemelerin alımını, satımını, ithalatını, ihracatını yapmak.

B- İnşaat

1- Türkiye sınırları içinde veya yabancı ülkelerde, resmi ve özel kurum ve kuruluşları tarafından kapalı zarf, açık arttırma, eksiltme, teklif alma ve pazarlık usulü ile ihaleye çıkarılacak her türlü küçük ve büyük yapıların, her türlü inşaat, mekanik, elektrik ve tesisat işlerini bunlarla ilgili bütün ekipman ve malzemelerin imalatını alımı, satımı ve anahtar teslimi taahhüt etmek. Her türlü banka, Banka Genel Müdürlüğü, Toplu konut ve siteler, okul, hastane, otel, motel, pansiyon, fabrikalar, hava meydanları, limanlar, sulama kanalları, köprü, yol, yol çizgi işleri, yol kenarlarındaki bariyerlerin düzenlemesi işlerini, sınırlı yapı ve fabrika inşaat işlerini taahhüt etmek yapmak ve yaptırmak veya emaneten yapımı olarak bu işleri üstlenmek.

2- Kat karşılığı arsa almak, parsellemek sureti ile aracılık yapmamak kaydıyla satmak, takas etmek ve kat karşılığı inşaat yapmak.

3- Yurt içinde ve yurt dışında turistik tesisler, toplu konutlar, mesken inşa etmek.

4- Konusu ile ilgili Her nev'i resmi ve özel ihalelere katılmak, bu ihaleleri almak, ihale konularını yapmak, yaptırmak devretmek, her türlü resmi ve özel inşaat taahhüt, tesisat işleri yapmak ve yaptırmak.

5- Şirket ihtiyacı için inşaat makineleri alet ve edevatlarını alabilir, kiralayabilir, satabilir, kiraya verebilir, ithalatı, ihracatı ve pazarlamasını yapabilir.

6- Konusu ile ilgili olarak taahhüt işleri yapabilir, yol Bina, fabrikaların inşaatlarının bakım, tamir ve onarımını yapmak.

7- Kendisinin yapmış olduğu inşaatların Kalorifer ve doğalgaz tesisatı işlerini yapmak.

8- Konusu ile ilgili olarak projelerin çizimi ve müşavirlik ve danışmanlık hizmetlerinde bulunabilir.

9- Her Türlü inşaat malzemeleri, inşaatlarda kullanılan her türlü demir, çimento, kum, çakıl, tuğla, briket, hazır beton, prefabrik yapı elemanları, ahşap yapı malzemelerinin alımı, satımı, ithalatı, ihracatı ve ticaretini yapmak.

10- Her türlü yapı projeleri çizmek ve çizdirmek, etüdler hazırlamak, ilgili kamu kuruluşlarından tescillerini yaptırmak, ruhsatlarını ve iskanlarını almak ve aldirmek.

11- İmar, imar ıslah, imar aplikasyon planları hazırlamak arazi üzerine ifraz ve tevhid işlemlerini hazırlamak, yapmak veya üçüncü şahıslara yaptırmak.

12- Konuları ile ilgili her türlü harfiyat işleri yapmak, her türlü inşaatların malozlarını, malzemelerini taşımak başkalarına taşıtmak işlerini yapabilir.

13- Şirket her türlü mimari plan proje çizimini ve taahhüdünü yapmak

14- Çizmiş olduğu projeler üzerinde tadilat yapmak ve uygulamak.

15- Üç boyutlu modelleme çizimi yapmak, peyzaj projesi ve uygulaması yapmak,

16- Yurt içinden ve yurt dışından almış olduğu plan projelerin çizimi ve uygulamasını yapmak veya başka bir firma ile birlikte yürütmek.

17- Etüt ve işletme haritaları, kentsel ve kırsal arazi ve arsa düzenlemeleri, parselasyon ve planları, hâlihazır harita, imar planı ve mevzii imar planı ve çizimi, aplikasyon, ifraz, tevhid, yola terk, tescile konu olan harita ve planları yapmak.

18- Her türlü arazi ölçümü, yer kontrol noktalarının tesisi, deformasyon ölçmeleri, plankote, hidrografik ölçmeler, yeraltı ölçmeleri, konum belirlemeleri, karayolu ve enerji nakil hatları proje ve aplikasyon işlerini, kanalizasyon projeleri, köprü ve baraj proje ve aplikasyonu yürütmek.

19- Her türlü projelerin arazine uygulama işlerini yapmak, tapu ve kadastro teknik hizmetleri ve işlemlerini yürütmek.

20- Yurt içinde ve yurt dışında her türlü otel, motel, okul, banka, hastane, otopark, benzinlik, iş merkezi, plaza, konut ve diğer her türlü resmi ve özel yapı tasarımlarının yapılması, projelendirilmesi, onaylatılması ve bu proje ve planların kontrolü ve kontrollüğünün yapılması ve yapılması,

21- Yurt içi ve yurt dışı her türlü mühendislik ve mimarlık hizmetlerini vermek ve almak, menfi mesuliyeti üstlenmek hak ediş düzenlemek, geçici ve kesin kabulleri yapmak ve yaptırmak, yurt içi ve yurt dışında mühendislik ve mimarlık çalışmalarını yapmak ve yaptırmak üzere ofis ve bürolar açmak.

22- Ket türlü Emlak, gayrimenkuller, konutlar, siteler, daireler, marketler, depolar, iş hanları, iş merkezleri, plazalar, villalar ve tatil köyleri, devre mülkler apart otel, motel camping ve turistik tesisler, organize sanayi bölgeleri, arsalar, araziler ve her türlü taşınmazın alımını, satımını pazarlamasını ve ticaretini yapabilir, devir alabilir, devredebilir kiralayabilir ve kiraya verebilir.

23- Şirket amaç ve konusuna uygun olarak hizmetlerini üstlenmiş olduğu binaların, sitelerin, dairelerin ve buna benzer gayrimenkullerin uygun şekilde kullanılmasının sağlanması, gayrimenkullerin bakım ve onarımı için gerekli çalışmaların gerçekleştirilmesi, gerekli hizmetlerin oluşturulması, gayrimenkul içerisindeki ortak alanların onarımı, bakımı, faaliyeti ve kullanımına ilişkin işlemler, teknik ve spesifikasyonlar çerçevesinde dahili düzenleme dekorasyon onarım ve değişikliklere uyması gereken zorunlu ilkeleri belirten dahili düzenlemelerin hazırlanması gayrimenkullere ait birimlerin kiralanması, her türlü yönetim

hizmetlerinin sağlanması ve gayrimenkul sahipleri tarafından kendisine yüklenen görevlerin yerine getirilmesi işlerini yapmak.

24- Dekorasyon malzemeleri, dekorasyon malzemelerinin imalatında kullanılan her türlü mamullerin alımı satımı, ithalatı ve ihracatını yapabilir. Dekorasyon işlerini yapabilir. Çevre ve mekan düzenleme ve tanzim işlerini yapar. Ev ve işyerlerinin resmi ve özel büroların dekorasyon işlerini yapabilir.

25- Dekorasyon ve mobilya malzemeleri, ahşap ve metalden büro ve ev mobilyaları, her türlü mutfak dolapları ve mutfak dekorasyon işleri yatak odaları, oturma odaları, koltuk, masa ve sandalye, yatak ve her türlü mobilya imalatı, alımı, satımı, pazarlaması, ithalatı ve ihracatını yapmak. Mobilya ve dekorasyon malzemelerini satışı ve teşhiri için gerekli olan satış mağazaları, teşhir salonları kiralayabilir, kiraya verebilir alabilir ve satabilir.

26- Ev, Büro ve işyerlerinde kullanılan her türlü mobilya ve dekorasyon malzemelerinin, Hammadde ve yardımcı maddelerinin, mobilya aksesuarlarının imalatını, alımını, satımını, ithalatını ve ihracatını yapmak.

27- Her türlü pvc kaplama, pimapan pencere sistemlerinin montajını, alımını, satımını, ithalatını, ihracatını toptan ve perakende ticaretini yapmak.

28- Her türlü sauna ve modem banyo araç ve gereçlerinin her türlü aksesuarlarının alımını, satımını, ithalatı ve ihracatını toptan ve perakende ticaretini yapmak.

C- Otomotiv

1- Motorlu ve motorsuz elektrikli,elektronik her çeşit kara vasıtaları olan otomobil, kamyon, kamyonet, otobüs, minibüs ve benzeri araçların her türlü tamir bakımını ve tamir ekipmanlarının alımını, satımını, ithalatını, ihracatını toptan ve perakende ticaretini yapmak, yedek parça, modernizasyonu, rutin teknik kontrollerini yapmak. Bu işlere ilgili her türlü servis ağı kurmak, işletmek.

2- Otomotiv sanayi ile ilgili yıkama yağlama servisi kurmak, işletmek, kullanılacak malzemelerin alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

3- Her türlü otopark hizmeti vermek.

4- Her türlü nakil vasıtasına ait yedek parçanın alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

5- Otomotiv sektörü ile ilgili her türlü mekanik, elektrikli, elektronik motor ve bütünleyici aksesuarlarını her türlü yedek parçalarının alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

6- Her türlü oto direksiyonu alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

7- Motorlu kara nakil vasıtalarının akülerinin alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

8- Her türlü oto yedek parçalarının yurt dışındaki ve yurt içindeki imalatçı firmaları ile anlaşmalar yaparak, bu firmaların mümessillik, distribütörlük ve acenteliklerini yapmak,

9- Her türlü motorlu taşıt ticareti, ithalat ve ihracatı yapmak.

10- Şirket otomotiv sanayi ile ilgili olarak otobüs, minibüs, midibüs, kamyon, kamyonet, traktör, taksi, motorsiklet, bisiklet, trayler ve bunlara benzer motorlu ve motorsuz kara, hava, deniz taşıtlarının, grayder, silindir, v.b. ağır iş sanayi makinelerinin, yükleme, boşaltma iş makinelerinin yurt içinde ve yurt dışında ticaretini yapmak, acente, bayilik ve mümessillik almak, ithalat, ihracat, toptan ve perakende ticaretini yapmak.

11- Motorlu kara nakil vasıtalarının iç ve dış lastikleri, jantları alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

12- Yurt içinde ve yurt dışında kurulu bulunan kara, hava ve deniz vasıtalarına ait iç ve dış lastik fabrikalarının bayiliklerini, mümessillikleri almak, vermek ve servislerini açmak, işletmek.

13- Oto galerileri açmak, işletmek veya işletirmek.

D- Tekstil

1- Her türlü tekstil ve konfeksiyon ürünü, kot pantolon, blucin, eşofman, gömlek, ceket, bebe ve çocuk giyimi, her türlü hakiki ve sun'i deriden mamul giyim eşyası, battaniye, pike, çarşaf, nevresim, havlu ve çeyiz eşyası, her nev'i, tekstil ürünleri imalatı ve her türlü konfeksiyon ürünlerinin imalatı, pazarlaması, toptan ve perakende dahili ticareti, ithalatı ve ihracatını yapmak. Başkalarına fason olarak yapmak, yaptırmak.

2- Her Türlü giyim eşyaları aksesuarları ile her türlü Pamuklu, yünlü, keten, ipek, sun'i deri, ve sentetik elyaftan mamul her türlü kumaşlardan her türlü iç ve dış giyim her türlü tekstil ürünlerinin ve dokuma ve baskı etiket ile tekstil ile konfeksiyon sanayinde kullanılan tüm aksesuar çeşitlerinin imalatını, alımını, satımını, ihracı, ithali, toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

3- Tekstil konuları ile ilgili yurt içi ve yurt dışında firmalara danışmanlık hizmetleri verebilir.

4- Her türlü pamuk, yün ve diğer ipliklerden mamul örme ve dokuma kumaşların imalini, ithalatını, ihracatını, toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

5- Her türlü kumaş ve tülden, dantelden imal edilen gelinlik, gelin şapkası, gelin çiçeği, taç, eldiven, ve her türlü gelinlik malzemeleri ile gelinlik iç ve dış giyim eşyalarının ihracatı, ithalatı ve pazarlamasını yapmak.

6- Konusu ile ilgili her türlü mamullerin yünlü, ipeklili, pamuklu, sun'i ve sentetik elyaftan ve

deriden mamul her türlü kumaş üzerine renk, şekil, boya, baskı ve empirme işleri imalatı, imal ettirilmesi işlerini yapmak.

7- Her türlü Fermuar, çit, çit, astar, lastik, vizovat, elyaf, tela, etiket, aksesuar, iplik ve her türlü konfeksiyon ürünleri ve yan sanayi ürünlerinin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

8- Her nevi metal sentetik ve tabii maddelerden yapılabilen düğmeler, agraf, toka, askı, fermuar, cırt, tela, lastik kaytan, fitil, etiket, bijuteri, taklit mücevherat ve aksesuarları ile her türlü konfeksiyon sanayi ve yan sanayi ürünlerinin imalatını, alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

9- Şirket konusu ile ilgili madde, hammadde, yardımcı madde ara madde, yarı mamul maddelerin alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

10- Tekstil, Konfeksiyon ve boya sanayinde kullanılan her nevi kimyevi boyalar, yardımcı madde ve malzemeleri ile tüm aksesuarlarının imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

11- Her türlü elektrikli, elektronik ve manuel tekstil ve konfeksiyon makinelerinin, bunların yedek parça ve tüm aksesuarlarının imalatını, alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

12- Şirket ihtiyacı için gerekli olan makine ve teçhizat ile alet ve edevatları satın alabilir, satabilir, kiralayabilir veya kiraya verebilir, gerekli olan atölye ve imalathane ile fabrikaları, kurabilir, işletebilir, kiralayabilir veya kiraya verebilir. Şirket ayrıca Üretimini veya ticaretini yaptığı mamullerin ambalaj ve kalite kontrolünü yapabilir.

13- Her türlü metraj baskı ve parça baskı, desen tasarım, grafik, çizim, şablon çekimi ve her türlü baskı çeşidi (Pigment, reaktif plastik, serigrafik, varak kabartma, plastik transfer ve flog baskı) işlerini yapmak.

14- Konusu ile ilgili her türlü konfeksiyon ve tekstil malzemeleri, fermuar, desinatör malzemeleri, gerekli boya ve şekil veren malzemelerin, emprime baskı alet ve edevatları ile yedek parça ve aksesuarlarının ithali, ihracı ve pazarlamasını yapmak.

15- Konuları ile ilgili olarak bakım, onarım, eğitim, müşavirlik ve servis hizmetlerinde bulunabilir.

16- Pamuk, yün, ipek, keten, kıl ve sun'i elyaftan ve bunların karışımından ve diğer maddelerden Türk el ve makine haklarının, seccadelerinin, kilimlerinin, imali, ihracı, ithali, dahili ticaret ve pazarlamasını yapmak.

17- Konusu ile ilgili olarak boya ve apre işlerini yapmak veya başkalarına yaptırmak.

18- Ham, Yarı Mamul ve mamul deri, Deriden mamul konfeksiyon mamulleri deri ürünleri, deriden mamul ayakkabı, çanta, mont,

(Baştarafı 500. Sayfada)
kemer, kravat, deriden mamul hediyeelik eşya, saraciye malzemeleri ile ayakkabı sanayinde kullanılan mamullerin ihracı, ithali, toptan ve perakende ticaretini yapmak.

E- Şirket Konusu ile ilgili Reeksport ve transit ticaret yapabilir. Konusu ile ilgili olarak resmi ve özel kurum ve kuruluşların açmış olduğu ihalelere iştirak edebilir, taahhütlerde bulunabilir.

F- Konuları ile ilgili depo, soğuk hava depoları, Antrepo, kamyonlar için garaj ve park yerleri yapılması ya da bunlardan hazır ve mevcut olanların kiralanması, kiraya verilmesi veya işletilmesi

G- Şirket için lüzum gösteren taşıtları (Gemiler dahil) alabilir, devir edebilir, bunlar üzerinde aynı ve şahsi tasarruflarda bulunabilir.

H- Şirket Yurt içinde ve Yurt Dışında mümessillik, distribütörlük alabilir veya verebilir. Ardiye, özel antrepo, özel depo işletmeciliği ve taahhüt işleri ile uğraşabilir. İhalelere iştirak edebilir. Konusu ile ilgili olarak fuarlara ve organizasyonlara iştirak edebilir.

İ- Şirket Konuları ile ilgili yerli ve yabancı gerçek ve tüzel kişilerle işbirliği yaparak yeni şirketler kurabilir, kurulmuş şirketlere iştirak edebilir. Yurt içinde veya dışında temsilcilikler açabilir.

J- Şirket konularına giren malların depolanması, nakli, tevzii için gerekli her türlü tesisat, teçhizat, vasıta, arazi ve bina satın alabilir, satabilir veya başkalarından kiralayabilir, kiraya verebilir. Şirket mallarının teşhiri için teşhir ve satış yerleri açabilir.

K- Şirket Konuları ile ilgili ve bu faaliyetleri için faydalı knowhow, izin, ruhsatname, ihtira beratları, lisans, imtiyaz, marka ve emsali gibi hakları istihsal ve iktisap edebilir veya üçüncü şahıslara kısmen ya da tamamen kiralayabilir, devir edebilir, başkalarına ait olanların devrini alabilir.

L- Şirket ihtiyacı için gerekli iç ve dış kredileri dahili ve harici finansman kurumları yerli ve yabancı işletmelerden temin edebilir. Bunlar için gerekli her türlü tasarruflarda bulunabilir.

M- Şirket konusu ile ilgili olarak her türlü gayrimenkul iktisap edebilir, kiralayabilir veya kiraya verebilir, alabilir, satabilir, sahibi bulunduğu menkul ve gayrimenkulleri üçüncü şahıslar lehine ipotek verebilir, tesis ve tescil edebilir, kefil olabilir veya bunlar üzerinde her türlü hakları iktisap edebilir.

Şirket maliki bulunduğu menkul ve gayrimenkulleri gerek kendi borçları için gerekse üçüncü gerçek ve tüzel kişilerin borçları için ipotek edebilir, kefalet olarak verebilir, alabilir, teminat olarak gösterebilir ve alacaklarına karşılık da menkul ve gayrimenkulleri ipotek alabilir, verebilir ve bu ipotekleri farkedebilir.

Şirket yukarıda sayılanlar dışında konusu ile ilgili başka işler de yapmak istediği takdirde, Genel Kurul tarafından karar alınıp tescil ve ilan edildikten sonra yapabilir.

Şirketin Merkezi Madde 4-

Şirketin Merkezi İstanbul İli Fatih İlçesi'ndedir. Adresi Şeyh Mehmet Geylani Mahallesi Mimar Kemalettin Caddesi No: 22-24 Kat: 4/62 Eminönü-Fatih-İstanbul'dur. Adres değişikliğinde yeni adres, ticaret siciline tescil ve Türkiye Ticaret Sicil Gazetesinde ilan ettirilir. Tescil ve ilan edilmiş adrese yapılan tebligat şirkete yapılmış sayılır. Tescil ve ilan edilmiş adresinden ayrılmış olmasına rağmen yeni adresini süresi içinde tescil ettirmemiş şirket için bu durum fesih sebebi sayılır. Şirket yurt içinde ve yurt dışında şubeler açabilir.

Süre Madde 5-

Şirketin süresi tescil ve ilan edildiği tarihten başlamak üzere Süresizdir.

Sermaye Madde 6-

Şirketin sermayesi beheri 1.(Bir) TL kıymetinde nama yazılı 15.700.00. (Onbeşmilyon yediyüzbin) adet hisseye ayrılmış olup 15.700.000.- (Onbeşmilyonyediyüzbin) TL'dir. Bu Sermayenin

5.535.250. Adet hisseye karşılık 5.535.250.- TL'si Ali Demirel

3.240.625. Adet hisseye karşılık 3.240.625.- TL'si Arif Mahmut Demirel

2.757.575. Adet hisseye karşılık 2.757.575.- TL'si Ömer Fahrettin Demirel

2.757.575. Adet hisseye karşılık 2.757.575.- TL'si Mücteba Fatih Demirel

1.408.975. Adet hisseye karşılık 1.408.975.- TL'si Hikmet Demirel

Tarafından muvazaadan ari olarak tamamen taahhüt edilmiştir.

15.700.000.- TL olan şirket sermayesinin Tamamı Türk Ticaret Kanununun 152 nci maddesine göre nev'i değiştiren İstanbul Ticaret Sicili Memurluğu'nun 238262 Sicil numarasında kayıtlı Merve Optik Sanayi Ve Ticaret Limited Şirketi Ünvanlı Şirketin Ödenmiş sermayesinden karşılanmıştır. Nev'i değiştiren Merve Optik Sanayi Ve Ticaret Limited Şirketi'nin özvarlığı, Bakırköy 3. Asliye Ticaret Mahkemesi'nin 18.06.2010 Tarih ve Esas No: 2010/253 D.İş. Karar No: 2010/253 sayılı Değişik İş Kararı ile atanan bilirkişilerce 25.06.2010 Tarih ve Dosya No: 2010/253 D.İş Sayılı rapor ile tespit edilmiştir.

Limited Şirket iş bu anonim şirkete bütün aktif ve pasifleri ile birlikte devrolunmuştur.

Hisse Senetleri Nama Yazılıdır.Yönetim Kurulu hisse senetlerini bir veya daha fazla hisseyi ihtiva eden kupürler halinde bastırmaya ve dağıtmaya yetkilidir.

Yönetim Kurulu Hisse senetleri bastırılıp dağıtılincaya kadar geçerli olmak üzere nama yazılı muvakkat pay ilmühaberi çıkarabilir ve dağıtabilir.

Hisselerin Devri Madde 7-

Şirket hissedarlarından birisi şirketteki hisselerini devir etmek istediği takdirde öncelikle mevcut ortaklara hisse devir miktarı ve devir bedelini belirten bir yazı ile bildirecektir. Mevcut ortaklar 15 gün içerisinde bu devri kabul ettiklerine dair bir bildirimde bulunmazlar ise hissesinin devir edecek olan ortak mevcut ortaklara teklif ettiği bedelden daha aşağı olmamak üzere hisselerini üçüncü şahıslara devir edebilecektir. Devir işleminin geçerli olabilmesi için yönetim kurulunca karar alınıp pay defterine işlenmesi şarttır. Yönetim Kurulu hiçbir sebep göstermeksizin yapılan devir işlemi pay defterine işlemekten imtina edebilir.

Yönetim Kurulu Ve Süresi: Madde 8-

Şirketin işleri ve idaresi genel kurul tarafından Türk Ticaret Kanunu hükümleri dairesinde hissedarlar arasından seçilecek en az üç üyeden oluşan bir yönetim kurulu tarafından yürütülür. Yönetim kurulu üyeleri en çok üç yıl için seçilirler. Seçim süresi sona eren yönetim kurulu üyeleri yeniden seçilebilirler. Genel kurul lüzum görürse yönetim kurulu üyelerini her zaman değiştirebilir.

Şirketin Temsil Ve İlamı Madde 9-

Şirketin yönetimi ve dışarıya karşı temsili yönetim kuruluna aittir. Şirket tarafından verilecek bütün belgelerin ve yapılacak sözleşmelerin geçerli olabilmesi için bunların şirketin ünvanı veya kaşesi altına konmuş şirketi temsil ve ilzama yetkili kişi veya kişilerin imzasını taşıması gereklidir.

Murakıp ve Görevleri Madde 10-

Genel kurul, gerek hissedarlar arasından, gerekse dışarıdan en çok üç yıl için bir veya birden fazla murakıp seçer. Bunların sayısı beşi geçmez. Murakıplar Türk Ticaret Kanununun 353 ve 357 nci maddelerinde sayılan görevleri yapmakla yükümlüdür.

Genel Kurul Madde 11-

a) Davet Şekli: Genel kurullar olağan veya olağanüstü olarak toplanır. Bu toplantılara davet de Türk Ticaret Kanununun 355, 365, 366 ve 368 nci madde hükümleri uygulanır.

b) Toplantı Vakti: Olağan genel kurul, şirketin hesap devresinin sonundan itibaren 3 ay içerisinde ve senede en az bir defa, olağanüstü genel kurullar ise şirket işlerinin icap ettirdiği hallerde ve zamanlarda toplanır.

c) Rey Verme ve Vekil Tayini: Olağan ve olağanüstü genel kurul toplantılarında hazır bulunan hissedarların veya vekillerinin bir hisse için bir oyu vardır. Genel kurul toplantılarında hissedarlar kendilerini diğer hissedarlar veya hariçten tayin edecekleri vekil vasıtası ile temsil ettirebilirler.

Şirkette hissesi olan vekiller kendi oylarından başka temsil ettikleri hissedarların da sahip olduğu oyu kullanmaya yetkilidirler.

d) Müzakerelerin Yapılması ve Karar Nisabı: Şirket genel kurul toplantılarında Türk Ticaret Kanununun 369 ncu maddesinde yazılı hususlar müzakere edilerek gerekli kararlar alınır. Genel kurul toplantıları ve toplantılardaki karar nisabı Türk Ticaret Kanununda daha yüksek bir oran öngörülmemişse Şirket Sermayesinin % 63'ünü temsil eden hissedarların katılımı ile toplanır ve kararlar şirket sermayesinin kanunda daha yüksek bir oran öngörülmemişse şirket sermayesinin %63'ünü temsil eden hissedarların olumlu oyu ile alınır.

e) Toplantı Yeri: Genel kurullar şirketin yönetim merkezi binasında veya yönetim merkezinin bulunduğu şehrin elverişli bir yerinde ya da İstanbul' da toplanır.

Toplantıda Bulunması Madde 12-

Gerek olağan ve gerekse olağanüstü genel kurul toplantılarında Sanayi ve Ticaret Bakanlığı Komiserinin bulunması ve toplantı zabıtlarını ilgililerle birlikte imza etmesi şarttır. Komiserin gıyabında yapılacak genel kurul toplantılarında alınacak kararlar ve komiserin imzasını taşımayan genel kurul toplantı zabıtları geçerli değildir.

İlan Madde 13-

Şirkete ait ilanlar Türk Ticaret Kanununun 37.nci maddesinin 4 ncü fıkrası hükümleri saklı kalmak şartıyla şirket merkezinin bulunduğu yerde çıkan en az bir gazete ile asgari 15 gün evvel yapılır. Mahallinde gazete yayınlanmadığı takdirde ilan en yakın yerdeki gazete ile yapılır. Ancak genel kurulun toplantıya çağırılmasına ait ilanlar Türk Ticaret Kanununun 368.nci maddesi hükümleri gereğince ilan ve toplantı günleri hariç olmak üzere en az iki hafta evvel yapılması zorunludur. Sermayenin azaltılmasına veya tasfiyeye ait ilanlar için kanununun 397 ve 438 nci maddesi hükümleri uygulanır.

Hesap Dönemi Madde 14-

Şirketin hesap yılı Ocak ayının birinci günü başlar ve aralık ayının sonuncu günü biter. Yalnız ilk hesap yılı şirketin kesin olarak kurulduğu tarihten başlar ve o senenin aralık ayının sonuncu günü biter.

Kar'ın Tespiti Ve Dağıtım Madde 15-

Şirketin genel masrafları ile muhtelif amortisman bedelleri gibi şirkette ödenmesi veya ayrılması zorunlu olan miktar hesap yılı sonunda tespit edilen gelirlerden indirildikten sonra geriye kalan miktar safi karı teşkil eder Bu suretle meydana gelecek kardan öncelikle % 5 kanuni ihtiyat akçesi ayrılır. Kalandan itfa edilmemiş

hisse senetlerinin bedelleri ödenen kısmına % 5 oranında birinci temettü verilmesine yetecek miktar çıkarılır. Geriye kalan kısmı genel kurulun tespit edeceği şekil ve surette dağıtılır.

Kurucular ve yönetim kurulu üyeleri ile memur ve hizmetlilere ayrılmak miktarlar ikinci temettü hissesi olarak hissedarlara dağıtılması kararlaştırılan ve kara iştirak eden kuruluşlara dağıtılan paradan Türk Ticaret Kanununun 466 nci maddesi 2 nci fıkrasının 3 numaralı bendi gereğince % 10 kesilerek adi ihtiyat akçesine eklenir.

İhtiyat Akçesi Madde 16-

Şirket tarafından ayrılan ihtiyat akçeleri hakkında Türk Ticaret Kanununun 466 ve 467 nci madde hükümleri uygulanır.

Kanuni Hükümler Madde 17-

Bu ana sözleşmede bulunmayan hususlar hakkında Türk Ticaret Kanunu hükümleri uygulanır.

Geçici Madde 1- Yönetim Kurulu üyeliklerine 3 yıl süre ile vazife görmek üzere Hikmet Demirel, Ali Demirel, Arif Mahmut Demirel Ve Mücteba Fatih Demirel seçilmişlerdir.

Yönetim Kurulu Başkanlığına Ali Demirel

Yönetim Kurulu Başkan Vekilliğine Hikmet Demirel

Yönetim Kurulu Üyeliklerine de Arif Mahmut Demirel ve Mücteba Fatih Demirel Seçilmişlerdir.

Şirketi Temsil ve İlam Aşağıdaki Şekilde olacaktır.

1- Gayrimenkul Alım ve Satımı ile Şirkete ait markaların devir işlemlerinde Yönetim Kurulu Başkanı Ali Demirel ve Yönetim Kurulu Başkan Vekili Hikmet Demirel Şirketin Ticaret ünvanı veya kaşesi altına atacakları Müşterek İmzaları ile Şirketi temsil ve ilzama yetkili kılınmışlardır.

2- Bankalar ve Finans kurumlarıyla yapılacak kredi sözleşmelerinde Yönetim Kurulu Başkanı Ali Demirel ve Yönetim Kurulu Başkan Vekili Hikmet Demirel Şirketin Ticaret ünvanı veya kaşesi altına atacakları münferit imzaları ile şirketi temsil ve ilzama yetkili kılınmışlardır.

3- Yukarıda (1. Ve 2. Maddede) yazılı hususların dışındaki iş ve işlemlerde Yönetim Kurulu Başkanı Ali Demirel, Yönetim Kurulu Başkan Vekili Hikmet Demirel ve Yönetim Kurulu Üyeleri Arif Mahmut Demirel Şirketin Ticaret Ünvanı veya kaşesi altına atacakları Münferit İmzaları ile şirketi temsil ve ilzama yetkili kılınmışlardır.

Geçici Madde 2- İlk olağan genel kurul toplantısına kadar bir yıl süre ile vazife görmek üzere Kısıklı Caddesi Masaldan İş Merkezi No: 46 A Blok Kat 2 Üsküdar- İstanbul adresinde mukim T.C. uyruklu Hüseyin Çetin

Şirket Murakıby olarak seçilmiştir.

(Devamı 502. Sayfada)

(Baştarafı 501. Sayfada)
Kurucu Ortaklar
Ali Demirel İmza
Arif Mahmut Demirel İmza
Ömer Fahrettin Demirel İmza
Hikmet Demirel İmza
Mücteba Fatih Demirel İmza

(20/A)(17/610811)

**İstanbul Ticaret Sicili
Memurluğundan**

Sicil Numarası: 750749

**Ticaret Ünvanı
ES MALİ YATIRIM VE
DANIŞMANLIK ANONİM
ŞİRKETİ**

Ticari Merkezi: İstanbul
Bahçelievler Yenibosna Basın
Ekspres Yolu Kavak Sok: Ser
Plaza A Blok No: 3 K.2- 3

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan Şirketin 09.12.2010 tarihli olağanüstü genel kurul kararının ve ana sözleşme tadil metninin tescil ve ilanı. Kısmi Bölünme sözleşmesinin ve pay cetvelinin ilanları istenmiş olmakla, 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 31.12.2010 tarihinde tescil edildiği ilan olunur.

**Es Mali Yatırım Ve
Danışmanlık Anonim Şirketi'nin
09.12.2010 Tarihinde Yapılan
Olağanüstü Genel Kurul
Toplantı Tutanağı**

Es Mali Yatırım Ve Danışmanlık Anonim Şirketinin Olağanüstü Genel Kurul Toplantısı 09/12/2010 tarihinde Saat 13.00'da İstanbul, Yenibosna, Basın Ekspres Yolu Kavak Sokak No:3 Ser Plaza A blok Kat: 3 adresinde, İstanbul il Sanayi ve Ticaret Müdürlüğü'nün 08.12.2010 tarih ve 72698 Sayılı yazılılarıyla görevlendirilen Bakanlık Komiseri Hüseyin Sımrıcı'nın gözetiminde ve T.T.K. 370. maddesine istinaden toplanmıştır.

Haziran cetvelinin tetkikinden, şirketin toplam 50.000,00 TL'lik sermayesine tekabül eden 50.000 adet hisseden, 50.000- TL'lik sermayeye karşılık 50.000 adet hissenin asaleten olmak üzere toplantıda bütün ortakların temsil edildiğinin ve böylece gerek kanun ve gerekse ana sözleşmede öngörülen asgari toplantı nisabının mevcut olduğunun anlaşılması üzerine toplantı Yönetim Kurulu Başkanı Sayın Ethem Sancak tarafından açılarak gündemin görüşülmesine geçilmiştir.

1. Buna göre; Divan Başkanlığına Ethem Sancak, Oy Toplayıcılığına Necat Sancak, Katipliğe Özer Sancak'ın seçilmelerine oybirliği ile karar verilmiştir.

2. Genel kurul toplantı tutanaklarının imzalanması için divan heyetine yetki verilmesine oybirliğiyle karar verilmiştir.

3. Gündemin üçüncü maddesi gereğince; 5520 Sayılı Kurumlar Vergisi Kanunu'nun 19. ve 20.

Maddelerinin ilgili hükümleri uyarınca, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümlerine uygun olarak,

26.10.2010 tarihli Olağanüstü Genel Kurul Toplantısında Yönetim Kurulumuzaya verilen yetki ile Sancak İnşaat Tur. Nak. Ve Dış. Tic. A.Ş.'nin 31.07.2010 tarihli bilanço ve mali kayıtları esas alınarak Bakırköy 3. Asliye Ticaret Mahkemesi'nin 2010/434 D. İş sayılı dosyası kapsamında istihsal olunan 22/11/2010 tarihli Bilirkişi Raporu ile de uygun bulunan kısmi bölünme işlemini konu eden ve Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi ile 18.11.2010 tarihinde imzalanan ve işbu tutanağa ekli Kısmi Bölünme Sözleşmesi'nin ve kısmi bölünme işlemlerinin onaylanmasına oy birliği ile karar verilmiştir.

Ayrıca, Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'nin kısmi bölünmesi sebebiyle bölünen şirketin aktifinde kayıtlı olan 26.452.477,00- TL tutarındaki Hedef- Alliance Holding A.Ş. hisselerinin şirketimize devri karşılığında şirketimiz tarafından ihraç edilecek hisselerin tamamının Kısmi Bölünme Sözleşmesi'nin "Kısmi Bölünmenin Uygulanma Şekli" başlıklı 5. maddesinde ayrıntılı olarak belirtildiği üzere; mevcut ortağımız Sn. Ethem Sancak'a verilmesine oybirliği ile karar verilmiştir.

4. Şirketimizde; Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'nin kısmi bölünmesi suretiyle devralınan iştirak hisselerine bağlı olarak sermaye maddesinin tadil edilmesi hususunun görüşülmesine geçilmiştir. Bakırköy 3. Asliye Ticaret Mahkemesi'nin 2010/434 D. İş sayılı dosyası kapsamında istihsal olunan 22/11/2010 tarihli Bilirkişi Raporunda da görülen, Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'ne ait toplam kayıtlı değeri 122.876.090,00- TL tutarında olan Hedef-Alliance Holding A.Ş. iştirak hisselerinin 26.452.477,00- TL'lik kısmının şirketimiz ES Mali Yatırım ve Danışmanlık AŞ.'ye devri mukabilinde şirket sermayemizin 26.452.477,00- TL tutarında artırılmasına ve aynı sermaye karşılığı ihraç edilen hisselerin ortağımız Sn. Ethem Sancak'a verilmesine oybirliği ile karar verilmiştir.

Buna göre, şirket ana sözleşmesinin "Sermaye" başlıklı 6. maddesinin aşağıdaki şekilde tadil edilmesine oybirliği ile karar verilmiştir.

**Yeni Şekil
Madde 6
Sermaye**

Şirket'in sermayesi 26.502.477- TL (Yirmialtımyüzbeşyüz ikibindörtüzyetmişyedi TL) olup; bu sermaye her biri 1.- TL nominal değerinde toplam 26.502.477 adet hisseye ayrılmıştır.

Şirketin önceki sermayesi olan 50.000 TL (ellibin) tamamen ödenmiştir. Bu defa kısmi bölünme suretiyle arttırılan 26.452.477 TL aynı sermaye Bakırköy Asliye 3. Ticaret Mahkemesinin 2010/434 D.İş sayılı dosya kapsamında istihsal olunan 22.11.2010 tarihli bilirkişi raporunda yer aldığı üzere bölünme sözleşmesi doğrultusunda, bölünen şirket Sancak İnşaat Turizm Nakliyat ve Dış Ticaret AŞ'den devralınan Hedef- Alliance Holding AŞ. iştirak hisselerinin kayıtlı değerinden karşılanmıştır.

Hisse senetleri nama yazılıdır. Sermayenin dağılımı aşağıdaki gibidir.

Ortağın İsmi: Ethem Sancak
Hisse Adedi: 26.502.473
Nominal Değeri (TL): 26.502.473

Ortağın İsmi: Özer Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Fuat Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Necat Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Nurten Yıldırım
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Toplam
Hisse Adedi: 26.502.477
Nominal Değeri (TL): 26.502.477 TL

5. Gündemde yer alan hususlar görüşülmüş olup, toplantıda görüşülecek başka bir husus kalmadığından toplantıya Divan Başkanı huzurunda dilek ve temennilerle son verildi.

Komiser Divan Başkanı
Hüseyin Sımrıcı İmza
Oy Toplayıcı
Ethem Sancak İmza
Oy Toplayıcı
Necat Sancak İmza
Katip
Özer Sancak İmza

Şirketin Ünvanı: Es Mali Yatırım Ve Danışmanlık Anonim Şirketi

Şirketin Adresi: Yenibosna, Basın Ekspres Yolu Kavak Sokak No: 3 Ser Plaza A Blok Kat: 3

Ticaret Sicil Memurluğu: İstanbul Ticaret Sicil Memurluğu 750749 Sicil No

Önceki Sermayesi: 50.000 TL
Şimdiki Sermayesi: 26.502.477 TL

Genel Kurul Tarihi: 09.12.2010

Sermaye Artırımına İştirak Eden Pay Sahiplerinin:

Adı Soyadı Ünvanı: Ethem Sancak
Artırım Öncesi Pay Miktarı YTL: 49.996

Artırım Sonrası Pay Miktarı YTL: 26.502.473

Taahhüt Ettiği Pay Miktarı: 26.452.477
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Özer Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Fuat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Nurten Yıldırım
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Toplam
Artırım Öncesi Pay Miktarı YTL: 50.000 TL
Artırım Sonrası Pay Miktarı YTL: 26.502.477

Yukandaki bilgilerin doğruluğu tasdik olunur.

Es Mali Yatırım Ve Danışmanlık Anonim Şirketi Yönetim Kurulu

Ethem Sancak
Yönetim Kurulu Başkanı
Necat Sancak
Yönetim Kurulu Bşk. Vekili
Nurten Yıldırım İmza
Yönetim Kurulu Üyesi
Özer Sancak İmza
Yönetim Kurulu Üyesi

Kısmi Bölünme Sözleşmesi

**Madde 1-
Kısmi Bölünmeye Tabi Şirket
Ve Bölünmenin Ana Unsurları**

İstanbul Ticaret Sicil Memurluğu'nun "492418" Sicil Numarasında kayıtlı ve "Göztepe Mah. Orhangazi Cad. Karanfil Sok: No: 64 Kat: 4 D: 2 Bağcılar/İstanbul" adresinde yerleşik "Sancak İnşaat Turizm Nakliyat Ve Dış Ticaret Anonim Şirketi" (Bundan böyle kısaca "Bölünen Şirket" yada "Devreden" olarak anılacaktır); 5520 sayılı Kurumlar Vergisi Kanunu'nun 19. maddesinin 3. fıkrasının (b) bendi ile 20. maddesinin 3. fıkrası, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümleri gereğince, malvarlığında bulunan "Hedef-Alliance Holding A.Ş." iştirak hisselerinden 26.452.477 TL değerindeki hisseleri mukayyet değerleri üzerinden kısmi bölünme suretiyle İstanbul Siciline 750749

numarası ile kayıtlı ES Mali Yatırım ve Danışmanlık Anonim Şirketi'ne (Bundan böyle kısaca "Devralan şirket" olarak anılacak) aynı sermaye olarak devredilecektir. Aynı sermaye karşılığı ihraç edilecek olan hisseler ise, Bölünen Şirket ortaklarından Ethem Sancak'a verilecektir

**Madde 2-
Kısmi Bölünmenin Hukuksal
Dayanağı**

İşbu Kısmi Bölünme Sözleşmesi; Bakırköy (3) Asliye Ticaret Mahkemesi'nin 2010/434 D.İş sayılı dosyasında mevcut olan, Mahkeme'nin 22.10.2010 tarihli kararı ile atanmış bulunan üç kişilik bilirkişi heyeti tarafından Bölünen Şirket'in 31.07.2010 tarihli bilançoları esas alınmak sureti ile hazırlanan Bilirkişi Raporunda belirtilen hususlar dahilinde 18.12.2010 tarihinde Bölünen Şirket ve Devralan Şirket tarafından imzalanmıştır.

5520 sayılı Kurumlar Vergisi Kanunu'nun 19. maddesinin 3. fıkrasının (b) bendi ile 20. maddesinin 3. fıkrası, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümleri, Türk Ticaret Kanunu'nun ilgili maddeleri ve Bölünen Şirket'in gerçekleştirmiş olduğu 29.09.2010 tarihli Olağanüstü Genel Kurul Toplantısında alınan ve 30.09.2010 tarihinde tescil edilen kararlar işbu Kısmi Bölünme Sözleşmesine hukuksal dayanak teşkil ederler.

**Madde 3-
Kısmi Bölünmeye Esas Alınan
Mali Tablo Ve Bilanço**

İşbu Kısmi Bölünme işlemi, Bölünen Şirket'e ait 31.07.2010 tarihli bilanço ve ekli mali tablolar üzerinden gerçekleştirilecektir. Kısmi bölünmeye konu iştirak hisselerinin değerlerinin belirlenmesinde kayıtlı değerler esas alınacaktır.

**Madde 4-
Kısmi Bölünmenin Konusu**

Bölünen Şirkete ait Olağanüstü Genel Kurul toplantısında alınan kararlarda; Bölünen Şirket'in aktifinde kayıtlı ve dökümü aşağıda yer alan "Hedef- Alliance Holding A.Ş." iştirak hisselerinin 26.452.477,00- TL tutarındaki kısmının 5. maddede ayrıntılı olarak belirtildiği şekilde, kısmi bölünme tarihi itibarıyla kısmi bölünme yoluyla aktiften çıkartılarak ES Mali Yatırım ve Danışmanlık Anonim Şirketi'ne aşağıda belirtilen miktarlar nispetinde kayıtlı değerleri ile devredilmesine karar verilmiştir.

Bu kapsamda Bölünen Şirket'in malvarlığında bulunan "Hedef- Alliance Holding A.Ş." iştirak hisselerinin toplamda tamamı 122.876.090,00- TL tutarındaki kısmından 96.423.613,00- TL tutarındaki kısmını kısmi bölünme planı ile kurulacak 3 yeni şirkete ve

(Devamı 503 . Sayfada)

EXHIBIT A-2



TRANSLATION DECLARATION

STATE OF NEW YORK §
 §
COUNTY OF NEW YORK §

I, HASAN FILIK, declare as follow:

I am a translator fluent in the Turkish and English languages, and on behalf of Morningside Translations, I declare that the attached document is, to the best of my knowledge and belief, an accurate, true and correct translation from Turkish to English, that the translation is in a form that best reflects the intention and meaning of the original Turkish text, and nothing has been added thereto or omitted therefrom.

Pursuant to 28 U.S. Code § 1746, I, HASAN FILIK, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On: October 22, 2015.

Signature of HASAN FILIK

(Continued from Page 498)

Atahan Kisacikoglu has been selected as the Managing Director for 3 (three) years.

Representation**Article: 9**

The managing directors shall represent and bind the Company. Signatures that shall represent and bind the Company shall be determined, registered and announced by the Shareholders Assembly. Atahan Kisacikoglu, who has been selected as the Managing Director for 3 (Three) years, has been authorized to represent and bind the Company with his individual signature.

Accounting Period**Article: 10**

The Company's accounting period shall be between January 1 and December 31. The first accounting period shall run until December 31 from the date of registration.

Contingency Reserves**Article: 11**

Every year, 5% shall first be set aside from the net profit as contingency reserves. Contingency reserves shall be set aside until they reach 20% of the Company's paid-in capital. No dividend shall be distributed to the shareholders before the legal contingency reserves required by the law and these Articles of Incorporation are set aside from the net profit.

Distribution of Profit**Article: 12**

The Company's net profit is the amount remaining after all of the expenses incurred on behalf of the Company are deducted.

The amount remaining after legal contingency reserves are set aside shall be distributed to the shareholders in proportion to their shares held according to the decision adopted by the shareholders assembly. The first dividend shall be set aside at 5% of the paid-in capital.

Legal Provisions**Article: 13**

Any matter not provided herein shall be subject to the provisions of the Turkish Commercial Code (TCC).

Shareholder: Timucin Pakoz Signature:

Shareholder: Atahan Kisacikoglu
Signature:

(5/A) (4 [illeg.] 3176)

COOPERATIVES

ISTANBUL

From Istanbul Trade Registry

Registration Number: 408201

Trade Name

L.L. EKSIÖGLU AKASYA HOMES,
HOUSING AND BUILDING
COOPERATIVE IN LIQUIDATION

Main Place of Business: Istanbul Tuzla Istasyon Mah. Hatboyu Cad. Eksioğlu Camlikent Sit. No. 126

Upon the request of registering and announcing the Resolution of the Ordinary General Assembly dated

December 8, 2010, of the Cooperative with the above principal place of business, registration number and trade name, and the property disclosure statement arranged according to Article 44 of the Enforcement and Bankruptcy Code (EBC), it is hereby announced that the foregoing is registered in accordance with the provisions of the Turkish Commercial Code 6762 and based on the documents in our office on December 31, 2010.

General Assembly Minutes

The Meeting of the Ordinary and Closure General Assembly of the L.L. Eksioğlu Akasya Homes, Housing and Building Cooperative in Liquidation for the 2009 Accounting Period was held on August 12, 2010, at 17:00 hours at Istasyon Mah. Hatboyu Cad. Eksioğlu Camlikent Sit. No. 126 Tuzla/Istanbul under the supervision of the Representative of the Ministry of Industry and Trade Aysun Hafizoglu.

A review carried out before the commencement of the Meeting of the General Assembly showed the following:

a) The shareholder invitation letters containing the agenda were notified to 7 shareholders present on the list of attendees on November 10, 2010.

b) 7 out of 7 shareholders shown on the List of Shareholders, prepared after its conformance to the requirements in Article 26 of the Cooperatives Law 1163 and to the records in the Share Register, were approved by the Board of Directors, were personally present at the meeting. The legal meeting quorum required by the Articles of Incorporation has been achieved. There is no objection to the meeting method and to the shareholders statuses.

In light of the above, the Chairperson of the Board of Directors commenced the meeting.

Agenda Items:

Article 1: Commencement: Attendance was taken.

2- By anonymous vote, Gokhan Eksioğlu was elected as the Chairperson of the Council, Adil Tufekci was elected as the Secretary and Hasan Dagli was elected as the Scrutineer. The authority of signing the Meeting Minutes was granted by anonymous vote.

3- Moment of standing in silence was taken for Ataturk and the Turkish Dignitaries.

4- The activity report of the Board of Directors and the report of the Board of Auditors were read.

5- The balance sheet dated December 31, 2009, was read. Discussion on the reports and the balance sheet was opened. Since no one requested to speak, the Chairperson of the Council submitted to the vote of the General Assembly the reports and the balance sheet, which were accepted by anonymous vote.

6- The boards of directors, auditors and liquidation were acquitted separately by anonymous vote.

7- 1st Announcement announced on page 394 dated July 24, 2009, and issue 7361, 2nd Announcement on page 638 dated July 29, 2009, and issue 7364, and 3rd Announcement on page 638 dated August 5, 2009, and issue 7369 for dissolution and liquidation providing that third parties who have debt claims from the cooperative are required to apply within one year, together with the respective documents, were registered and announced on page 638 of the Trade

Registry Gazette dated August 12, 2009, and issue 7374.

The cooperative has no active inventory, debt and debt claim. The liquidators who completed the procedures, Ali Eksi and Eyup Eksi, were acquitted by anonymous vote. It was adopted by anonymous vote that documents, books, announcements and other documents required by law to be kept should be kept by the Liquidator Ali Eksi, a Turkish national residing at Kurtkoy Narin Sok. No: 9 Pendik/Istanbul.

It was adopted by anonymous vote that, since the cooperative had fulfilled its purpose and objective and procedures for the liquidation of the cooperative, the final records of the cooperative should be deleted from the Trade Registry, the Chamber of Commerce and other official authorities.

8- As there was no objection to the meeting, the Chairperson of the Council closed the meeting at 18:00 hours. These minutes were prepared, read and signed at the place of meeting.

Chairperson of the Council
Gokhan Hizir Eksioğlu
Signature

Secretary
Adil Tufekci
Signature

Scrutineer
Hasan Dagli
Signature

The Ministry Representative
Aysun Hafizoglu
Signature

Property Disclosure Statement dated August 12, 2010, by L.L. Eksioğlu Akasya Homes, Housing and Building Cooperative in Liquidation Pursuant to Article 44 of the Enforcement and Bankruptcy Law

Assets: None
Liabilities: None

The Company has no claims due from or payable to third parties.

Stamp and signature
(5/A) (4/6997)

STATUTE
AMENDMENTS

ISTANBUL

From Istanbul Trade Registry

Registration Number: 238262

Former Trade Name
MERVE OPTİK SANAYİ VE
TİCARET LİMİTED SİRKETİNew Trade Name
MERVEOPTİK SANAYİ VE
TİCARET ANONİM SİRKETİ

Principal Place of Business: Istanbul Fatih Eminonu Seyh Mehmet Geylani Mah. Mimar Kemalettin Cad. No: 22-24 K.4/62

It has been requested to register and announce the Articles of Incorporation of the joint stock company arranged by the Bakirkoy 15th Public Notary on December 14, 2010, with reference no.

45730 due to the change in the type of the company, whose principal place of business, registration number and trade name are shown above, and the signature specimen certified by the same notary public on December 8, 2010, with reference no. 44819 has been submitted to our office. It is therefore hereby announced that the foregoing is registered in accordance with the provisions of the Turkish Commercial Code 6762 and based on the documents in our office on December 15, 2010.

Articles of Incorporation of Merve Optik Sanayi Ve Ticaret Anonim Sirketi**Incorporation Article 1-**

A Joint Stock Company has been incorporated by and between the founders, whose names, family names, places of residence and nationalities are written below, according to the provisions of the Turkish Commercial Code concerning immediate incorporation of joint stock companies and by changing the company type of Merve Optik Sanayi Ve Ticaret Limited Sirketi registered with Istanbul Trade Registry under registration number 238262 according to Article 152 of the Turkish Commercial Code.

- Ali Demirel, a national of the Republic of Turkey (Turkish ID: 29449538554) residing at Senlikoy Mahallesi Fuatpasa Sokak No: 15A/8 Florya-Bakirkoy-Istanbul,

- Arif Mahmut Demirel, a national of the Republic of Turkey (Turkish ID: 29443538772) residing at Beykoz Acarkent Sitesi 59. Sokak 10. Cadde B-699 Beykoz-Istanbul,

- Omer Fahrettin Demirel, a national of the Republic of Turkey (Turkish ID: 29452538480) residing at Senlikoy Mahallesi, Beyazkent Sitesi C Blok No: 5/7 Bakirkoy-Istanbul,

- Hikmet Demirel, a national of the Republic of Turkey (Turkish ID: 29461538198) residing at Basinkoy Mahallesi Gulistan Sokak No: 12/B Florya-Bakirkoy-Istanbul,

- Mucteba Fatih Demirel, a national of the Republic of Turkey (Turkish ID: 29434539054) residing at Basinkoy Mahallesi Gulistan Sokak No: 12/B Florya-Bakirkoy-Istanbul

Trade Name**Article 2-**

The Trade Name of the Company is Merve Optik Sanayi ve Ticaret Anonim Sirketi.

Purpose and Subject**Article 3-**

The main purpose and subject of the Company are as follows.

A- Optical Products and Souvenirs

1- The Company can manufacture, purchase, sell, import, export, carry out domestic whole sale and retail trade and marketing of, repair, conduct maintenance and assemble any type of optical merchandise, tool, device and machinery, control measurement device, eyeglasses, eyeglass frames, lens, sunglasses, ski goggles, optical lens, sunglass lenses and other eyeglass equipment, protective glasses, industrial glasses, eyeglass manufacturing materials, store window ornaments and decorations, eyeglass accessories, earpieces, screws, hinges, cases and cleaning cloths, display cases, lenses and

auxiliary lens materials, or can contract out all of the foregoing to others.

2- The Company can manufacture, purchase, sell, import, export, and carry out domestic wholesale and retail trade and marketing of any type of prescription and relaxing eyeglasses, sunglasses, optical, self-tinting and color lenses, contact lenses, lens solutions, antireflective eyeglass lenses and frames and any material related to the foregoing.

3- The Company can manufacture, purchase, sell, import, export, and carry out domestic wholesale and retail trade of, market and distribute eyeglass lenses and contact lenses, intraocular lenses, optical frames and sunglasses which are either specific or not specific to elimination of any type of visual impairment, and their respective materials.

4- The Company can manufacture, purchase, sell, import, export, and perform domestic wholesale and retail trade and marketing of any type of optical material, any brand of eyeglasses and machinery, their unfinished, semi-finished and finished materials and accessories thereof.

5- The Company can manufacture, import, export, and carry out domestic wholesale and retail sale of any type of organic and inorganic materials related to its subject.

6- The Company can import, export, purchase and sell any equipment and products related to its subjects.

7- The Company can participate in any tender opened by official or private institutions and organizations related to its subject.

8- The Company can import, export, carry out wholesale and retail trade of, and represent any type of watches, jewelry and their accessories.

9- The Company can import, export, trade and represent any unfinished and auxiliary materials, machinery, and spare accessory parts related to watches.

10- The Company can carry out any business, brokering, representational and franchise activities related to the Company activities.

11- The Company can purchase, sell, import and export any type of battery, dial, watch band and other related materials.

12- The Company can offer consultancy and organization services related to its subject.

13- The Company can purchase, sell, import, export, and carry out domestic wholesale and retail trade of and market any type of male, female, child wristwatch and their accessories, materials, tools and equipment, and can obtain and grant dealership.

14- The Company can purchase, sell, import and export any type of watch, clock, urban clock system, alarm clock, mosque clock, and any type of watch mechanism, band, hanger, battery, glass, accessory, and material

(Continued on page 500)

(Continued from Page 499)
and can obtain and grant dealership.
15- The Company can repair, maintain, fix and assemble any kind of clock and can procure, sell, import and export any necessary materials required for this purpose.

B- Construction

1. The company can perform any and all kinds of construction, mechanical, electrical and installation works of all kinds of small and big structures which may be awarded either through closed envelope, sale by auction, bargaining methods and tendering procedure conducted by private and public authority and institutions either within the borders of Turkey or abroad and can procure, sell and undertake turn-key contracts for any related equipment and materials. The company can undertake contracting and installation works for any and all banks, Bank Headquarters, Mass Housing and housing projects, schools, hospitals, hotels, motels, hostels, factories, airports, ports, irrigation channels, bridges, roads, road marking works, and execution of highway guardrails; construction of industrial structures and factory buildings and have such works subcontracted or undertake such works as a temporary contractor.

2- The company can procure lands on flat for land basis, to exchange them by parceling out providing that not to act as intermediary, and to execution construction works on flat for land basis.

3- The company can construct touristic facilities, mass housing units and residences within the country and abroad.

4- The company can participate in any official or private tenders relevant to its subject and have such tenders awarded to the company; execute the works subject to such tenders; have them executed; transfer such works; perform any and all official and private construction, contracting and installation works and have them executed.

5- The company may procure, rent, sell, let on hire, import, export and market any tool and equipment and heavy duty machinery for the requirements of the company.

6- The company can perform any contracting works relevant to its subject; can execute construction, maintenance, repair and overhauling works of roads, buildings and factories.

7- The company can perform any heating system and natural gas installation works for the constructions that are executed by the company.

8- The company can perform any design engineering and consulting works and give consultancy services relevant to the subject of the company.

9- The company can procure, sell, import, export and trade any and all kinds of construction materials and any materials such as iron, cement, sand, gravel, bricks, briquette, ready-mix concrete, prefabricated construction elements, wooden building materials.

10- The company can make any and all kinds of building drawings prepared and draw them; prepare surveys; have them registered at relevant public authorities; take licenses and occupancy permits and have them obtained.

11- The company can prepare any master zoning, reclamation, and zoning application plans; prepare and proceed with parceling out and land amalgamation on such lands or have these performed by any third parties.

12- The company can perform any earthworks; transport debris and materials of all kinds of constructions and have them transported.

13- The company can prepare any and all kinds of architectural plans and drawings and undertake to prepare them.

14- The company can make amendments on the drawings they have prepared and implement them.

15- The company can perform 3D modeling, prepare and implement landscape designs.

16- The company can perform drawing and implementation of the plans and drawings contracted within the country and abroad or have such works executed together with another company.

17- The company can prepare any maps and plans including survey and operational maps, arrangement of urban and rural area and lands, parceling and planning; draw current maps, zoning plans and layout plans and any map and plans that are subject to application, allotment, parceling, amalgamation, renunciation for road, and registration.

18- The company can perform any and all kinds of land survey, marking benchmarks, performing deformation measurement, dimensional drawings, hydrological surveys, underground surveys, location determination, design and application works for highways and energy transmission lines; sewerage drawings, bridge and dam design and application.

19- The company can perform application of any drawings on land; give title deed and cadastral technical services and procedures.

20- The company can perform any and all kinds of designs such as hotels, motels, schools, banks, hospitals, bus terminals, fuel stations, business centers, plazas, housings and other official and private building designs and drawings within the country and abroad; have such design and drawings approved; perform engineering consultancy works for such drawing and plans and have them performed.

21- The company can render and obtain any and all kinds of engineering and architectural services within the country and abroad; undertake scientific responsibility; prepare progress payment reports; perform temporary and final acceptances and have them performed; open offices and bureaus in order to perform engineering and architectural works.

22- The company can procure, sell, market and trade any and all kinds of immovable properties, real estate, housings, building complexes, apartments, markets, storages, business centers, business plazas, plazas, villas and resort villages, time share properties, apart hotels, motels, camping and touristic facilities, organized industrial zones, lands, fields; transfer them; take their transfer; rent and let on hire.

23- The company can have any undertaken services of the buildings, building complexes, apartments and similar real estate relevant to the objectives and subject of the company; continue in accordance with the intended usage and perform any necessary maintenance and repair works of such real estates; arrange necessary services; perform repair, maintenance and any actions that are required for activities and usage of common areas within such real estates; and perform any arrangement, decoration, repair and modifications according to technical aspects and specifications and internal arrangements that indicate the mandatory principles and letting any units of such real estates on hire and providing all kinds of management services for such real estate and perform the duties that are assigned to the company by the property owners.

24- The company can perform procurement, sale, import and export of any and all kinds of decoration materials and any materials that are used in

production of decoration materials; perform decoration works, landscaping and location layout works; perform decoration works for homes and offices and any public and private offices.

25- The company can make any decoration and furniture, office and home furniture made of wood and metal all kinds of kitchen cabinets; perform kitchen decoration; produce, procure, sell, market, import and export all kinds of furniture for bedrooms, living rooms, sofas, tables and chairs, beds. The company can rent, let on hire, procure and sell any sales stores and showrooms that are required for sale and exhibition of furniture and decoration materials.

26- The company can manufacture, procure, sell, import and export of any and all kinds of decoration materials and furniture used at homes, offices and work places and any auxiliary accessories for such furniture.

27- The company can perform installation, procurement, sale, import, export, wholesale and retail trade of all kinds of PVC coated window systems.

28- The company can perform procurement, sale, import and export and wholesale and retail trade of all kinds of steam rooms and modern bath armatures and accessories.

C- Automotive

1- The company can perform any and all kinds of repair and maintenance works for land vehicles such as cars, trucks, lorries, buses, minibuses and similar vehicles with and without engines including electrical/electronic vehicles; perform procurement, sale, import, export, wholesale and retail trade of any repair equipment and spare parts; perform modernization, routine technical controls of such vehicles. The company can establish service networks to perform such works and can operate them.

2- The company can establish and operate washing-lubrication services for the automotive sector; perform procurement, sale, import, export, wholesale and retail domestic trade of any consumables to be used therein and to perform their distribution and marketing.

3- The company can render all kinds of car parking services.

4- The company can perform procurement, sale, import, and export, wholesale and retail domestic trade of spare parts for all kinds of transportation vehicles and perform distribution and marketing of them.

5- The company can perform procurement, sale, import, and export, wholesale and retail domestic trade of any and all kinds of mechanical, electrical, electronic engine and supplementary accessories and all kinds of spare parts relevant to the automotive sector and can perform distribution and marketing of them.

6- The company can perform procurement, sale, import, and export, wholesale and retail domestic trade of any and all kinds of car steering wheels.

7- The company can perform procurement, sale, import, and export, wholesale and retail domestic trade of batteries of motor land vehicles and can perform distribution and marketing of them.

8- The company can enter into contracts with manufacturer companies of spare parts within the country and abroad and can take agencyship, distributorship of such companies.

9- The company can perform trade, import and export of any and all kinds of motor vehicles.

10- The company can perform domestic and international trade of buses, minibuses, midi-buses, trucks, lorries,

tractors, taxis, motorcycles, bicycles, trailers and similar land, air, sea vehicles with or without engines and any heavy duty machinery such as grader, cylinder etc. and any loading and unloading machinery; perform import, export, wholesale and retail domestic trade of them and can take agencyship and distributorship of such vehicles.

11- The company can perform trade, import and export of any and all kinds of tube and tires and wheel rims of motor vehicles.

12- The company can take agencyship and distributorship of any tire companies for land, air and sea vehicles the factories of which are established within the country and abroad and can assign such distributorships and can open and operate such services.

13- The company can open auto galleries and operate them or have them operated.

D- Textile

1- The company can manufacture any and all kinds of textile and garment products, blue jeans, sweat suits, shirts, coats, baby and children wear, all kinds clothing made of leather and imitation leather; blanket, piqué, bed sheets, bedding, towels and dowry materials and all kinds of textile products; perform their marketing, retail and wholesale trade, import and export and have these produced by contract manufacturing.

2- The company can produce, procure, sell, export, import, wholesale and retail trade of all kinds of clothing together with their accessories, any and all kinds of underwear and outerwear that are made of cotton, wool, linen, artificial leather and synthetic fiber and other types of accessories used in textile sector such as woven and printed labels.

3- The company can give consultancy services to the companies within the country and abroad on textile issues.

4- The Company can perform manufacturing, import, export, wholesale and retail trade of any and all woven and knitted fabrics that are made of cotton, wool and other yarns.

5- The Company can perform import, export and marketing of bridal dresses, bridal hats, bridal flowers, crowns, gloves and underwear and outerwear and bridal all materials made of all kinds of fabrics, veil and lace.

6- The Company can perform manufacturing of dyeing, pattern printing and printed processing of all wool, cotton, artificial and synthetic fiber and leather made fabrics and have them manufactured.

7- The company can perform manufacturing, procurement, sale, import, export, wholesale and retail domestic trade and marketing of zippers, grippers, linings, elastic band, vizovat, fiber, interlining, label, accessories, yarns and all kinds of ready-made clothing materials and any sub-industry materials

8- The company can perform manufacturing, procurement, sale, import, export, wholesale and retail domestic trade and marketing of all kinds of metal, synthetic buttons, hook and eyes, claps, hangers, zipper, grippers, interlining, elastic cord, cord, label, jewelry, imitation jewelry and accessories and all kinds of ready-made clothing industry and sub-industry products.

9- The company can perform procurement, sale, import, export, wholesale and retail domestic trade and marketing of all kinds of raw materials, semi-products relevant to the subject of the company.

10- The company can perform manufacturing, procurement, sale, import, export, wholesale and retail domestic trade and marketing of all kinds of dyes, auxiliary substances and

materials used in textile and ready-made clothing and dye industry.

11- The company can perform manufacturing, procurement, sale, import, export, wholesale and retail domestic trade and marketing of all kinds of electrical, electronic and manual machines and any spare parts and accessories thereof that are used in ready-made clothing industry.

12- The company can perform procurement, sale, rent, let on hire any machinery and equipment together with tools and equipment that are required by the company and can establish, operate, rent or let on hire any necessary workshops and manufacturing plants and factories. The company can further perform packing and quality control of the products that are produced or traded by the company.

13- The company can perform works of repeat printing and part printing, pattern design, graphics, drawing, jig printing and all kinds of printing types (pigment, reactive plastics, serigraphy, embossed foil, plastic transfer and flog printing).

14- The company can perform import, export, and marketing of all kinds of ready-made clothing and textile materials, zippers, designer materials, necessary dyes and shaping materials, printed material equipment and tools and any spare part and accessories thereof.

15- The company can perform services of installation, maintenance, repair, training, consultancy and services relevant to the subject of the company.

16- The company can manufacture, export, import, domestic trade and market of all kinds cotton, wool, silk, linen, bristle, and artificial fiber in Turkish handmade and machine production carpets, prayer rugs and rugs or any of them made of by mixture of such materials.

17- The company can perform dyeing and printing works relevant to its subject or have them performed.

18- The company can produce leather products made of raw leather, semi-product and produced leather and leather made ready-ware and leather products such as shoes, bags, coats ...

(Continued on Page 501)

(Continued from page 500)

... can export, import, carry out wholesale and retail trade of belts, ties, leather souvenirs, and leather crafts and materials used in the shoe industry

E- The Company can carry out re-export and transit trade related to its subject. It can participate in tenders opened by official and private institutions and organizations related to its subject and make commitments with regard to its subject.

F- The Company can build storages, cold storages and warehouses and garages and parking places for trucks as they relate to its subjects, or lease, lease out or operate those that are ready and available.

G- The Company can purchase and take or transfer ownership of necessary vehicles (including ships), and make any dispositions in kind and personal thereon.

H- The Company can take or grant representation and distributorship at home or abroad. It can carry out warehouse, private warehouse and private storage operations and contract works. It can participate in tenders. It can participate in fairs and organizations related to its subject.

I- The Company can cooperate with domestic and foreign natural and legal persons related to its subjects to establish new companies or participate in existing companies. It can open representation offices at home and abroad.

J- The Company can purchase, sell, lease or lease out any kind of installation, equipment, vehicle, land and building required for storage, shipment and distribution of the merchandise related to its subjects. It can open display and sales venues for display of the Company products.

K- The Company can procure and own rights related to and for its subjects, such as utility know-how, permit, patent, license, concession, brand and the like. It can lease out or transfer ownership of the same to third parties in part or whole, or take ownership of them from third parties.

L- The Company can procure any required domestic or foreign loan from domestic and foreign finance institutions and domestic and foreign establishments. It can dispose of them in any manner necessary.

M- The Company can acquire, lease, lease out, purchase and sell any type of immovable property regarding its subject. It can establish and register lien on its movable and immovable properties and stand as security in favor of third parties, and can acquire any rights thereon.

The Company can grant lien on its movable and immovable property against its debts as well as the debts of third natural and real persons. It can stand as and obtain surety and present the same as security and obtain lien on movable and immovable property against its debt claims. It can grant and release lien on the same.

Aside from those listed above, if the Company desires to carry out other activities related to its subject, it can do so after the respective resolution is adopted by the General Assembly and announced.

Principal Place of Business Article 4-

The principal place of business of the Company is in the Fatih sub-province of Istanbul province. The address is Seyh Mehmet Geylani Mahallesi Mimar Kemalettin Caddesi No: 22-24 Kat: 4/62 Eminonu-Fatih-Istanbul. In the case of an address change, the new address shall be registered in the trade registry and announced in the Trade Registry Gazette of Turkey. Notifications to the registered and announced address shall

be deemed served to the Company. The Company's failure to register the new address in due time, although it has left its registered and announced address, shall be deemed cause for termination. The Company can open branches at home and abroad.

Term Article 5-

The term of the Company is indefinite from the date of its registration and announcement.

Capital Article 6-

The Company's capital is TL 15,700,000 (fifteen million seven hundred thousand), which is divided into 15,700.00 (fifteen million seven hundred thousand) shares registered in the name of shareholders, with each having par value of TL 1 (one). Of this capital, TL 5,535,250.00, corresponding to 5,535,250 shares, has been committed by Ali Demirel, TL 3,240,625.00, corresponding to 3,240,625 shares, has been committed by Arif Mahmut Demirel, TL 2,757,575.00, corresponding to 2,757,575 shares, has been committed by Omer Fahrettin Demirel, TL 2,757,575.00, corresponding to 2,757,575 shares, has been committed by Mucteba Fatih Demirel, TL 1,408,975.00, corresponding to 1,408,975 shares, has been committed by Hikmet Demirel in full and free of collusion.

The entire capital of TL 15,700,000.00 of the Company was met from the paid-in capital of Merve Optik Sanayi ve Ticaret Limited Sirketi, registered with Istanbul Trade Registry under registration number 238262, which changed type according to Article 152 of the Turkish Commercial Code. The net assets of Merve Optik Sanayi ve Ticaret Limited Sirketi, which changed type, has been established with the report dated June 25, 2010 and with File No: 2010/253, Varied Case of the experts appointed by Bakirkoy 3rd Commercial Court of First Instance with its decision dated June 18, 2010 and with Case No: 2010/253, Varied Case, Decision No: 2010/253.

The limited company has been transferred to this joint stock company with all its assets and liabilities.

Share Certificates are registered in the name of the shareholders. The Board of Directors is authorized to print and distribute the share certificates in denominations involving one or more shares.

The Board of Directors may issue and distribute temporary share certificates, registered in the name of shareholders, which will be valid until the share certificates are printed and distributed.

Transfer of Shares Article 7-

If one of the shareholders of the Company wants to transfer his/her shares, he/she shall first notify the existing shareholders by a letter indicating the amount of shares and the transfer price. If the existing shareholders do not make known their acceptance of the transfer within 15 days, the shareholder transferring his/her shares may transfer his/her shares to third parties at a price not lower than

what he/she has offered to the existing shareholders. For the transfer to be valid, it shall be adopted by a decision of the Board of Directors and entered in the stock ledger. The Board of Directors may refrain from entering the transfer in the stock ledger without any justification.

The Board of Directors and Its Term Article 8-

The Company's activities and management shall be carried out by the Board of Directors, which, according to the provisions of the Turkish Commercial Code, must be comprised of at least three members to be elected among the shareholders by the General Assembly. The members of the Board of Directors shall be selected for a maximum of three years. The members of the Board of Directors whose terms end may be re-elected. The General Assembly may replace any member of the Board of Directors at any time, if it deems it necessary.

Representing and Binding the Company Article 9-

The Company shall be managed, represented and bound by the Board of Directors. For all documents provided by the Company and contracts concluded by the Company to be valid, they shall bear the signatures affixed under the Company name or stamp of the person or the persons authorized to represent and bind the Company.

Auditor and Duties Article 10-

The General Assembly shall elect one or more auditors for a maximum of three years from outside as well as from among the shareholders. The number of auditors shall not be more than five. The auditors shall be obliged to perform the duties listed in Articles 353 and 357 of the Turkish Commercial Code.

General Assembly Article 11-

a) Method of Invitation: The General Assembly convenes ordinarily or extraordinarily. Invitations for the meetings shall be subject to the provisions of Articles 355, 365, 366 and 368 of the Turkish Commercial Code.

b) Time of Meeting: An ordinary General Assembly shall convene within 3 months of the end of the accounting period and at least once every year, and an extraordinary General Assembly shall convene as and when required by the Company business.

c) Voting and Appointment of Proxies: The shareholders or their proxies who are present at ordinary and extraordinary General Assembly meetings shall each have one vote. The shareholders may be represented at General Assembly meetings by other shareholders or by a proxy they appoint from outside. Proxies who are shareholders of the Company shall be authorized to cast their own vote and to cast the vote of the shareholder they represent.

d) Discussions and Quorum: Points provided in Article 369 of the Turkish Commercial Code shall be discussed and necessary decisions shall be adopted at the General Assembly meetings. The quorum for General Assembly meetings

shall be the participation of the shareholders representing 63% of the Company's capital unless a higher quorum is provided by the Turkish Commercial Code, and the quorum for adoption of decisions shall be the yeas votes of the shareholders representing 63% of the capital, unless it is specified to be higher by the relevant law.

e) Meeting Venue: The meetings shall be held at the head office of the Company or at a convenient place in the city in which the head office is situated or in Istanbul.

Attendance of Commissioner at Meetings Article 12-

It is mandatory that the Commissioner of the Ministry of Industry and Commerce attend both ordinary and extraordinary General Assembly meetings and sign the meeting minutes together with the concerned persons. Decisions adopted in the meetings held in the absence of the Commissioner and the General Assembly meeting minutes not bearing the signature of the Commissioner shall not be valid.

Announcements Article 13-

Announcements regarding the Company shall be made at least 15 days prior in at least one newspaper issued where the company's principal place of business is situated, subject to paragraph 4 of Article 37 of the Turkish Commercial Code. If no newspaper is issued in the respective area, announcements shall be made in a newspaper issued at the nearest location. However, announcements calling for a meeting of the General Assembly shall be made at least two weeks prior to the said meeting, excluding the announcement dates and meeting days pursuant to the provisions of Article 368 of the Turkish Commercial Code. Announcements regarding decrease of the capital or liquidation shall be subject to Articles 397 and 438 of the Law.

Accounting Period Article 14-

The Company's accounting period shall start on the first day of January and end on the last day of December. However, the first accounting period shall start on the date of final incorporation of the Company and end on the last day of December.

Determination and Distribution of Profit Article 15-

The net profit is the amount after the Company's general expenses and amounts required to be paid or set aside by the Company, such as depreciation expenses, are deducted from the revenues determined at the end of the accounting period. From the net profit calculated in this way, first, 5% shall be set aside as legal contingency reserves. From the remaining amount, an amount that shall suffice for payment of a 5% first dividend to the part of non-redeemable stocks that were fully paid shall be deducted. The remaining amount shall be distributed as and in the manner determined by the General Assembly.

A 10% portion shall be deducted from the amounts to be distributed to the founders, the members of the Board of Directors, officers and employees and the sum decided to be distributed to the shareholders as second dividend and the sum distributed to the entities participating in the profit, and added to the ordinary contingency reserves pursuant to sub-paragraph 3 of paragraph 2 of Article 466 of the Turkish Commercial Code.

Contingency Reserves Article 16-

Contingency reserves set aside by the Company shall be subject to the provisions of Articles 466 and 467 of the Turkish Commercial Code.

Legal Provisions Article 17-

Matters not provided herein shall be subject to the provisions of the Turkish Commercial Code.

Provisional Article 1- Hikmet Demirel, Ali Demirel, Arif Mahmut Demirel and Mucteba Fatih Demirel have been elected as the members of the Board of Directors to serve for a period of 3 years. Ali Demirel has been elected as the Chairperson of the Board of Directors. Hikmet Demirel has been elected as the Vice Chairperson of the Board of Directors. Arif Mahmut Demirel and Mucteba Fatih Demirel have been elected as members of the Board of Directors.

The Company shall be represented and bound as follows.

1- The Chairperson Ali Demirel and the Vice Chairperson Hikmet Demirel of the Board of Directors are authorized to represent and bind the Company with their joint signatures affixed under the trade name or stamp of the Company in property purchases and sales and transfer of brands.

2- The Chairperson Ali Demirel and the Vice Chairperson Hikmet Demirel of the Board of Directors are authorized to represent and bind the Company with their individual signatures affixed under the trade name or stamp of the Company in loan agreements concluded with banks and finance organizations.

3- The Chairperson Ali Demirel and the Vice Chairperson Hikmet Demirel and the member Arif Mahmut Demirel of the Board of Directors are authorized to represent and bind the Company with their individual signatures affixed under the trade name or stamp of the Company in matters other than the above (in Articles 1 and 2).

Provisional Article 2- Huseyin Cetin, a national of the Republic of Turkey residing at Kisikli Caddesi Masaldan Is Merkezi No. 46 A Blok Kat: 2 Uskudar - Istanbul, has been elected as the Company's Auditor to serve for a period of one year until the first Ordinary General Assembly meeting.

(Continued on Page 502)

(Continued from Page 501)

Founding Shareholders
Ali Demirel Signature
Arif Mahmut Demirel Signature
Omer Fahrettin Demirel Signature
Hikmet Demirel Signature
Mucteba Fatih Demirel Signature
(20/A) (17/610811)

From Istanbul Trade Registry**Registration Number: 750749**

Trade Name
ES MALI YATIRIM VE
DANISMANLIK ANONIM SIRKETI

Principal Place of Business: Istanbul Bahcelievler Yenibosna Basın Ekspres Yolu Kavak Sok: Ser Plaza A Blok No. 3 K.2-3

It has been requested to register and announce the decision of the Extraordinary General Assembly dated December 9, 2010, and the amended Articles of Incorporation of the Company with the above principal place of business, registration no. and trade name, and to announce the Partial Demerger Agreement and the share table. It is hereby announced that the foregoing is registered according to the provisions of the Turkish Commercial Code 6762 and based on the documents in our office on December 31, 2010.

The Meeting Minutes of the Extraordinary General Assembly of Es Mali Yatirim Ve Danismanlik Anonim Sirketi dated December 9, 2010

The Extraordinary General Assembly of Es Mali Yatirim Ve Danismanlik Anonim Sirketi convened on December 9, 2010, at 13:00 hours at Istanbul Yenibosna Basın Ekspres Yolu Kavak Sokak No. 3 Ser Plaza A Blok Kat: 3 under the supervision of the Commissioner of the Ministry Huseyin Sinirci commissioned by the letter of the Directorate of Industry and Commerce of Istanbul dated December 8, 2010, and numbered 72698 and pursuant to Article 370 of the TCC.

After it was understood from the review of the list of attendance that, of the 50,000 shares corresponding to the total capital of the Company capital of TL 50,000.00, 50,000 shares, thus all shareholders, were represented in person during the meeting and that, thereby, the minimum meeting quorum specified both by the law and by the Articles of Incorporation was achieved. Therefore, the Chairperson of the Board of Directors, Mr. Ethem Sancak, commenced the meeting and proceeded with discussion of the agenda.

1- Accordingly, Ethem Sancak was elected as the Chairperson of the Council, Necat Sancak was elected as the Scrutineer, and Ozer Sancak was elected as the Secretary by anonymous vote.

2- It was adopted by anonymous vote to grant authority to the council to sign the meeting minutes of the General Assembly.

3- Pursuant to item 3 of the agenda, and pursuant to the respective provisions of Articles 19 and 20 of the Corporate Tax Law 5520, and according to the provisions of the "Regulation on Procedures and Principles for Partial Demerger of Joint Stock Companies and Limited Companies" published in Official Gazette Issue No. 25231 of September 16, 2003, it was decided by anonymous vote to approve the Partial Demerger Agreement attached to these minutes, signed on November 18, 2010, with Sancak Insaat Turizm Nakliyat ve Dis Ticaret Anonim Sirketi by the authority granted to our Board of Directors at the Extraordinary General Assembly Meeting dated October 26, 2010, for the partial demerger found acceptable based on the balance sheet and financial records of Sancak Insaat Tur. Nak. Ve Dis. Tic. AS. dated July 31, 2010, by the Expert Report dated November 22, 2010, prepared under the scope of the Varied Case File 2010/434 of Bakirkoy 3rd Commercial Court of First Instance.

Also, it was adopted by anonymous vote to deliver all of the shares to be issued by our Company in return for the transfer of the shares corresponding to TL 26,452,477.00 of Hedef-Alliance Holding AS, registered in the assets of the demerged company due to the partial demerger of Sancak Insaat Turizm Nakliyat ve Dis Ticaret Anonim Sirketi, to our current shareholder Mr. Ethem Sancak, as defined in detail in Article 5 entitled "Method of Application of Partial Demerger" of the Partial Demerger Agreement.

4. The meeting proceeded with discussion on amending the article related to the capital of our Company due to the participation stocks taken over by means of the partial demerger of Sancak Insaat Turizm Nakliyat ve Dis Ticaret Anonim Sirketi. It was adopted by anonymous vote to increase our Company's capital by TL 26,452,477.00 in return for the transfer of the participation stocks of TL 26,452,477.00 from Hedef-Alliance Holding AS's participation stocks with the total registered value of TL 122,876,090.00 owned by Sancak Insaat Turizm Nakliyat ve Dis Ticaret Anonim Sirketi, as seen in the Expert Report dated November 22, 2010, prepared under the scope of Varied Case File 2010/434 of Bakirkoy 3rd Commercial Court of First Instance and deliver the shares issued in return for the capital in kind to our shareholder Mr. Ethem Sancak.

According to this, it was adopted by anonymous vote to amend Article 6, entitled "Capital," of the Articles of Incorporation.

Amended Article
Article 6
Capital

The Company's capital is TL 26,502,477.00 (twenty-six million five hundred two thousand four hundred seventy-seven) divided into 26,502,477 shares, with each having a par value of TL 1.00.

The prior capital of TL 50,000.00 (fifty thousand) of the Company was fully paid. This time, the increase of TL 26,452,477.00 of the capital in kind

due to the partial demerger was met from the registered value of the participation stocks of Hedef-Alliance Holding AS, taken over from the demerged company Sancak Insaat Turizm Nakliyat ve Dis Ticaret AS in line with the demerger agreement as provided in the expert report dated November 22, 2010, prepared under the scope of Varied Case File 2010/434 of Bakirkoy 3rd Commercial Court of First Instance.

Share certificates are registered in the name of the shareholders. The distribution of the capital is as follows.

Name of Shareholder: Ethem Sancak
Shares Held: 26,502,473
Par value (TL): 26,502,473.00

Name of Shareholder: Ozer Sancak
Shares Held: 1
Par value (TL): 1.00

Name of Shareholder: Fuat Sancak
Shares Held: 1
Par value (TL): 1.00

Name of Shareholder: Necat Sancak
Shares Held: 1
Par value (TL): 1.00

Name of Shareholder: Nurten Yildirim
Shares Held: 1
Par value (TL): 1.00

Total
Number of Shares: 26,502,477
Par value (TL): 26,502,477.00

5. The items included on the agenda were discussed and the meeting ended as there was no other matter to discuss.

Commissioner Chairperson of the Council
Huseyin Sinirci Signature
Scrutineer
Ethem Sancak Signature
Scrutineer
Necat Sancak Signature
Secretary
Ozer Sancak Signature

Company Trade Name: Es Mali Yatirim Ve Danismanlik Anonim Sirketi
Company Address: Yenibosna, Basın Ekspres Yolu Kavak Sokak No: 3 Ser Plaza A Blok Kat: 3
Trade Registry Office: Istanbul Trade Registry
Registration No: 750749
Previous Capital: TL 50,000.00
Present Capital: TL 26,502,477.00
Date of the General Assembly Meeting: December 9, 2010

Details of the Shareholders
Participating in the Capital Increase:

Name and Title: Ethem Sancak
Shares Held before the Increase: YTL 49,996.00
Shares Held after the Increase: YTL 26,502,473.00
Number of Shares Subscribed: 26,452,477
Paid:
Payment Bank: Signature

Name and Title: Ozer Sancak
Shares Held before the Increase: YTL 1
Shares Held after the Increase: YTL 1
Number of Shares Subscribed:
Paid:
Payment Bank: Signature

Name and Title: Fuat Sancak
Shares Held before the Increase: YTL 1
Shares Held after the Increase: YTL 1
Number of Shares Subscribed:
Paid:
Payment Bank: Signature

Name and Title: Necat Sancak
Shares Held before the Increase: YTL 1
Shares Held after the Increase: YTL 1
Number of Shares Subscribed:
Paid:
Payment Bank: Signature

Name and Title: Nurten Yildirim
Shares Held before the Increase: YTL 1
Shares Held after the Increase: YTL 1
Number of Shares Subscribed:
Paid:
Payment Bank: Signature

Total
Shares before the Increase: YTL 50,000.00
Shares after the Increase: YTL 26,502,477.00

The above information is certified as true.

Es Mali Yatirim Ve Danismanlik Anonim Sirketi
Board of Directors
Ethem Sancak
Chairperson of the Board of Directors
Necat Sancak
Vice Chairperson of the Board of Directors
Nurten Yildirim Signature
Member of the Board of Directors
Ozer Sancak Signature
Member of the Board of Directors

Partial Demerger Agreement

Article 1-
The Company Subject of Partial Demerger and Main Elements of the Demerger

Pursuant to sub-paragraph (b) of paragraph 3 of Article 19 and paragraph 3 of Article 20 of Corporate Tax Law 5520, and the provisions of the "Regulation on Procedures and Principles for Partial Demerger of Joint Stock Companies and Limited Companies" published in Official Gazette Issue No. 25231 of September 16, 2003, "Sancak Insaat Turizm Nakliyat ve Dis Ticaret Anonim Sirketi" registered under registration no. "492418" with the Istanbul Trade Registry and with the principal place of business at "Goztepe Mah. Orhangazi Cad. Karanfil Sok. No. 64 Kat: 4 D: 2 Bagcilar/Istanbul" (Hereinafter referred to as "Demerged Company" or "Transferor") shall transfer part of the shares in its assets of "Hedef-Alliance Holding AS" corresponding to TL 26,452,477.00 at their registered value to Es Mali Yatirim ve Danismanlik Anonim Sirketi registered under registration no. 750749 with the Istanbul Trade Registry (Hereinafter referred to as "Transferee") through partial demerger. Shares to be issued in return for capital in kind shall be delivered to the shareholder, Ethem Sancak, of the Demerged Company.

Article 2-
Legal Basis of Partial Demerger

This Partial Demerger Agreement is signed by and between the Demerged Company and the Transferee on December 18, 2010 under the Expert

Report prepared based on the balance sheet of the Demerged Company dated July 31, 2010, by a commission of three experts appointed by the decision of October 22, 2010, of the Bakirkoy 3rd Commercial Court of First Instance in its Varied Case File 2010/434.

Sub-paragraph (b) of paragraph 3 of Article 19 and paragraph 3 of Article 20 of Corporate Tax Law 5520, the provisions of the "Regulation on Procedures and Principles for Partial Demerger of Joint Stock Companies and Limited Companies" published in Official Gazette Issue No. 25231 of September 16, 2003, applicable articles of the Turkish Commercial Code, and the decisions adopted at the Extraordinary General Assembly of the Demerged Company dated September 29, 2010, and registered on September 30, 2010, constitute the legal basis for this Partial Demerger Agreement.

Article 3-
Financial Statements and Balance Sheet as the Basis of Partial Demerger

This partial demerger shall be carried out based on the balance sheet and financial statements of the Demerged Company dated July 31, 2010.

Article 4-
Subject of Partial Demerger

It has been decided by the Extraordinary General Assembly of the Demerged Company to remove the part of the participation stocks of "Hedef-Alliance Holding AS" corresponding to TL 26,452,477.00, included in the assets of the Demerged Company and listed below as defined in detail in Article 5, from the assets through partial demerger by the date of partial demerger and transfer them to Es Mali Yatirim ve Danismanlik Anonim Sirketi at their registered value according to the amounts provided below.

Thereunder, the part corresponding to that of the total participation stocks of "Hedef-Alliance Holding AS" of TL 122,876,090.00 corresponding to TL 96,423,613.00 and included in the assets of the Demerged Company to 3 companies to be newly established under a partial demerger plan and ...

(Continued on Page 503)

EXHIBIT A-3



Glasses

From Wikipedia, the free encyclopedia

For the short story by Henry James, see [Glasses \(short story\)](#).

See also [glass](#), [glass \(disambiguation\)](#), or [spectacle \(disambiguation\)](#).

Glasses, also known as **eyeglasses** or **spectacles**, are frames bearing lenses worn in front of the eyes used for vision correction.

Safety glasses are a kind of eye protection against flying debris or against visible and near visible light or radiation. Sunglasses allow better vision in bright daylight, and may protect one's eyes against damage from high levels of ultraviolet light. Specialized glasses may be used for viewing specific visual information (such as stereoscopy). Sometimes glasses are worn simply for aesthetic or fashion purposes.



A modern pair of prescription reading glasses



French Empire gilt scissors glasses
c. 1805 (with one lens missing)



Glasses – ca. 1920s

Contents

- 1 History
 - 1.1 Precursors
 - 1.2 Invention of eyeglasses
 - 1.2.1 Refuted claims
 - 1.3 Later developments
- 2 Types
 - 2.1 Corrective
 - 2.1.1 Single vision
 - 2.1.1.1 Over the counter reading glasses
 - 2.1.2 Bifocal
 - 2.1.3 Trifocal
 - 2.1.4 Progressive
 - 2.1.5 Adjustable focus
 - 2.2 Safety
 - 2.3 Sunglasses
 - 2.4 3D glasses
 - 2.5 Magnification (bioptics)
 - 2.6 Yellow-tinted computer/Gaming glasses
- 3 Frames
 - 3.1 Parts
 - 3.2 Temple types
 - 3.3 Materials
 - 3.3.1 Plastic
 - 3.3.2 Metal
 - 3.3.3 Natural materials
- 4 Fashion

- 4.1 Personal image
- 4.2 Styles
- 5 Corrective lens shape
- 6 Vertex distance
- 7 Refractive index
 - 7.1 Advantages of higher indices
 - 7.2 Disadvantages of increased indices
- 8 Optical quality
 - 8.1 Abbe number
 - 8.2 Power error (-D corrections for myopia)
 - 8.3 Lens induced oblique astigmatism (+D corrections for presbyopia)
 - 8.4 Minimizing power error and lens induced astigmatism
- 9 Cosmetics and weight
 - 9.1 Reducing lens thickness
 - 9.2 Weight
 - 9.3 Facial distortion and social stigma
- 10 Lens materials
 - 10.1 Optical crown glass
 - 10.2 Plastic (CR-39)
 - 10.3 Trivex
 - 10.4 Polycarbonate
 - 10.5 High-index plastics (thiourethanes)
 - 10.6 Ophthalmic material property tables
- 11 Lens coatings
 - 11.1 Anti-reflective
 - 11.2 Ultraviolet protection
 - 11.3 Scratch resistance
- 12 Redistribution
- 13 See also
- 14 Notes
- 15 References
- 16 Bibliography
- 17 External links

History

Precursors

The earliest written record of magnification dates back to the 1st century AD, when Seneca the Younger, a tutor of Emperor Nero of Rome, wrote: "Letters, however small and indistinct, are seen enlarged and more clearly through a globe or glass filled with water".^[1]

The use of a convex lens to form an enlarged/magnified image is discussed in Alhazen's *Book of Optics* (1021). Its translation into Latin from Arabic in the 12th century was instrumental to the invention of eyeglasses in 13th century Italy.^[1]

Englishman Robert Grosseteste's treatise *De iride* ("On the Rainbow"), written between 1220 and 1235, mentions using optics to "read the smallest letters at incredible distances". A few years later in 1262, Roger Bacon is also known to have written on the magnifying properties of lenses.^[2]

Sunglasses, in the form of flat panes of smoky quartz, were used in China during the 12th century.^[a] Similarly, the Inuit have used snow goggles for eye protection. While they did not offer any corrective benefits^[4] they did improve visual acuity via the pinhole effect.

Invention of eyeglasses



The *Glasses Apostle* by Conrad von Soest (1403)

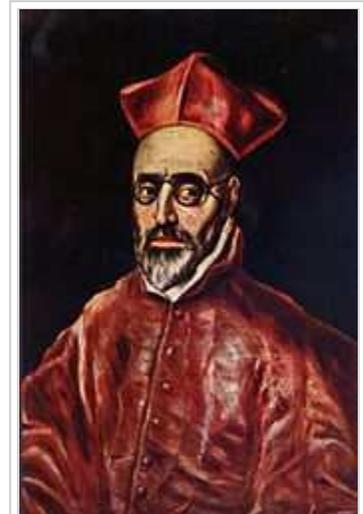
The first eyeglasses were made in Italy in about 1286, but it is not clear who the inventor was. In a sermon delivered on February 23, 1306, the Dominican friar Giordano da Pisa (ca. 1255–1311) wrote "It is not yet twenty years since there was found the art of making eyeglasses, which make for good vision... And it is so short a time that this new art, never before extant, was discovered. ... I saw the one who first discovered and practiced it, and I talked to him."^[5] Giordano's colleague Friar Alessandro della Spina of Pisa (d. 1313) was soon making eyeglasses. The *Ancient Chronicle of the Dominican Monastery of*

St. Catherine in Pisa records: "Eyeglasses, having first been made by someone else, who was unwilling to share them, he [Spina] made them and shared them with everyone with a cheerful and willing heart."^[6] By 1301, there were guild regulations in Venice governing the sale of eyeglasses.^[7]

The earliest pictorial evidence for the use of eyeglasses is Tommaso da Modena's 1352 portrait of the cardinal Hugh de Provence reading in a scriptorium. Another early example would be a depiction of eyeglasses found north of the Alps in an altarpiece of the church of Bad Wildungen, Germany, in 1403.



Detail of a portrait of the Dominican Cardinal and renowned biblical scholar Hugh of Saint-Cher painted by Tommaso da Modena in 1352



Portrait of cardinal Fernando Niño de Guevara by El Greco circa 1600 shows glasses with temples passing over and beyond the ears

These early glasses had convex lenses that could correct both hyperopia (farsightedness), and the presbyopia that commonly develops as a symptom of aging. It was not until 1604 that Johannes Kepler published the first correct explanation as to why convex and concave lenses could correct presbyopia and myopia.

[b]

Early frames for glasses consisted of two magnifying glasses riveted together by the handles so that they could grip the nose. These are referred to as "rivet spectacles". The earliest surviving examples were found under the floorboards at Kloster Wienhausen, a convent near Celle in Germany; they have been dated to *circa* 1400.^[10]

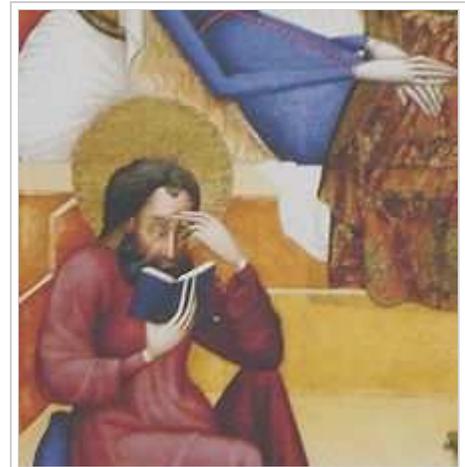
Refuted claims

In 1907 Professor Berthold Laufer, a German-American anthropologist, stated in his history of glasses that "the opinion that spectacles originated in India is of the greatest probability and that spectacles must have been known in India earlier than in Europe".^{[11][12]} However, Joseph Needham showed that the mention of glasses in the manuscript Laufer used to justify the prior invention of them in Asia did not exist in older versions of that manuscript, and the reference to them in later versions was added during the Ming dynasty.^[13]

Although there have been claims that Salvino degli Armati of Florence invented eyeglasses, these claims have been exposed as hoaxes.^{[14][15]} Furthermore, although there have been claims that Marco Polo encountered eyeglasses during his travels in China in the 13th century, no such statement appears in his accounts.^{[16][17]} Indeed, the earliest mentions of eyeglasses in China occur in the 15th century and those Chinese sources state that eyeglasses were imported.^[18]

Later developments

The American scientist Benjamin Franklin, who suffered from both myopia and presbyopia, invented bifocals. Serious historians have from time to time produced evidence to suggest that others may have preceded him in the invention; however, a correspondence between George Whatley and John Fenno, editor of *The Gazette of the United States*, suggested that Franklin had indeed



Seated apostle holding lenses in position for reading. Detail from *Death of the Virgin*, by the Master of Heiligenkreuz, ca. 1400–30 (Getty Center).



A portrait of Francisco de Quevedo y Villegas, 1580–1645

invented bifocals, and perhaps 50 years earlier than had been originally thought.^[19]

The first lenses for correcting astigmatism were designed by the British astronomer George Airy in 1825.^[20]

Over time, the construction of frames for glasses also evolved. Early eyepieces were designed to be either held in place by hand or by exerting pressure on the nose (*pince-nez*). Girolamo Savonarola suggested that eyepieces could be held in place by a ribbon passed over the wearer's head, this in turn secured by the weight of a hat. The modern style of glasses, held by temples passing over the ears, was developed some time before 1727, possibly by the British optician Edward Scarlett. These designs were not

immediately successful, however, and various styles with attached handles such as "scissors-glasses" and lorgnettes were also fashionable from the second half of the 18th century and into the early 19th century.

In the early 20th century, Moritz von Rohr and Zeiss (with the assistance of H. Boegehold and A. Sonnefeld^[21]), developed the Zeiss Punktal spherical point-focus lenses that dominated the eyeglass lens field for many years.

In 2008, Joshua Silver designed eyewear with adjustable corrective glasses. They work by silicone liquid, a syringe, and a pressure mechanism.^[22]

Despite the increasing popularity of contact lenses and laser corrective eye surgery, glasses remain very common, as their technology has improved. For instance, it is now possible to purchase frames made of special memory metal alloys that return to their correct shape after being bent. Other frames have spring-loaded hinges. Either of these designs offers dramatically better ability to withstand the stresses of daily wear and the occasional accident. Modern frames are also often made from strong, light-weight materials such as titanium alloys, which were not available in earlier times.

Types

Glasses come in many types. They can be classified by their primary function, but also appear in combinations such as prescription sunglasses or safety glasses with enhanced magnification.

Corrective

Main articles: Corrective lens and Refractive error



Harry S. Truman, 33rd President of the United States, was known to have poor vision.

Corrective lenses are used to correct refractive errors by bending the light entering the eye in order to alleviate the effects of conditions such as nearsightedness (myopia), farsightedness (Hypermetropia) or astigmatism. Another common condition in patients over forty years old is presbyopia, which is caused by the eye's crystalline lens losing elasticity, progressively reducing the ability of the lens to accommodate (i.e. to focus on objects close to the eye). Corrective lenses are made to conform to the prescription of an ophthalmologist or optometrist. A lensmeter can be used to verify the specifications of a pair of glasses.

Pinhole glasses are a type of corrective glasses that do not use a lens. Pinhole glasses do not actually refract the light or change focal length. Instead, they create a diffraction limited system, which has an increased depth of field, similar to using a small aperture in photography. This form of correction has many limitations that prevent it from gaining popularity in everyday use.

Corrective eyeglasses can significantly improve the life quality of the wearer. Not only do they enhance the wearer's visual experience, but can also reduce problems that appear such as headaches or squinting.

Single vision

Single vision lenses correct for only one distance. If they correct for far distance, the person must accommodate to see clearly up close. If the person cannot accommodate, they may need a separate pair of single vision glasses for near distances, or else use a multifocal lens (see below).

Over the counter reading glasses

Ready-made reading glasses go by many names, including over the counter glasses, ready readers, cheaters, magnifiers, non-prescription readers, or generic readers. They offer clearer vision to people with presbyopia and hyperopia. They are typically sold in retail locations such as pharmacies and grocery stores, but are also available in book stores and clothing retailers. They are available in common reading prescriptions in strengths ranging from +0.75 to +3.50 diopters. These glasses do not take into account the mathematics of the wearer's distance prescription, often causing the distance to become blurry unless they are removed. If the wearer has little to no need for correction in the distance, the glasses may work quite well for seeing better during near vision tasks. But if the person has a need for correction in the distance, it is less likely that they will be perfectly effective.

Reading glasses come in two main styles: full frames, in which the entire lens is made in the reading prescription, and half-eyes, style glasses that sit lower down on the nose.^[23] Full frame readers must be removed to see distance clearly, while the distance can be clearly viewed over the top of half-eye readers.



Seattle skyline as seen through a corrective lens, showing the effect of refraction



Typical pair of single vision glasses

Although such glasses are generally considered safe, an individual prescription, as determined by an ophthalmologist or optometrist and made by a qualified optician, usually results in better visual correction and fewer headaches and visual discomfort.

This is due to the optical centres of the lenses in non prescription readers not being correctly aligned with the wearers Pupillary Distance (the distance between pupils). This causes headaches, discomfort and in some cases eye muscle strain due to prismatic effect.

Bifocal

With a bifocal, the upper part of the lens is generally used for distance vision, while the lower segment is used for near vision. The area of the lens that caters to near vision is called the add segment. There are many different shapes, sizes, and positions for the add segment that are selected for functional differences as well as the visual demands of the patient. Bifocals allow people with presbyopia to see clearly at distance and near without having to remove the glasses, which would be required with single vision correction.

Trifocal

Trifocal lenses are similar to bifocals, except that the two focal areas are separated by a third in the middle. This segment corrects the wearer's vision for intermediate distances roughly at arms' length, *e.g.* computer distance. This lens type has two segment lines, dividing the three different correcting segments.

Progressive

Progressive addition or varifocal lenses provide a smooth transition from distance correction to near correction, eliminating segment lines and allowing clear vision at all distances. The lack of any abrupt change in power and the uniform appearance of the lens gives rise to the name "no-line bifocal".

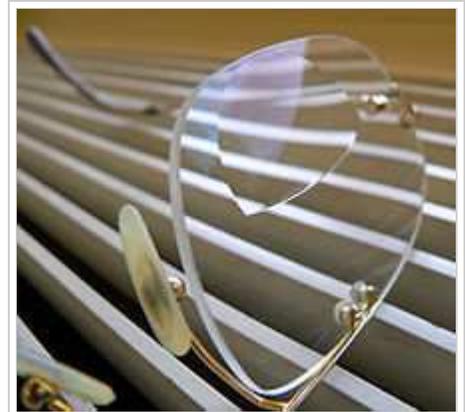
Adjustable focus

Adjustable or variable focus dynamically adjusts focal length, typically allowing clear vision at any distance. It is especially useful for treating the loss of accommodation common in presbyopia.

Safety

See also: Eye protection

Safety glasses are worn to protect the eyes during a variety of tasks. They are made with shatter-resistant plastic lenses to protect the eye from flying debris and can shield the eyes from hazardous splatters such as blood or chemicals. There are also



These bifocals are upside down as they rest on the surface. The add segment of the lens for near vision is the "D" shaped area.

safety glasses for welding, which are styled like wraparound sunglasses, but with much darker lenses, for use in welding where a full sized welding helmet is inconvenient or uncomfortable. These are often called "flash goggles", because they provide protection from welding flash. Nylon frames are usually used for protection eyewear for sports because of their lightweight and flexible properties.

Sunglasses

Main article: Sunglasses

Sunglasses provide improved comfort and protection against bright light and often against ultraviolet (UV) light. Photochromic lenses, which are photosensitive, darken when struck by UV light. The dark tint of the lenses in a pair of sunglasses blocks the transmission of light through the lens.

Light polarization is an added feature that can be applied to sunglass lenses. Polarization filters are positioned to remove horizontally polarized rays of light, which eliminates glare from horizontal surfaces (allowing wearers to see into water when reflected light would otherwise overwhelm the scene). Polarized sunglasses may present some difficulties for pilots since reflections from water and other structures often used to gauge altitude may be removed. Liquid crystal displays often emit polarized light making them sometimes difficult to view with polarized sunglasses.

Sunglasses may be worn just for aesthetic purposes, or simply to hide the eyes. Examples of sunglasses that were popular for these reasons include teashades and mirrorshades. Many blind people wear nearly opaque glasses to hide their eyes for cosmetic reasons.

Sunglasses may also have corrective lenses. Clip-on sunglasses or sunglass clips can be attached to another pair of glasses. Some wrap-around sunglasses are large enough to be worn over top of another pair of glasses. Otherwise, many people opt to wear contact lenses to correct their vision so that standard sunglasses can be used.

3D glasses

Main article: 3D Viewers

The illusion of three dimensions on a two dimensional surface can be created by providing each eye with different visual information. 3D glasses create the illusion of three dimensions by filtering a signal containing information for both eyes. The signal, often light reflected off a movie screen or emitted from an electronic display, is filtered so that each eye receives a slightly different image. The filters only work for the type of signal they were designed for.



Safety glasses with side shields



Woman wearing sunglasses

Anaglyph 3D glasses have a different colored filter for each eye, typically red and blue or red and green. A polarized 3D system on the other hand uses polarized filters. Polarized 3D glasses allow for color 3D, while the red-blue lenses produce an image with distorted coloration. An active shutter 3D system uses electronic shutters. Head-mounted displays can filter the signal electronically and then transmit light directly into the viewers eyes.

Anaglyph and polarized glasses are distributed to audiences at 3D movies. Polarized and active shutter glasses are used with many home theaters. Head-mounted displays are used by a single person, but the input signal can be shared between multiple units.

Magnification (bioptics)

Glasses can also provide magnification that is useful for people with vision impairments or specific occupational demands. An example would be *bioptics* or *bioptic telescopes* which have small telescopes mounted on, in, or behind their regular lenses. Newer designs use smaller lightweight telescopes, which can be embedded into the corrective glass and improve aesthetic appearance (mini telescopic spectacles). They may take the form of self-contained glasses that resemble goggles or binoculars, or may be attached to existing glasses.

Yellow-tinted computer/Gaming glasses

A type of glasses, usually with a minor yellow tint. Basically performs minor color correction, or the top of reducing headache due lack of blinking. Might also be minor corrective. Unprescribed glasses.

Depending on the company, these computer or gaming glasses can also filter out high energy blue and ultra-violet light from LCD screens, fluorescent lighting, and other sources of light. This allows for reduced eye-strain. These glasses can be ordered as standard or prescription lenses that fit into standard optical frames.^[24]

Due to the blue energy blocking nature of these lenses, they also help users sleep at night along with reducing age-related macular degeneration.^[25]

Frames

The ophthalmic frame is the part of a pair of glasses which is designed to hold the lenses in proper position. Ophthalmic frames come in a variety of styles, sizes, materials, shapes, and colors.^[26]

Parts

- two **eyewires** or **rims** surrounding and holding the lenses in place
- **bridge** which connects the two eyewires,
- **chassis**, the combination of the eyewires and the bridge
- **top bar** or **brow bar**, a bar just above the bridge providing structural support and/or style enhancement. The addition of a top bar makes a pair of glasses aviator eyeglasses
- **brows** or **caps** – plastic or metal caps which fit over the top of the eyewire for style enhancement and to provide additional support for the lenses. The addition of brows makes a pair of glasses Browline glasses

- two **nose pads** that allow a comfortable resting of the eyewires on the nose
- two **pad arms** which connect the eyewire to the nosepads
- two **end pieces** which connect the eyewire via the "hinges" to the temples
- two **hinges** connecting the endpieces to the frames and allowing a swivel movement
- pair of frame-front endpieces
- two **temples** (earpieces) on either side of the skull
- two **temple tips** at the end of each temple

Temple types

- **Skull Temples**: bend down behind the ears, follow the contour of the skull and rest evenly against the skull
- **Library Temples**: generally straight and do not bend down behind the ears. Hold the glasses primarily through light pressure against the side of the skull
- **Convertible Temples**: used either as library or skull temples depending on the bent
- **Riding Bow Temples**: curve around the ear and extend down to the level of the ear lobe. Used mostly on athletic, children's, and industrial safety frames;
- **Comfort Cable Temples**: similar to the Riding bow but constructed from coiled, metal, flexible cable

Materials

Plastic

- Cellulose Acetate (Zyl)
- Optyl (A type of hypoallergenic material made especially for eyeglass frames. It features a type of elasticity that returns the material to its original shape)
- Cellulose propionate (molded, durable plastic)
- 3D-printed plastic using super-fine polyamide powder and Selective Laser Sintering processes – see Mykita Mylon
- Nylon

Metal

- Gold
- Silver
- Aluminum
- Beryllium
- Stainless steel
- Titanium
- Flexon

Natural materials

- Wood
- Bone
- Ivory
- Leather

- Semi-precious or precious stone

Fashion

Many people require glasses for the reasons listed above. There are many shapes, colors, and materials that can be used when designing frames and lenses that can be utilized in various combinations. Oftentimes, the selection of a frame is made based on how it will affect the appearance of the wearer. Some people with good natural eyesight like to wear eyeglasses as a style accessory.

Personal image

For most of their history, eyeglasses were seen as unfashionable, and carried several potentially negative connotations: wearing glasses caused individuals to be stigmatized and stereotyped as pious clergymen (as those in religious vocation were the most likely to be literate and therefore the most likely to need reading glasses), elderly, or physically weak and passive.^{[27][28]} The stigma began to fall away in the early 1900s when the popular Theodore Roosevelt was regularly photographed wearing eyeglasses, and in the 1910s when popular comedian Harold Lloyd began wearing a pair of horn-rimmed glasses as the "Glasses" character in his films.^{[27][28]}



Former United States senator
Barry Goldwater in horn-
rimmed glasses

Since, eyeglasses have become an acceptable fashion item and often act as a key component in individuals' personal image. Musicians Buddy Holly and John Lennon became synonymous with the styles of eyeglasses they wore to the point that thick, black horn-rimmed glasses are often called "Buddy Holly glasses" and perfectly round metal eyeglass frames called "John Lennon (or Harry Potter) Glasses." British comedic actor Eric Sykes was known in the United Kingdom for wearing thick, square, horn-rimmed glasses, which were in fact a sophisticated hearing aid that alleviated his deafness by allowing him to "hear" vibrations.^[29] Some celebrities have become so associated with their eyeglasses that they continued to wear them even after taking alternate measures against vision problems: United States Senator Barry Goldwater and comedian Drew Carey continued to wear non-prescription glasses after being fitted for contacts and getting laser eye surgery, respectively.

Other celebrities have used glasses to differentiate themselves from the characters they play, such as Anne Kirkbride, who wore oversized, 1980s-style round horn-rimmed glasses as Deirdre Barlow in the soap opera *Coronation Street*, and Masaharu Morimoto, who wears glasses to separate his professional persona as a chef from his stage persona as Iron Chef Japanese.

Recently, many NBA players wear lensless glasses with thick plastic frames like horn-rimmed glasses during post-game interviews, geek chic that draws comparisons to Steve Urkel.^{[30][31]}

In superhero fiction, eyeglasses have become a standard component of various heroes' disguises (as masks), allowing them to adopt a nondescript demeanor when they are not in their superhero persona: Superman is well known for wearing 1950s style horn-rimmed glasses as Clark Kent, while Wonder Woman wears either round, Harold Lloyd style glasses or 1970s style bug-eye glasses as Diana Prince.

An example of the halo effect is seen in the stereotype that those who wear glasses are intelligent [2] (<http://psychologynewsandreviews.com/blog/2013/5/26/are-you-looking-smart-in-your-new-glasses-an-examination-of-glasses-and-intelligence>) (See also Myopia#Education and IQ) or, especially in teen culture, even geeks and nerds. Some people who find that wearing glasses may look "nerdy" turn to contact lenses or laser eye surgery, especially under peer pressure. People wearing glasses are also often perceived as shy or quiet.

Styles

In the 20th century, eyeglasses came to be considered a component of fashion; as such, various different styles have come in and out of popularity. Most are still in regular use, albeit with varying degrees of frequency.

- Browline glasses
- Bug-eye glasses
- Cat eye glasses
- GI glasses
- Horn-rimmed glasses
- Lensless glasses
- Pince nez
- Rimless glasses

Corrective lens shape

Corrective lenses can be produced in many different shapes from a circular lens called a lens blank. Lens blanks are cut to fit the shape of the frame that will hold them. Frame styles vary and fashion trends change over time, resulting in a multitude of lens shapes. For lower power lenses, there are few restrictions which allows for many trendy and fashionable shapes. Higher power lenses can cause distortion of peripheral vision and may become thick and heavy if a large lens shape is used. However, if the lens becomes too small, the field of view can be drastically reduced.

Bifocal, trifocal, and progressive lenses generally require a taller lens shape to leave room for the different segments while preserving an adequate field of view through each segment. Frames with rounded edges are the most efficient for correcting myopic prescriptions, with perfectly round frames being the most efficient. Before the advent of eyeglasses as a fashion item, when frames were constructed with only functionality in mind, virtually all eyeglasses were either round, oval, or curved octagons. It was not until glasses began to be seen as an accessory that different shapes were introduced to be more aesthetically pleasing than functional.



Modern glasses with a rectangular lens shape

Vertex distance

Vertex distance is the space between the front of the eye and the back surface of the lens. In glasses with powers greater than four diopters, the vertex distance can affect the effective power of the glasses. Another consideration is that a smaller vertex distance allows the same field of view through a smaller lens. But there is a limit on how close the lenses can be to the eye, since it can be bothersome if the eyelashes brush against the lens surface while blinking.

Refractive index

In the UK and the US, the refractive index is generally specified with respect to the yellow He-d Fraunhofer line, commonly abbreviated as n_d . Lens materials are classified by their refractive index, as follows:

- Normal index – $1.48 \leq n_d < 1.54$
- Mid-index – $1.54 \leq n_d < 1.60$
- High-index – $1.60 \leq n_d < 1.74$
- Very high index – $1.76 \leq n_d$

This is a general classification. Indexes of n_d values that are ≥ 1.60 can be, often for marketing purposes, referred to as high-index. Likewise, Trivex and other borderline normal/mid-index materials, may be referred to as mid-index.

Advantages of higher indices

- Thinner, sometimes lighter lenses (See below).
- Improved UV protection over CR-39 and glass lenses.

Disadvantages of increased indices

- Lower Abbe number meaning, amongst other things, increased chromatic aberration.
- Poorer light transmission and increased backside and inner-surface reflections (see Fresnel reflection equation) increasing importance of anti-reflective coating.
- Manufacturing defects have more impact on optical quality.
- Theoretically, off-axis optical quality degrades (oblique astigmatic error). In practice this degradation should not be perceptible – current frame styles are much smaller than they would have to be for these aberrations to be noticeable to the patient, the aberration occurring some distance away from the optical centre of the lens (off-axis).

Optical quality

Abbe number

Of all of the properties of a particular lens material, the one that most closely relates to its optical performance is its dispersion, which is specified by the Abbe number. Lower Abbe numbers result in the presence of chromatic aberration (i.e., color fringes above/below or to the left/right of a high contrast object), especially in larger lens sizes and stronger prescriptions ($\pm 4D$ or greater). Generally, lower Abbe numbers are a property of mid and higher index lenses that cannot be avoided, regardless of the material used. The Abbe number for a material at a particular refractive index formulation is usually specified as its Abbe value.

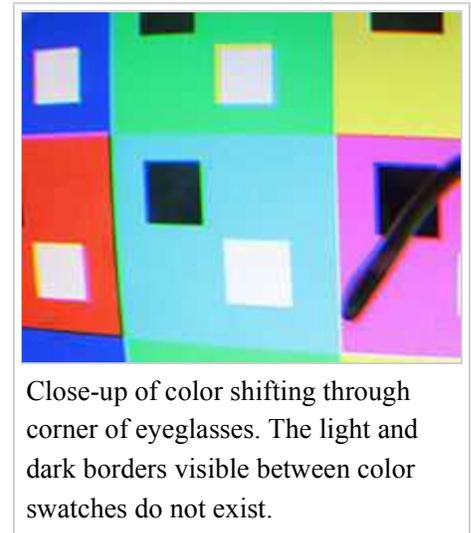
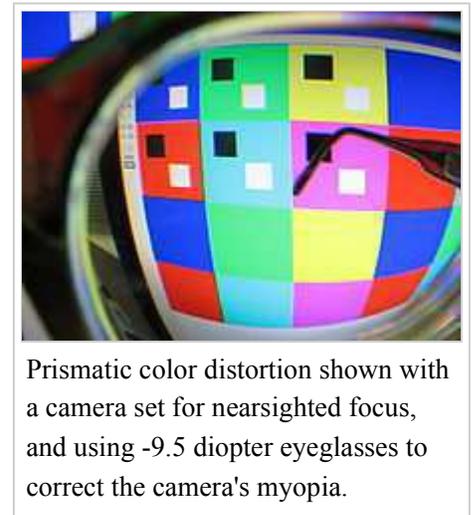
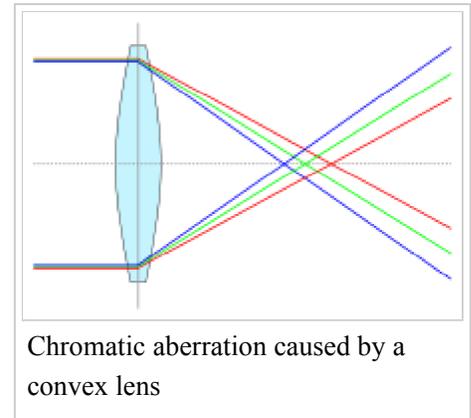
In practice, a change from 30 to 32 Abbe will not have a practically noticeable benefit, but a change from 30 to 47 could be beneficial for users with strong prescriptions that move their eyes and look 'off-axis' of optical center of the lens. Note that some users do not sense color fringing directly but will just describe 'off-axis blurriness'. Abbe values even as high as that of ($V_d \leq 45$) produce chromatic aberrations which can be perceptible to a user in lenses larger than 40 mm in diameter and especially in strengths that are in excess of $\pm 4D$. At $\pm 8D$ even glass ($V_d \leq 58$) produces chromatic aberration that can be noticed by a user. Chromatic aberration is independent of the lens being of spherical, aspheric, or atoric design.

The eye's Abbe number is independent of the importance of the corrective lens's Abbe, since the human eye:

- Moves to keep the visual axis close to its achromatic axis, which is completely free of dispersion (i.e., to see the dispersion one would have to concentrate on points in the periphery of vision, where visual clarity is quite poor)
- Is very insensitive, especially to color, in the periphery (i.e., at retinal points distant from the achromatic axis and thus not falling on the fovea, where the cone cells responsible for color vision are concentrated. *See: Anatomy and Physiology of the Retina*

(<http://www.psych.ndsu.nodak.edu/mccourt/Psy460/Anatomy%20and%20physiology%20of%20the%20retina/Anatomy%20and%20physiology%20of%20the%20retina.html>.)

In contrast, the eye moves to look through various parts of a corrective lens as it shifts its gaze, some of which can be as much as several centimeters off of the optical center. Thus, despite the eye's dispersive properties, the corrective lens's dispersion cannot be dismissed. People who are sensitive to the effects of



chromatic aberrations, or who have stronger prescriptions, or who often look off the lens's optical center, or who prefer larger corrective lens sizes may be impacted by chromatic aberration. To minimize chromatic aberration:

- Try to use the smallest vertical lens size that is comfortable. Generally, chromatic aberrations are more noticeable as the pupil moves vertically below the optical center of the lens (e.g., reading or looking at the ground while standing or walking). Keep in mind that a smaller vertical lens size will result in a greater amount of vertical head movement, especially while performing activities that involve short and intermediate distance viewing, which could lead to an increase in neck strain, especially in occupations involving a large vertical field of view.
- Restrict the choice of lens material to the highest Abbe value at acceptable thickness. The oldest most basic commonly used lens materials also happen to have the best optical characteristics at the expense of corrective lens thickness (i.e., cosmetics). Newer materials have focused on improved cosmetics and increased impact safety, at the expense of optical quality. Lenses sold in the USA must pass the Food and Drug Administration ball-drop impact test, and depending on needed index these seem to currently have 'best in class' Abbe vs Index (N_d): Glass (2x weight of plastics) or CR -39 (2 mm vs. 1.5 mm thickness typical on newer materials) 58 @ 1.5, Sola Spectralite (47@1.53), Sola Finalite (43@1.6), and Hoya Eury (36 @ 1.7). For impact resistance safety glass is offered at a variety of indexes at high Abbe number, but is still 2x the weight of plastics. Polycarbonate ($V_d=30-32$) is very dispersive, but has excellent shatter resistance. Trivex ($V_d=43$ @ 1.53), is also heavily marketed as an impact resistant alternative to Polycarbonate, for individuals who don't need polycarbonate's index. Trivex is also one of the lightest materials available.
- Use contact lenses in place of eyeglasses. A contact lens rests directly on the surface of the cornea and moves in sync with all eye movements. Consequently, the contact lens is always directly aligned on center with the pupil and there is never any off-axis misalignment between the pupil and the optical center of the lens.

Power error (-D corrections for myopia)

Power error is the change in the optical power of a lens as the eye looks through various points on the area of the lens. Generally, it is least present at the optic center and gets progressively worse as one looks towards the edges of the lens. The actual amount of power error is highly dependent on the strength of the prescription as well as whether a best spherical form of lens or an optically optimal aspherical form was used in the manufacture of the lens. Generally, best spherical form lenses attempt to keep the ocular curve between four and seven diopters.

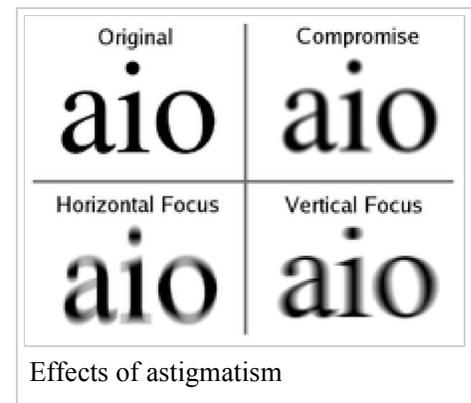
Lens induced oblique astigmatism (+D corrections for presbyopia)

As the eye shifts its gaze from looking through the optical center of the corrective lens, the lens induced astigmatism value increases. In a spherical lens, especially one with a strong correction whose base curve is not in the best spherical form, such increases can significantly impact the clarity of vision in the periphery.

Minimizing power error and lens induced astigmatism

As corrective power increases, even optimally designed lenses will have distortion that can be noticed by a user. This particularly affects individuals that use the off-axis areas of their lenses for visually demanding tasks. For individuals sensitive to lens errors, the best way to eliminate lens induced aberrations is to use contact lenses. Contacts eliminate all these aberrations since the lens then moves with the eye.

Barring contacts, a good lens designer doesn't have many parameters which can be traded off to improve vision. Index has little effect on error. Note that, although chromatic aberration is often perceived as 'blurry vision' in the lens periphery and gives the impression of power error, this is actually due to color shifting. Chromatic aberration can be improved by using a material with improved ABBE. The best way to combat lens induced power error is to limit the choice of corrective lens to one that is in the best spherical form. A lens designer determines the best-form spherical curve using the Oswalt curve on the Tscherning ellipse. This design gives the best achievable optical quality and least sensitivity to lens fitting. A flatter base-curve is sometimes selected for cosmetic reasons. Aspheric or atoric design can reduce errors induced by using a suboptimal flatter base-curve. They cannot surpass the optical quality of a spherical best-form lens, but can reduce the error induced by using a flatter than optimal base curve. The improvement due to flattening is most evident for strong farsighted lenses. High myopes (-6D) may see a slight cosmetic benefit with larger lenses. Mild prescriptions will have no perceptible benefit (-2D). Even at high prescriptions some high myope prescriptions with small lenses may not see any difference, since some aspheric lenses have a spherically designed center area for improved vision and fit.^[32]



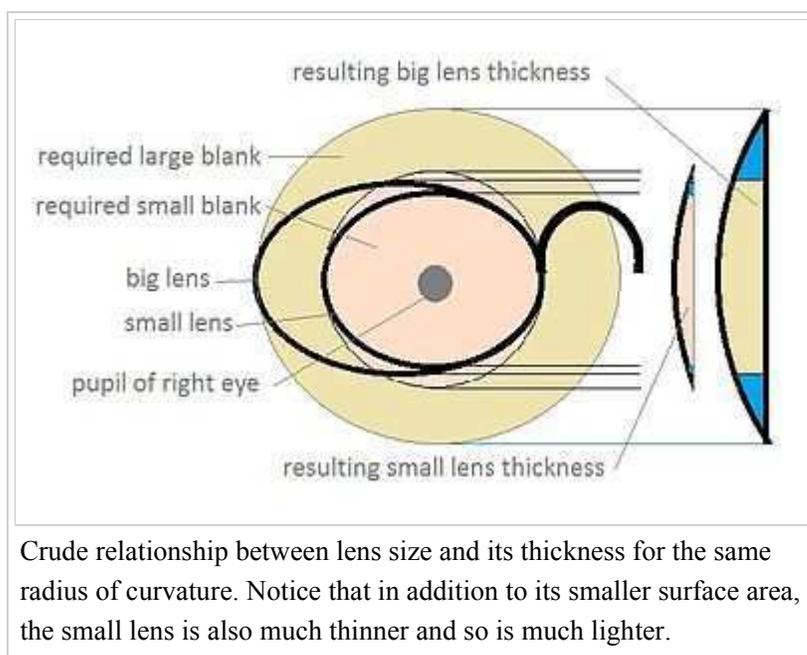
In practice, labs tend to produce pre-finished and finished lenses in groups of narrow power ranges to reduce inventory. Lens powers that fall into the range of the prescriptions of each group share a constant base curve. For example, corrections from -4.00D to -4.50D may be grouped and forced to share the same base curve characteristics, but the spherical form is only best for a -4.25D prescription. In this case the error will be imperceptible to the human eye. However, some manufacturers may further cost-reduce inventory and group over a larger range which will result in perceptible error for some users in the range who also use the off-axis area of their lens. Additionally some manufacturers may verge toward a slightly flatter curve. Although if only a slight bias toward plano is introduced it may be negligible cosmetically and optically. These optical degradations due to base-curve grouping also apply to aspherics since their shapes are intentionally flattened and then asphericized to minimize error for the average base curve in the grouping.

Cosmetics and weight

Reducing lens thickness

Note that the greatest cosmetic improvement on lens thickness (and weight) is had from choosing a frame which holds physically small lenses. The smallest of the popular adult lens sizes available in retail outlets is

about 50 mm (2.0 in) across. There are a few adult sizes of 40 mm (1.6 in), and although they are quite rare, can reduce lens weight to about half of the 50 mm versions. The curves on the front and back of a lens are ideally formed with the specific radius of a sphere. This radius is set by the lens designer based on the prescription and cosmetic consideration. Selecting a smaller lens will mean less of this sphere surface is represented by the lens surface, meaning the lens will have a thinner edge (myopia) or center (hyperopia). A thinner edge reduces light entering into the edge, reducing an additional source of internal reflections.



Extremely thick lenses for myopia can be beveled to reduce flaring out of the very thick edge. Thick myopic lenses are not usually mounted in wire frames, because the thin wire contrasts against the thick lens, to make its thickness much more obvious to others.

Index can improve the lens thinness, but at a point no more improvement will be realized. For example, if an index and lens size is selected with center to edge thickness difference of 1 mm then changing index can only improve thickness by a fraction of this. This is also true with aspheric design lenses.

The lens's minimum thickness can also be varied. The FDA ball drop test (5/8" 0.56 ounce steel ball dropped from 50 inches)^[33] effectively sets the minimum thickness of materials. Glass or CR-39 requires 2.0 mm, but some newer materials only require 1.5 mm or even 1.0 mm minimum thickness.

Weight

Material density typically increases as lens thickness is reduced by increasing index. There is also a minimum lens thickness required to support the lens shape. These factors results in a thinner lens which is not lighter than the original. There are lens materials with lower density at higher index which can result in a truly lighter lens. These materials can be found in a material property table. Reducing frame lens size will give the most noticeable improvement in weight for a given material. Ways to reduce the weight and thickness of corrective lenses, in approximate order of importance are these:

- Choose glasses frames with small lenses; that is to say, so that the longest measurement across the lens at any angle is as short as possible. This gives the greatest advantage of all.
- Choose a frame that allows the pupil to occupy the exact middle point of the lens.
- Choose a lens as near round as possible. These are less commonly found than other shapes.
- Choose as high a refractive index for the lens material as cost permits.

It is not always possible to follow the above points, because of the rarity of such frames, and the need for more pleasing appearance. However, these are the main factors to consider if ever it should become necessary and possible to do so.

Facial distortion and social stigma

Eyeglasses for a high-diopter nearsighted or farsighted person cause a visible distortion of his or her face as seen by other people, in the apparent size of the eyes and facial features visible through the eyeglasses.

- For extreme nearsightedness the eyes appear small and sunken into the face, and the sides of the skull can be visible through the lens. This gives the wearer the appearance of having a very large or fat head in contrast with their eyes.
- For extreme farsightedness the eyes appear very large on the face, making the wearer's head seem too small.

Either situation can result in social stigma^[34] due to some facial distortions. This can result in low self-esteem of the eyeglass wearer and lead to difficulty in making friends and developing relationships.

People with very high-power corrective lenses can benefit socially from contact lenses because these distortions are minimized and their facial appearance to others is normal. Aspheric/atoric eyeglass design can also reduce minification and magnification of the eye for observers at some angles.

Lens materials

Optical crown glass

(B270 (http://www.mellesgriot.com/pdf/CatalogX/X_04_14.pdf#search=%22glasses%20crown%20glass%22))

- Refractive index (n_d): 1.52288
- Abbe value (V_d): 58.5
- Density: 2.55 g/cm³ (the heaviest corrective lens material in common use, today)
- UV cutoff: 320 nm
 - Please note: Schott B270 is an optical glass used in precision optics. It is NOT an ophthalmic glass. Schott ophthalmic glass types are S-1 and S-3. The issue here is an incorrect value for UVA and UVB transmission, as well as other related product type issues. ***

Glass lenses have become less common owing to the danger of shattering and their relatively high weight compared to CR-39 plastic lenses. They still remain in use for specialised circumstances, for example in extremely high prescriptions (currently, glass lenses can be manufactured up to a refractive index of 1.9) and in certain occupations where the hard surface of glass offers more protection from sparks or shards of material. If the highest Abbe value is desired, the only choices for common lens optical material are optical crown glass and CR-39.

Higher-quality optical-grade glass materials exist (e.g. Borosilicate crown glasses such as BK7 (<http://www.pgo-online.com/intl/katalog/BK7.html>) ($n_d=1.51680 / V_d=64.17 / D=2.51$ g/cm³), which is commonly used in telescopes and binoculars, and fluorite crown glasses such as Schott N-FK51A ([<https://en.wikipedia.org/wiki/Glasses>](http://www.us.schott.com/optics_devices/english/download/tie-</p></div><div data-bbox=)

40_optical_glass_for_precision_molding_v2_us.pdf) ($n_d=1.48656 / V_d=84.47 / D=3.675 \text{ g/cm}^3$), which is 16.2 times the price (http://www.us.schott.com/optics_devices/english/download/opticalglassdatasheetsv040706b2.xls) of a comparable amount of BK7, and are commonly used in high-end camera lenses). However, one would be very hard pressed to find a laboratory that would be willing to acquire or shape custom eyeglass lenses, considering that the order would most likely consist of just two different lenses, out of these materials. Generally, V_d values above 60 are of dubious value, except in combinations of extreme prescriptions, large lens sizes, a high wearer sensitivity to dispersion, and occupations that involve work with high contrast elements (e.g. reading dark print on very bright white paper, construction involving contrast of building elements against a cloudy white sky, a workplace with recessed can or other concentrated small area lighting, etc.).

Plastic (CR-39)

- Refractive index (n_d): 1.498 (standard)
- Abbe value (V_d): 59.3
- Density: 1.31 g/cm^3
- UV cutoff: 355 nm

Plastic lenses are currently the most commonly prescribed lens, owing to their relative safety, low cost, ease of production, and outstanding optical quality. The main drawbacks of many types of plastic lenses are the ease by which a lens can be scratched, and the limitations and costs of producing higher-index lenses. CR-39 lenses are the exception to the plastics in that they have inherent scratch resistance.

Trivex

- Refractive index (n_d): 1.532
- Abbe value (V_d): 43–45 (depending on licensing manufacturer)
- Density: 1.1 g/cm^3 (the lightest corrective lens material in common use)
- UV cutoff: 380 nm

Trivex is a relative newcomer that possesses the UV-blocking properties and shatter resistance of polycarbonate while at the same time offering far superior optical quality (i.e., higher Abbe value) and a slightly lower density. Its lower refractive index of 1.532 vs. polycarbonate's 1.586 may result in slightly thicker lenses however. Along with polycarbonate and the various high-index plastics, Trivex is a lab favorite for use in rimless frames, owing to the ease with which it can be drilled and its resistance to cracking around the drill holes. One other advantage that Trivex has over polycarbonate is that it can be easily tinted.

Polycarbonate

- Refractive index (n_d): 1.586
- Abbe value (V_d): 30
- Density: 1.2 g/cm^3
- UV cutoff: 385 nm

Polycarbonate is lighter weight than normal plastic. It blocks UV rays, is shatter resistant and is used in sports glasses and glasses for children and teenagers. Because polycarbonate is soft and will scratch easily, scratch resistant coating is typically applied after shaping and polishing the lens. Standard polycarbonate with an Abbe value of 30 is one of the worst materials optically, if chromatic aberration intolerance is of concern. Along with Trivex and the high-index plastics, polycarbonate is an excellent choice for rimless eyeglasses. Similar to the high-index plastics, polycarbonate has a very low Abbe value, which may be bothersome to individuals sensitive to chromatic aberrations.

High-index plastics (thiourethanes)

- Refractive index (n_d): 1.600–1.740
- Abbe value (V_d): 42–32 (higher indexes generally result in lower Abbe values)
- Density: 1.3–1.5 (g/cm³)
- UV cutoff: 380–400 nm

High-index plastics allow for thinner lenses. The lenses may not be lighter, however, due to the increase in density vs. mid- and normal index materials. A disadvantage is that high-index plastic lenses suffer from a much higher level of chromatic aberrations, which can be seen from their lower Abbe value. Aside from thinness of the lens, another advantage of high-index plastics is their strength and shatter resistance, although not as shatter resistant as polycarbonate. This makes them particularly suitable for rimless eyeglasses.

These high-refractive-index plastics are typically thiourethanes, with the sulfur atoms in the polymer being responsible for the high refractive index.^[35] The sulfur content can be up to 60 percent by weight for an $n=1.74$ material.^[35]

Ophthalmic material property tables

Material, Plastic	Index (N_d)	Abbe (V_d)	Specific Gravity (g/cm³)	UVB/ UVA	Reflected light (%)	Minimum thickness typ/min (mm)	Note
CR-39 Hard Resin	1.49	59	1.31	100% / 90%	7.97	1.6	
PPG Trivex (Average)	1.53	44	1.11	100% / 100%	8.70	?/1.0	PPG, Augen, HOYA, Thai Optical, X-cel, Younger
SOLA Spectralite	1.54	47	1.21	100% / 98%	8.96		(also Vision 3456 (Kodak)?)
Essilor Ormex	1.56 ^[36]	37	1.23	100% / 100%	9.52		
Polycarbonate	1.586	30	1.20	100% / 100%	10.27	?/1.5	Tegra (Vision-Ease) Airwear (Essilor) FeatherWates (LensCrafters)
MR-8 1.6 Plastic	1.6 ^[37]	41	1.30	100% / 100%	10.43		
MR-6 1.6 Plastic	1.6	36	1.34	100% / 100%	10.57		
MR-20 1.6 Plastic	1.60	42	1.30	100% / 100%			
SOLA Finalite	1.60	42	1.22	100% / 100%	10.65		
MR-7 1.67 Plastic	1.67 ^[37]	32	1.35	100% / 100%	12.26		
MR-10 1.67 Plastic	1.67 ^[37]	32	1.37	100% / 100%	12.34		
Nikon 4 Plastic NL4	1.67	32	1.35	100% / 100%			
Hoya EYRY	1.70	36	1.41	100% / 100%	13.44	?/1.5	
MR-174 1.74 Plastic	1.74 ^[37]	33	1.47	100% / 100%	14.36		Hyperindex 174 (Optima)
Nikon 5 Plastic NL5	1.74	33	1.46	100% / 100%			
Tokai	1.76	30	1.49	100% / 100%			

Material, Glass	Index (N _d)	ABBE (V _d)	Specific Gravity	UVB/ UVA	Reflected light (%)	Minimum thickness typ/min (mm)	Note
Crown Glass	1.525	59	2.54	79% / 20%	8.59		
PhotoGray Extra	1.523	57	2.41	100% / 97%	8.59		
1.6 Glass	1.604	40	2.62	100% / 61%	10.68		Zeiss Uropal, VisionEase, X-Cel
1.7 Glass	1.706	30	2.93	100% / 76%	13.47		Zeiss Tital, X-Cel, VisionEase, Phillips
1.8 Glass	1.800	25	3.37	100% / 81%	16.47		Zeiss Tital, X-Cell, Phillips, VisionEase, Zhong Chuan Optical (China)
1.9 Glass	1.893	31	4.02	100% / 76%	18.85		Zeiss Lantal, Zhong Chuan Optical (China) <i>not FDA-approved for sale in USA</i>

Reflected light calculated using Fresnel reflection equation for normal waves against air on two interfaces. This is reflection without an AR coating.

Compilations of manufacturer material data can be found at opticampus (<http://www.opticampus.com/tools/materials.php>), firstvisionmedia (http://www.firstvisionmedia.com/uww/2005_lens/savvy_lens.html), and eyecarecontacts (http://www.eyecarecontacts.com/thin_light_lenses.html). Additional information on branding can be found at eyetopics (<http://www.eyetopics.com/articles/38/1/Eyeglass-Lens-Materials.html>).

Indices of refraction for a range of materials can be found in the list of refractive indices.

Lens coatings

Main article: Optical coating

Anti-reflective

Main article: Anti-reflective coating

Anti-reflective coatings help to make the eye behind the lens more visible. They also help lessen back reflections of the white of the eye as well as bright objects behind the eyeglasses wearer (e.g. windows, lamps). Such reduction of back reflections increases the apparent contrast of surroundings. At night, anti-reflective coatings help to reduce headlight glare from oncoming cars, street lamps and heavily lit or neon signs.

One problem with anti-reflective coatings is that historically they have been very easy to scratch. Newer coatings, such as Crizal Alizé UV with its 5.0 rating and Hoya's Super HiVision with its 10.9 rating on the COLTS Bayer Abrasion Test (glass averages 12–14), try to address this problem by combining scratch resistance with the anti-reflective coating. They offer a measure of dirt and smudge resistance, due to their hydrophobic properties (110° water drop contact angle for Super HiVision and 116° for Crizal Alizé UV). And now, many anti-reflective coatings, like Crizal, now offer complete UV protection on the front side and the back side of the lens.

Ultraviolet protection

A UV coating is used to reduce the transmission of light in the ultraviolet spectrum. UV-B radiation increases the likelihood of cataracts, while long-term exposure to UV-A radiation can damage the retina. DNA damage from UV light is cumulative and irreversible. Some materials such as Trivex and Polycarbonate, naturally block most UV light; they have UV-cutoff wavelengths just outside the visible range, and do not benefit from the application of a UV coating.

Scratch resistance

Resists damage to lens surfaces from minor scratches.

Redistribution

Some organizations like Lions Clubs International,^[38] Unite For Sight^[39] and New Eyes for the Needy provide a way to donate glasses and sunglasses. Unite For Sight has redistributed more than 200,000 pairs.^[40]

See also

- Adjustable-focus eyeglasses
- Baden-Powell's Unilens
- Eye examination
- Eyeglass prescription
- Glasses fetishism



The effects of an anti-reflective coating applied (as seen on the bottom picture) as compared to regular eyeglass lens (notice how the reflection of the photographer in the top lens is clearly visible)

- History of optics
- Monocle
- X-ray vision

Notes

1. Chinese judges wore dark glasses to hide their facial expressions during court proceedings.^[3]
2. In his treatise *Ad Vitellionem paralipomena* [Emendations (or Supplement) to Witelo] (1604), Kepler explained how eyeglass lenses compensate for the distortions that are caused by presbyopia or myopia, so that the image is once again properly focused on the retina.^{[8][9]}

References

1. Kriss, Timothy C; Kriss, Vesna Martich (April 1998). "History of the Operating Microscope: From Magnifying Glass to Microneurosurgery". *Neurosurgery* **42** (4): 899–907. doi:10.1097/00006123-199804000-00116. PMID 9574655.
2. "...Optics Highlights: II. Spectacles". University of Maryland, Department of Electrical & Computer Engineering. Retrieved 2007-09-01.
3. Needham 1962, p. 121.
4. Ament, Phil (2006-12-04). "Sunglasses History – The Invention of Sunglasses". *The Great Idea Finder*. Vaunt Design Group. Retrieved 2007-06-28.
5. Ilardi 2007, p. 5 (<http://books.google.com/books?id=peIL7hVQUmwC&pg=PA5#v=onepage&q&f=false>).
6. Ilardi 2007, p. 6.
7. Ilardi 2007, p. 9.
8. Ilardi 2007, p. 244.
9. Ronchi, Vasco; Edward Rosen, transl (1991), *Optics: The Science of Vision*, Mineola, NY: Dover Publications, pp. 45–46
10. "Rivet spectacles". *www.college-optometrists.org*. The College of Optometrists. 2015. Retrieved 28 February 2015.
11. Laufer, Berthold (1907) "Geschichte der Brille" (<http://books.google.com/books?id=UgGgAAAAMAAJ&pg=PA379#v=onepage&q&f=false>) (History of eyeglasses), *Mitteilungen zur Geschichte der Medizin und der Naturwissenschaften* (Communications on the History of Medicine and the Sciences), **6** (4) : 379-385.
12. Agarwal, R. K. (1971) "Origin of spectacles in India," *British Journal of Ophthalmology*, **55** (2) : 128-129. Available on-line at: National Center for Biotechnology Information (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1208150/?page=1>)
13. "Science and Civilization in China Vol 4.1" (PDF). pp. page 118–119. Retrieved May 3, 2014.
14. Rosen, Edward (1956), "The invention of eyeglasses", *Journal of the History of Medicine and Allied Sciences* **11**: 13–46 (part 1), 183–218 (part 2), doi:10.1093/jhmas/xi.2.183
15. Ilardi 2007, pp. 13-18 (<http://books.google.com/books?id=peIL7hVQUmwC&pg=PA13#v=onepage&q&f=false>).
16. Needham 1962, p. 119, footnote c (<http://books.google.com/books?id=oJ9nayZZ2oEC&pg=119#v=onepage&q&f=false>).
17. Hirschberg, Julius (1911), "Geschichte der Augenheilkunde" [History of Ophthalmology], in Graef, Alfred K; Saemisch, Theodor, *Handbuch der gesamten Augenheilkunde [Handbook of all ophthalmology]* **13**, Leipzig, DE: Wilhelm Engelmann, p. 265
18. Needham 1962, p. 119.
19. "The 'Inventor' of Bifocals?". The College of Optometrists.
20. Bruen, Robert. "Sir George Biddell Airy". *The Lucasian Chair of Mathematics at Cambridge University*. Robert Bruen. Retrieved 1 January 2014.
21. "Eyeglass Lenses and Visual Aids from Industrial Production". Zeiss. Retrieved 2007-09-02.
22. "Adspecs Eyeglasses Could Provide Sight for a Billion". *TreeHugger*.

23. "Reading Glasses". *Over 40*. All about vision. Retrieved 2010-06-14.
24. "BluTech Lenses – Technology, The story behind BluTech Lenses". *BluTech Lenses*.
25. "Expert Healthy Vision & Eye Care Tips, News, Articles & Information – Essilor USA". *essilorusa.com*.
26. "Optical Course". OpticalCourse.com. Retrieved 7 May 2014.
27. "Understanding Three-Piece Mounting", *Eyewear*, Seiko
28. Lloyd, Annette (1996), *The Fashion of Harold Lloyd*
29. Sykes, Eric (2004-12-31), "Comedy Great", *News*, BBC
30. "Whacky NBA Playoff Fashion!". *YouTube*. Google. Retrieved 2012-06-26.
31. Cacciola, Scott (2012-06-14), "NBA Finals: LeBron James, Dwyane Wade and Other Fashion Plates of the NBA Make Specs of Themselves", *The Wall Street Journal* (oline ed.), retrieved 2012-06-26
32. Meister, Darryl. "Ophthalmic Lens Design". *OptiCampus.com*. Retrieved November 12, 2008.
33. Code of Federal Regulations Title 21 "Food and Drugs" Sec. 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses* (<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=801.410>)
34. *Refractive surgery or contact lenses – how and when to decide?*, Clinical Optometry, Dove Press, p 68, 10 Nov 2011
35. Is the sky the limit?
(http://www.mitsuichem.com/special/mr/resources/img/MR_article_in_MAFO_magazine_2009.pdf) MAFO Ophthalmic labs & Industry, April 2009
36. [1] (<http://catalogue.essilor.ca/en-ca/Gammes/Simple%20Vision/Organique/Hyp%E9ral%20Ormex/>)
37. "MR™ Series | Mitsui Chemicals". MitsuiChem.com. Retrieved 2014-05-03.
38. *Lions Eyeglasses Recycling Facts*, Lions Clubs International, retrieved 20 August 2008
39. *Donate Eyeglasses and Sunglasses*, Unite For Sight, retrieved 20 August 2008
40. "Brick Award Winner: Jennifer Staple", *People: do something*, HowStuffWorks, 20 February 2007, retrieved 20 August 2008

Bibliography

- Ilardi, Vincent (2007), *Renaissance Vision from Spectacles to Telescopes*, Philadelphia, PA: American Philosophical Society.
- Needham, Joseph (1962), "part 1", *Science & Civilisation in China IV*, Cambridge, ENG, UK: Cambridge University Press.

External links

-  The dictionary definition of spectacles at Wiktionary
-  Media related to Glasses at Wikimedia Commons
-  Quotations related to Glasses at Wikiquote
- "Spectacles Gallery", *Museum*, British Optical Association.
- "Spectacles", *The Medieval Technology*, NYU.
- "Are Your Eyes Right", *Popular Science* (article), February 1944, on eyes and how eyeglasses correct vision (page 120).
- "Common Spectacles Styles before, during and after the Civil War", *Archive.org* (article), 2012, Antique Eyeglasses in America.

Retrieved from "<https://en.wikipedia.org/w/index.php?title=Glasses&oldid=686878662>"

Categories: Corrective lenses | Italian inventions

- This page was last modified on 21 October 2015, at 22:23.
- Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HAGGAR CLOTHING CO.,

Opposer,

vs.

MERVE OPTIK SANAYI VE TICARET
ANONIM SIRKETI,

Applicant.

§
§
§
§
§
§
§
§
§
§
§
§

Opposition No. 91221844

Mark: **MUSTANG (Stylized)**

MUSTANG

(Serial No: 79/104,357)

Publication Date: January 6, 2015

**OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR
SUMMARY JUDGMENT AND BRIEF IN SUPPORT THEREOF**

EXHIBITS A-4, A-5, B, B-1

EXHIBIT A-4



Dictionary.com (<http://dictionary.reference.com/>)

Thesaurus.com (<http://www.thesaurus.com/>)



Word *of the* Day (<http://dictionary.reference.com/wordoftheday>)

wordoftheday)

Translate (<http://translate.reference.com/>)

Games (<http://dictionary.reference.com/fun>)

Blog (<http://blog.dictionary.com/>)

(<http://dictionary.reference.com/>)

definitions ▾

spectacles



)



spectacle

(<http://static.sfdict.com/staticrep/dictaudio/S07/S0778200.mp3>)

<http://dictionary.reference.com/browse/spectacles>

Synonyms Examples Word Origin

noun

1. anything presented to the sight or view, especially something of a striking or impressive kind:

The stars make a fine spectacle tonight.

2. a public show or display, especially on a large scale:

The coronation was a lavish spectacle.

3. **spectacles**, eyeglasses, especially with pieces passing over or around the ears for holding them in place.

4. Often, **spectacles**.

a. something resembling spectacles in shape or function.

b. any of various devices suggesting spectacles, as one attached to a semaphore to display lights or different colors by colored glass.

5. *Obsolete.* a spyglass.

(<http://blog.dictionary.com/whats-the-difference-between-ie-and>

Never mix up i.e. and e.g. again! Read more.

Idioms

6. **make a spectacle of oneself**, to call attention to one's unseemly behavior; behave foolishly or badly in public:

They tell me I made a spectacle of myself at the party last night.

Origin of spectacle

Middle English

(<http://dictionary.reference.com/browse/Middle%20English>)

Latin

(<http://dictionary.reference.com/browse/Latin>)

1300-1350

1300-50; Middle English < Latin *spectāculum* a sight, spectacle, derivative of *spectāre*, frequentative of *specere* to look, regard. See *-cle* (<http://dictionary.reference.com/browse/-cle>)²

Related forms

spectacleless, adjective

spectaclelike, adjective

superspectacle, noun

Synonyms

1. marvel, wonder, sight, show.

Dictionary.com Unabridged

Based on the Random House Dictionary, © Random House, Inc. 2015.

Cite This Source (<http://dictionary.reference.com/cite.html?qh=spectacles&ia=luna>)

Examples from the Web for spectaele

Contemporary Examples

Other young men play sports and watch them; Tamim simply bought the *spectacles* and events themselves.

(<http://www.thedailybeast.com/articles/2013/06/25/qatar-s-game-of-thrones.html?source=dictionary>)

source: Christopher Dickey (http://www.thedailybeast.com/contributors/christopher-dickey.html?source=dictionary)
June 24, 2013

Here is a large pile of *spectacles*, a spidery mass of rusted wire-frames and dusty lenses.

(http://www.thedailybeast.com/articles/2009/01/30/christopher-buckley-on-auschwitz.html?source=dictionary)
source: Christopher Buckley (http://www.thedailybeast.com/contributors/christopher-buckley.html?source=dictionary)
January 29, 2009

On my first day in divorce court the judge peered at me over her *spectacles* and strongly recommended I stop being so stubborn.

(http://www.thedailybeast.com/articles/2010/08/28/no-fault-divorce-my-fight-to-save-my-marriage.html?source=dictionary)
source: Beverly Willett (http://www.thedailybeast.com/contributors/beverly-willett.html?source=dictionary)
August 27, 2010

British Dictionary definitions for *spectacle*

spectacles

/ˈspɛktəkəlz/

plural noun

1. a pair of glasses for correcting defective vision *Often (informal) shortened to **specs***
2. (**cricket**) **pair of spectacles**, a score of 0 in each innings of a match

spectacle

/ˈspɛktəkəl/

noun

1. a public display or performance, esp a showy or ceremonial one
2. a thing or person seen, esp an unusual or ridiculous one: *he makes a spectacle of himself*
3. a strange or interesting object or phenomenon
4. (**modifier**) of or relating to spectacles: *a spectacle case*

See also *spectacles* (</browse/spectacles>)

Word Origin

C14: via Old French from Latin *spectaculum* a show, from *spectāre* to watch, from *specere* to look at

Collins English Dictionary - Complete & Unabridged 2012 Digital Edition

© William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins

Publishers 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012

Cite This Source (<http://dictionary.reference.com/cite.html?qh=spectacles&ia=ced2>)

Word Origin and History for spectāe

n.

"glass lenses to help a person's sight," early 15c., from plural of spectacle (/browse/spectacle).

spectacle

n.

mid-14c., "specially prepared or arranged display," from Old French *spectacle*, from Latin *spectaculum* "a show, spectacle," from *spectare* "to view, watch," frequentative form of *specere* "to look at," from PIE **spek-* "to observe" (see scope (/browse/scope) (n.1)).

Online Etymology Dictionary, © 2010 Douglas Harper

Cite This Source (<http://dictionary.reference.com/cite.html?qh=spectacles&ia=etymon2>)

spectāe in Medicine

spectacles spec·ta·cles (spĕk'tə-kəlz)

n.

See glass (/search?q=glass).

The American Heritage® Stedman's Medical Dictionary

Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published by Houghton Mifflin Company.

Cite This Source (<http://dictionary.reference.com/cite.html?qh=spectacles&ia=ahsmd>)



About (<http://content.dictionary.com/>) Terms (<http://dictionary.reference.com/help/terms.html>) Privacy (<http://dictionary.reference.com/privacy>)
 Careers (<http://content.dictionary.com/about/careers>) Apps (<http://dictionary.reference.com/apps>) Contact Us (<http://content.dictionary.com/about/contact>)

© 2015 Dictionary.com, LLC.

EXHIBIT A-5

2007 WL 1144944 (Trademark Tr. & App. Bd.)

THIS OPINION IS NOT A PRECEDENT OF THE T.T.A.B.

Trademark Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

CALAVO GROWERS, INC.

v.

LUIS CALVO SANZ, S.A

OPPOSITION 91170990

April 11, 2007

*1 Before [Walters](#), [Rogers](#), and [Cataldo](#)
Administrative Trademark Judges

By the Board:

This case now comes up for consideration of opposer's motion (filed January 12, 2007) for summary judgment on its claim of *res judicata*. The parties have fully briefed the motion. ¹

The Board has carefully reviewed the parties' respective arguments and accompanying exhibits, although the Board has not repeated the parties' arguments in this order.

I. Background

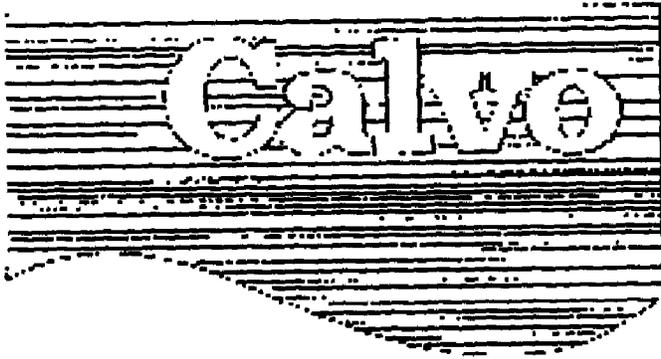
By way of background, on November 19, 2004, applicant applied to register the mark displayed below



for “fish and canned fish” in International Class 29. ²

Calavo Growers, Inc. ³ has opposed registration of applicant's mark on the grounds that applicant's applied-for mark (1) so resembles opposer's previously used and registered marks that it is likely to cause confusion, mistake, or deceive prospective consumers under Section 2(d) of the Lanham Act; (2) will dilute the distinctive quality of opposer's marks under Section 43(c) of the Lanham Act as amended; (3) is primarily merely a surname within the meaning of Section 2(e)(4) of the Lanham Act; and (4) is barred by the doctrine of *res judicata* based on the Board's determination in a prior proceeding involving opposer's predecessor in interest and applicant, Opposition No. 91122583, *Calavo Growers of California v. Luis Calvo Sanz, S.A.*

The previous opposition involved applicant's application to register the mark displayed below



for “meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk; edible oils; canned preserved meat and fish” in International Class 29.⁴ In that case, opposer asserted claims of likelihood of confusion, dilution, and that applicant's mark is primarily merely a surname. *See* Opposer's Amended Notice of Opposition. On May 17, 2002, the Board entered default judgment against applicant, pursuant to [Fed. R. Civ. P. 55\(b\)](#) for applicant's failure to answer the amended notice of opposition.

On November 30, 2006, the Board, noting that the doctrine of *res judicata* serves to preclude in appropriate cases the relitigation of matters previously litigated, invited the parties to address this issue by way of a motion for summary judgment limited to the claim of *res judicata*. Opposer then filed the motion for summary judgment which is the subject of this order.

II. Opposer's Motion for Summary Judgment

We will now discuss whether summary judgment is warranted in this case. Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *See* [Fed. R. Civ. P. 56\(c\)](#). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *See* [Celotex Corp. v. Catrett](#), 477 U.S. 317, 106 S.Ct. 2548 (1986). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. *See* [Opryland USA, Inc. v. Great American Music Show, Inc.](#), 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992). When the moving party's motion is supported by evidence sufficient to indicate that there is no genuine issue of material fact, and that the moving party is entitled to judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely-disputed facts that must be resolved at trial. The nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial.

*2 For the reasons explained below, we find that the doctrine of *res judicata* applies to this case.

Under the doctrine of *res judicata* (or claim preclusion), the entry of a final judgment “on the merits” of a claim (i.e., cause of action) in a proceeding serves to preclude the relitigation of the same claim in a subsequent proceeding between the parties or their privies, even in those cases where the prior judgment was the result of a default or consent. *See* [Lawlor v. National Screen Service Corp.](#), 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955); [Chromalloy American Corp. v. Kenneth Gordon, Ltd.](#), 736 F.2d 694, 222 USPQ 187 (Fed. Cir. 1984); and [Flowers Industries, Inc. v. Interstate Brands Corp.](#), 5 USPQ2d 1580 (TTAB 1987). A second suit is barred by *res judicata* or claim preclusion if

- (1) the parties (or their privies) are identical;
- (2) there has been an earlier final judgment on the merits of a claim; and

(3) the second claim is based on the same set of transactional facts as the first.

Jet, Inc. v. Sewage Aeration Systems, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000).

A. The Parties (or Their Privies) are Identical

No genuine issue of material fact exists regarding the first factor of the *res judicata* analysis -- that the present opposition involves the same parties or their privies as the prior opposition. Opposer has submitted evidence in the form of a declaration from Bruce Spurrell, Director of Purchasing and Risk Management for opposer, attesting that opposer is the successor-in-interest of Calavo Growers of California, the plaintiff in the prior case. Specifically, Mr. Spurrell asserts that opposer acquired all the rights, title, and interest of the Calavo Growers of California (including the CALAVO trademark registrations and applications) pursuant to a merger and reorganization of the companies. Para. 3, Spurrell Declaration. Applicant has submitted no evidence to rebut the assertions contained therein.

B. There Has Been an Earlier Final Judgment on the Merits of a Claim

With regard to the second factor of the *res judicata* analysis, there is no genuine issue of material fact that there has been an earlier final judgment on the merits of a claim. As noted *inter alia*, the Board entered default judgment against applicant in the prior opposition. It is well established that a default judgment can operate as a final judgment on the merits for *res judicata*. See *International Nutrition Co. v. Horphag Research Ltd.*, 55 USPQ2d 1492 (Fed. Cir. 2000) and cases cited therein; *see generally* *Wright, Miller & Cooper*, 18A *Federal Practice and Procedure Civil* 2d § 4440 (1999).

C. The Second Claim is Based On the Same Set of Transactional Facts as the First

*3 It is undisputed that the subsequent claims are based on the same set of transactional facts as the first. There is no genuine issue of material fact that the claims asserted by opposer in both proceedings are identical.

In addition, it is undisputed that the literal element of the marks at issue are identical. Applicant's slight modification to the design element of its current application cannot serve to avoid *res judicata*. *Miller Brewing Company v. Coy International Corporation*, 230 USPQ 675 (TTAB 1986) ("*Miller Brewing*") provides an apt illustration of this principle. In *Miller Brewing*, the Board found that the doctrine of *res judicata* applied to an applicant's second mark because the second mark differed from the first mark only insignificantly, and applicant had abandoned the application for the first mark resulting in a judgment against the applicant. In reaching its determination, the Board emphasized that it did not "wish to encourage losing parties to insignificantly modify their marks after an adverse ruling and thereby avoid the *res judicata* effect of the prior adjudication." See also *Aromatique Inc. v. Lang*, 25 USPQ2d 1359 (TTAB 1992).

Lastly, there is no genuine issue of material fact that the goods of applicant's present application are merely a narrowed version of the goods from applicant's prior application. Applicant cannot avoid the estoppel effect of a prior decision by filing a second application that contains a narrower definition of the goods that were "fully encompassed" in the previous application. See *J.I. Case Co. v. F.L. Industries, Inc.*, 229 USPQ 697 (TTAB 1986).

In sum, there is no genuine issue of material fact that the requisite elements for *res judicata* have been satisfied. In view thereof, opposer's motion for summary judgment is granted on its claim of *res judicata*. The opposition is sustained, and registration of applicant's mark is refused.

The Board notes, however that applicant, in its answer to the notice of opposition, counterclaimed to cancel five of opposer's pleaded registrations on the grounds that the mark CALAVO has become generic for the goods and services identified therein, and that the registrations were fraudulently procured from the USPTO.

In view thereof, applicant is allowed until twenty (20) days from the mailing date of this order to indicate whether it would like to proceed on the counterclaims, failing which said counterclaims shall be dismissed.

Footnotes

- 1 Opposer has submitted a reply brief which the Board has exercised its discretion to consider. *See* [Trademark Rule 2.127\(a\)](#).
- 2 Application Serial No. 76621293, alleging a bona fide intention to use the mark in commerce. The color(s) blue and white is/are claimed as a feature of the mark with the following description: “The mark includes three shades of the color blue. The darkest shade of blue appears beneath the word “CALVO”, while a lighter shade of blue surrounds the word “CALVO” and the lightest shade of blue is in the outermost top portion. The word “CALVO” appears in white letters surrounded by shading.”
- 3 In the notice of opposition, opposer has alleged that it is the successor-in-interest of Calavo Growers of California.
- 4 Application Serial No. 75769566, filed August 6, 1999. The application contains the statement that the English translation of the term “CALVO” is “BALD” and that the drawing is lined for the color blue.

2007 WL 1144944 (Trademark Tr. & App. Bd.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

2015 WL 2441551 (Trademark Tr. & App. Bd.)

THIS DECISION IS NOT A PRECEDENT OF THE TTAB

Trademark Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

BLVD SUPPLY, LLC

v.

JUAN CHEN

Cancellation No. 92059168

April 28, 2015

*1 Before [Quinn, Ritchie](#) and Masiello
Administrative Trademark Judges

By the Board:

This case now comes before the Board on:

1. BLVD Supply, LLC's ("BLVD") amended petition to cancel filed November 17, 2014 in response to the Board's October 20, 2014 order; and
2. Juan Chen's ("Chen") motion for summary judgment based on *res judicata*.

Amended Pleading

By an order of October 20, 2014, the Board allowed BLVD time to amend its petition to cancel. BLVD filed its amended petition on November 17, 2014, and Chen filed an answer thereto on December 17, 2014.¹ The amended petition to cancel is the operative pleading in this proceeding.

Motion for Summary Judgment

BLVD seeks to cancel Chen's registration of the mark:



for "down jacket; men's and women's jackets, sports jackets; sports pants; track jackets; track pants; wind pants; wind resistant jackets; waterproof jackets and pants; denim jackets; denims; heavy jackets; jackets; jogging pants; long jackets; sleeping garments; stretch pants, sweat jackets; sweat pants; sweat shirts; t-shirts; tops; undergarments" in International Class 25 ('202 Registration).²

In its amended petition to cancel, BLVD asserts claims of fraud and abandonment based on non-use and pleads common law rights in the mark BLVD SUPPLY COMPANY and ownership of application Serial No. 86172047 (now abandoned) for the mark

BLVD
SUPPLY COMPANY

Concurrently with her answer, Chen filed a motion for summary judgment based on *res judicata* or claim preclusion. The motion has been fully briefed.

Chen asserts, *inter alia*, that a prior proceeding -- Cancellation No. 92056299 (the “’299 cancellation”), which resulted in a final judgment of dismissal with prejudice -- involved the same parties and was based on the same claims. In support of her motion, Chen has submitted copies of the petition to cancel in the ’299 cancellation, the recorded assignment documents for application Serial No. 85531591,³ the motion to dismiss the ’299 cancellation, and the Board’s decision dismissing the ’299 cancellation. The petitioner in the earlier proceeding asserted claims of fraud and abandonment. Upon motion by Chen to dismiss the ’299 cancellation pursuant to Trademark Act § 2.132(a) for that petitioner’s failure to take testimony or enter evidence, the Board dismissed the cancellation with prejudice in its February 18, 2014 decision.

*2 In its response to the motion for summary judgment, BLVD argues, *inter alia*, that the petitioner in the ’299 cancellation was BLVD Supply, a California partnership,⁴ and the petitioner in the instant cancellation is a California limited liability company,⁵ a separate legal entity that is not a privy of the prior petitioner; that the ’299 cancellation was not a decision on the merits; and that the marks at issue in the ’299 cancellation are different from the marks at issue in the instant cancellation. *Response* at pp. 2-4.

In general, a party may not file a motion for summary judgment until the party has made its initial disclosures. [Trademark Rule 2.127\(e\)\(1\)](#); *Qualcomm, Inc. v. FLO Corp.*, 93USPQ2d 1768, 1769-70 (TTAB 2010). However, this rule has two exceptions: 1) a motion asserting lack of jurisdiction by the Trademark Trial and Appeal Board; or 2) a motion asserting claim or issue preclusion. [Trademark Rule 2.127\(e\)\(1\)](#); *Zoba Int’l Corp. v. DVD Format/LOGO Licensing Corp.*, 98 USPQ2d 1106, 1108 n.4 (TTAB 2011) (motion to dismiss considered as one for summary judgment where it asserts claim preclusion).

Entry of summary judgment is appropriate only where there are no genuine disputes as to any material facts, thus allowing the case to be resolved as a matter of law. [Fed. R. Civ. P. 56\(a\)](#). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. See *Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy’s, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). Evidence on summary judgment must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant’s favor. *Lloyd’s Food Prods., Inc. v. Eli’s, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA*, 23 USPQ2d at 1472. The Board may not resolve genuine disputes as to material facts on summary judgment; it may only ascertain whether genuine disputes as to material facts exist. See *Lloyd’s Food Prods.*, 25 USPQ2d at 2029; *Olde Tyme Foods*, 22 USPQ2d at 1542.

Claim Preclusion

Under the doctrine of claim preclusion, “a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” *Jet Inc. v. Sewage Aeration Sys.*, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979)).

*3 For claim preclusion to apply, therefore, there must be:

- (1) identity of parties (or their privies);
- (2) an earlier final judgment on the merits of a claim; and
- (3) a second claim based on the same set of transactional facts as the first.

Id.

First Factor -- Identity of Parties

The '299 cancellation was brought by BLVD Supply, and the present proceeding was filed by BLVD Supply, LLC. During the pendency of the '299 cancellation, BLVD Supply filed an assignment which purports to assign its entire right, title and interest in application Serial No. 85531591 and the mark BLVD SUPPLY to Thomas B. Fore (recorded with the Office on October 23, 2012, executed on October 18, 2012). Thereafter, Thomas B. Fore assigned his entire right, title and interest in, *inter alia*, the mark, BLVD SUPPLY, and application Serial No. 85531591 to BLVD Supply, LLC⁶ (recorded with the Office on August 6, 2013, executed on July 15, 2013). Accordingly, during the pendency of the '299 cancellation,⁷ BLVD Supply, LLC became the owner of all relevant trademark asserted by the petitioner in that proceeding, namely, ownership of the mark BLVD SUPPLY and application Serial No. 85531591, and was the owner of such rights at the time the Board issued its order dismissing the '299 cancellation, which BLVD does not dispute.

If the mark relied upon in a proceeding before the Board has been assigned and the assignee has not been joined or substituted in the proceeding, the proceeding may be continued in the name of the assignor. TBMP § 512.01. Further, if the mark relied upon by a party to a proceeding before the Board is transferred during the pendency of that proceeding, the decision of the Board will be binding upon the assignee. See *Hamilton Burr Publishing Co. v. E. W. Communications, Inc.*, 216 USPQ 802, 804 n.1 (TTAB 1982) (decision will be binding upon the assignee). Therefore, while the '299 cancellation remained in the name of BLVD Supply, because BLVD Supply, LLC was the owner of the mark BLVD SUPPLY and the petitioner's pleaded application Serial No. 85531591 at the time the Board issued its order, the order was binding on BLVD Supply, LLC.

We find that BLVD Supply and BLVD are in privity for purposes of claim preclusion. BLVD Supply is made up of the individuals Richard J. Loughran and Ryan Usrey. *July 11, 2014 Response*,⁸ *Loughran Declaration*. p. 1. Richard J. Loughran, as asserted in his declaration, is the Chief Executive Officer of BLVD and Ryan Usrey was a minority shareholder of BLVD prior to leaving in January 2014. Inasmuch as Mr. Loughran was a partner of BLVD Supply and is now the Chief Executive Officer of BLVD and Mr. Usrey was a partner of BLVD Supply and a one-time shareholder of BLVD, we find that BLVD Supply and BLVD are in privity for purposes of claim preclusion. See *John W. Carson Found v. Toilets.com Inc.*, 94 USPQ2d 1942, 1947 (TTAB 2010) (citing *Kraeger v. General Electric Co.*, 497 F.2d 468, 472 (2d. Cir. 1974) (The president and sole shareholder of a corporation was bound by the corporation's defeat in an action that he effectively controlled); *Vitronics Corp. v. Conceptoronic, Inc.*, 27 USPQ2d 1046, 1049 (D.N.H. 1992) (founder and CEO of corporation in privity with corporation)).

*4 In view thereof, the petitioner in the instant cancellation was a privy of the petitioner in the '299 cancellation -- BLVD Supply. See *Renaissance Rialto Inc. v. Boyd*, 107 USPQ2d 1083, 1085 (TTAB 2013); *John W. Carson Found*, 94 USPQ2d at 1947; TBMP § 206.02 (“[T]he concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g., assignor, assignee)”).

Further, there can be no argument that Chen is the same party as the respondent in the '299 cancellation.

Second Factor -- An Earlier Final Judgment on the Merits of a Claim

In its dismissal of the '299 cancellation, the Board granted Chen's motion to dismiss for failure to prosecute under [Trademark Rule 2.132\(a\)](#) as conceded.

Whether the judgment in a prior proceeding was the result of a dismissal with prejudice or even default, claim preclusion may still apply. *See, e.g., Orouba Agrifoods Processing Co. v. United Food Import*, 97 USPQ2d 1310 (TTAB 2010) (granting summary judgment to registrant on claim preclusion where petitioner's opposition had been dismissed with prejudice); *La Fara Importing Co. v. F. Lli de Cecco di Filippo Fara S. Martino S.p.a.*, 8 USPQ2d 1143, 1146 (TTAB 1988) (“Issue preclusion operates only as to issues actually litigated, whereas claim preclusion may operate between the parties simply by virtue of the final judgment.”); *Flowers Indus. Inc. v. Interstate Brands Corp.*, 5 USPQ2d 1580, 1583 (TTAB 1987) (claim preclusion applies “even when the prior judgment resulted from default, consent, or dismissal with prejudice”); *USOC v. Bata Shoe Co.*, 225 USPQ 340, 342 (TTAB 1984) (“default judgments generally operate as res judicata”). “[D]efault judgments for failure to answer, or dismissals for failure to prosecute, where there has been no decision ‘on the merits,’ can act as a bar under the doctrine of claim preclusion.” *Orouba Agrifoods Processing Co.*, 97 USPQ2d at 1313 (citing *International Nutrition Co. v. Horphag Research, Ltd.*, 220 F.2d 1325, 55 USPQ2d 1492, 1492 (Fed. Cir. 2000)).

In view thereof, the Board's dismissal with prejudice for failure to prosecute the '299 cancellation was a final judgment which may give rise to claim preclusion.

Third Factor -- A Second Claim Based on the Same Set of Transactional Facts as the First

*5 This case implicates the defensive doctrine of “bar,” wherein the Board must analyze whether the plaintiff can bring a subsequent case against a defendant. *See Jet Inc.*, 55 USPQ2d at 1856 (stating that the doctrine of claim preclusion “has come to incorporate common law concepts of merger and bar, and will thus also bar a second suit raising claims based on the same set of transactional facts”) (citing *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984)). RESTATEMENT (SECOND) OF JUDGMENTS § 19 (1982) provides that “a valid and final personal judgment rendered in favor of the defendant bars another action by the plaintiff on the same claim.” This bar extends to relitigation of “claims that were raised *or could have been raised*” in an earlier action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (emphasis added); *Migra*, 465 U.S. at 77 n.1. Thus, under claim preclusion, a plaintiff is barred from a “subsequent assertion of the same transactional facts in the form of a different cause of action or theory of relief.” *Vitaline Corp. v. General Mills Inc.*, 891 F.2d 273, 13 USPQ2d 1172, 1173 (Fed. Cir. 1989).

When, as here, the Board analyzes the defensive doctrine of bar, we must determine whether the proceedings arise from the same transactional facts. *See, e.g., Sharp Kabushiki Kaisha*, 79 USPQ2d at 1378-79; *Chromalloy American Corp.*, 222 USPQ at 189-90. Therefore, we must analyze whether BLVD's new claims arise out of the same set of transactional facts and thus could and should have been brought in the previous litigation.

The Court of Appeals for the Federal Circuit has stated that it is guided by the analysis set forth in the Restatement of Judgments in determining whether a plaintiff's claim in a particular case is barred by claim preclusion. *See Jet Inc.*, 55 USPQ2d at 1856; *Chromalloy American Corp. v. Kenneth Gordon (New Orleans), Ltd.*, 736 F.2d 694, 222 USPQ 187, 189-90 (Fed. Cir. 1984). Section 24 of the Restatement, which addresses splitting claims, provides that:

(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar . . . the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

*6 (2) What factual grouping constitutes a “transaction”, and what grouping constitutes a “series”, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Furthermore, Section 25 of the Restatement provides that the rule of Section 24 applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action:

- (1) To present evidence or grounds or theories of the case not presented in the first action, or
- (2) To seek remedies or forms of relief not demanded in the first action.

To assess whether the claims are based on the same set of transactional facts, comment b to Section 24 of the Restatement considers whether there is a common nucleus of operative facts. As noted, relevant factors include whether the facts are so woven together as to constitute a single claim in their relatedness in time, space, origin, or motivation, and whether, taken together, they form a convenient unit for trial purposes. *Id.* The same comment notes that:

Though no single factor is determinative, the relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first. If there is a substantial overlap, the second action should ordinarily be held precluded. But the opposite does not hold true; even when there is not a substantial overlap, the second action may be precluded if it stems from the same transaction or series.

Id. Courts have defined “transaction” in terms of a “core of operative facts,” the “same operative facts,” or the “same nucleus of operative facts,” and “based on the same, or nearly the same, factual allegations.” *Jet Inc.*, 55 USPQ2d at 1856 (quoting *Herrmann v. Cencom Cable Assoc., Inc.*, 999 F.2d 223, 226 (7th Cir. 1993)); see also *United States v. Haytian Rep.*, 154 U.S. 118, 125 (1894) (“One of the tests laid down for the purpose of determining whether or not the causes of action should have been joined in one suit is whether the evidence necessary to prove one cause of action would establish the other.”).

Applying this analysis, we note the body of the complaint⁹ in the '299 cancellation seeks to cancel the '202 Registration alleging, *inter alia*, that:

1. Chen committed fraud because she did not use the mark in connection with any goods and services in the United States; and

*7 2. Chen abandoned the mark because she “has never, or in the alternative, no longer uses and shows no intent to resume use of, the mark in commerce, in the United States.”

'299 Petition to Cancel, ¶¶ 1-2.

The cancellation proceeding now before us seeks to cancel the '202 Registration alleging, *inter alia*, that:

1. Chen committed fraud because she “was not using and had never used the [mark in the '202 Registration] in commerce on goods covered in the '202 Registration” and her specimen of use “has not be (sic) sold, offered for sale or distributed in the United States”; and

2. To the extent that Chen may have used her mark, she “abandoned the mark through non-use for at least three consecutive years ... with no intention to resume use.”

November 17, 2014 Petition to Cancel, ¶¶ 10-11, 13.

Considering the pleadings in each cancellation, it is clear that BLVD's claims of fraud and abandonment are based on the same set of transactional facts; in short, whether Chen committed fraud in her procurement of the '202 Registration or abandoned the mark in the '202 Registration based on lack of use in commerce in the United States. See *Jet Inc.*, 55 USPQ2d at 1856-57; *Haytian Rep.*, 154 U.S. at 125.

Decision

Based on the record before us, we find that there is no genuine dispute as to the facts underlying the allegation of claim preclusion in this case in light of the Board's February 18, 2014 decision rendered in the '299 cancellation. Chen's motion for summary judgment is **granted**. Judgment is entered against BLVD, and the petition for cancellation is **dismissed with prejudice**.

Footnotes

- 1 Chen's answer denied the salient allegations of the November 17, 2014 amended petition to cancel.
- 2 Registration No. 3716202 issued November 24, 2009
- 3 BLVD Supply pleaded application Serial No. 85531591 as part of its pleading of standing in the '299 cancellation.
- 4 Petitioner alleges that the partnership is composed of Richard J. Loughran and Ryan Usrey.
- 5 Petitioner alleges that the limited liability company is composed of Emma Chen, James Chen, Jeremiah Camping, Dave Uecker and Lofo Holdings LLC.
- 6 As indicated in the assignment record, the address for BLVD Supply, LLC is 15736 E. Valley Blvd., City of Industry, CA 91745.
- 7 The '299 cancellation was filed October 6, 2012 and the Board's decision issued February 18, 2014.
- 8 The Richard J. Loughran declaration was submitted with BLVD's July 11, 2014 response to Chen's June 6, 2014 motion for summary judgment.
- 9 The ESTTA coversheet also indicates a claim of deceptiveness under Section 2(a) as a ground for cancellation. However, the body of the complaint does not specifically address this ground.

2015 WL 2441551 (Trademark Tr. & App. Bd.)

2004 WL 1942062 (Trademark Tr. & App. Bd.)

Trademark Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

JEAN ALEXANDER COSMETICS, INC.

v.

L'OREAL USA CREATIVE, INC.¹

Opposition No. 91156843

August 9, 2004

*1 Before Hanak, Rogers, and Drost
Administrative Trademark Judges

By the Board:

On May 13, 2003, Jean Alexander Cosmetics, Inc. [JAC] filed a notice of opposition to application Serial No. 75057432 on the ground that applicant L'Oreal USA Creative, Inc.'s [LUCI] mark, shown below, when used on its hair care products, so resembles JAC's previously registered mark for the same or similar goods as to be likely to cause confusion.

Registration No. 1790050	Application Serial No. 75057432
	
hair care preparations; namely, shampoo, conditioner, styling lotion, permanent wave, hair dressing (alleging use and use in commerce since July 5, 1990)	<p>hair care products, namely shampoos, and hair color which are sold to and by professional hair dressers, stylists and salons (alleging use and use in commerce since 1988)</p> <p>swatch rings containing sample hair pieces of various colors (alleging use and use in commerce since 1992)</p>

Registration No. 1790050

Application Serial No. 75057432

hair care preparations; namely, shampoo, conditioner, styling lotion, permanent wave, hair dressing (alleging use and use in commerce since July 5, 1990)

hair care products, namely shampoos, and hair color which are sold to and by professional hair dressers, stylists and salons (alleging use and use in commerce since 1988)

swatch rings containing sample hair pieces of various colors
(alleging use and use in commerce since 1992)

This case comes before the Board on LUCI's combined motion to amend its answer and for judgment on the pleadings, filed October 31, 2003, and JAC's motion to convert LUCI's motion to a motion for summary judgment, filed November 28, 2003. Both motions have been briefed, and both involve the question of whether the Board's decision in a prior cancellation proceeding between these parties should be given preclusive effect.

Procedural Matters

Preliminarily, we note that LUCI moves to amend its answer to add the affirmative defense of judicial estoppel to its existing affirmative defenses of res judicata and collateral estoppel, and to seek entry of judgment on the affirmative defense of judicial estoppel. With regard to LUCI's motion to amend its answer, JAC filed a response specifically consenting thereto. Accordingly, LUCI's amended answer is accepted.

*2 On November 28, 2003, thirty days after LUCI's motion for judgment on the pleadings was served, JAC filed a motion to convert the motion for judgment on the pleadings to a motion for summary judgment, and its response to LUCI's presumptive motion for summary judgment. LUCI filed an opposition which argued that the motion was a ploy to persuade the Board to accept a late response to the motion for judgment on the pleadings. Insofar as LUCI has submitted matters outside the pleadings, the Board will treat LUCI's motion for judgment on the pleadings as one for summary judgment under [Fed. R. Civ. P. 56](#).² JAC's response to LUCI's motion for summary judgment, which accompanied JAC's motion to convert (and was thus received within 30 days of service of the motion for summary judgment) will be considered. *See* [Trademark Rule 2.127\(e\)\(1\)](#).

Background

On August 31, 1993, Registration No. 1790050 issued to JAC for the mark EQ SYSTEM and design for the hair care products listed above.

On August 15, 1997, Cosmair Inc., predecessor to LUCI, filed a petition to cancel Registration No. 1790050 for the mark EQ SYSTEM and design on the grounds of priority and likelihood of confusion, alleging that Cosmair Inc.'s application Serial No. 75057432 had been refused registration on the basis of Registration No. 1790050. The Board instituted Cancellation No. 92026649.³ Following a trial, the Board issued its final decision holding that, because Cosmair Inc. was not permitted to "tack on" its dates of use for the earlier version of the mark, Cosmair Inc. had not established priority of use. The Board's final decision also held that there were significant differences between the marks which, when applied to hair products, were neither unique nor arbitrary, that there was six years of co-existence without actual confusion, and that the testimony of witnesses for both parties indicated that confusion might be possible but was hardly likely, and that there was no likelihood of confusion between JAC's mark and Cosmair's original and modernized marks. Accordingly, the Board's final decision denied the petition to cancel on the ground that Cosmair had established neither priority of use nor likelihood of confusion.

Following the Board's decision in Cancellation No. 92026649, and the assignment of the application, the examining attorney withdrew the refusal to register LUCI's mark based on likelihood of confusion with JAC's registered mark, and approved the application for publication in the *Official Gazette*. Application Serial No. 75057432 published for opposition on January 14, 2003. After receiving extensions of its time in which to do so, on May 13, 2003, JAC filed a notice of opposition on the ground that LUCI's mark, when used on its hair care products, so resembles JAC's previously registered mark for the same or similar goods as to be likely to cause confusion.

Motion For Summary Judgment

*3 The Board now takes up the question of whether LUCI is entitled to summary judgment on the ground that the Board's finding in Cancellation No. 92026649 that there is no likelihood of confusion between LUCI's mark SHADES EQ and design, the subject of application Serial No. 75057432, and JAC's mark EQ SYSTEM and design, the subject of Registration No. 1790050, precludes consideration of the claim now brought by JAC, namely that there is a likelihood of confusion between the two marks.

As noted above, in support of its position that JAC is estopped from bringing the notice of opposition, LUCI has submitted the declaration of attorney Robert Sherman, and the pleadings and the Board's final order in Cancellation No. 92026649. JAC, on the other hand, contends that the prior Board decision should have no preclusive effect here. JAC argues that it has never taken the position that there was no likelihood of confusion between the parties' marks, that the parties' positions were reversed in the prior proceeding and JAC had no burden to demonstrate likelihood of confusion, and that JAC's role in the prior proceeding was limited to pointing out that LUCI's predecessor had failed to carry its burden of proof. JAC also argues that, because LUCI's predecessor failed to establish priority in the prior proceeding, the determination that there was no likelihood of confusion was not necessary to the Board's judgment. In support of its position, JAC submitted a copy of its trial brief filed in Cancellation No. 92026649, which includes a section in which JAC asserts that LUCI has not produced sufficient evidence to demonstrate likelihood of confusion.

Application of Estoppel

As noted, LUCI has asserted the affirmative defenses of res judicata (or claim preclusion), collateral estoppel (or issue preclusion), and judicial estoppel (preclusion of inconsistent legal positions). Trademark Act Section 19 specifically allows for the application of estoppel in *inter partes* Board proceedings. See 15 U.S.C. §1069.⁴ All three are judge-made doctrines, based on common law equitable principles. See Wright & Miller, 18 Fed. Prac. & Proc., Juris. 2d §4403 (2004). As such, consideration of the defenses is within the court or the Board's discretion. See *Vitaline Corp. v. General Mills, Inc.*, 891 F.2d 273, 13 USPQ2d 1172 (Fed. Cir. 1989); *Boston Chicken Inc. v. Boston Pizza International Inc.*, 53 USPQ2d 1053 (TTAB 1999); Wright & Miller, 18 Fed. Prac. & Proc., Juris. 2d §4405 (2004) (“[A] court may raise the question on its own motion.”). The Board will exercise its discretion and consider whether the Board's earlier judgment precludes this action.

*4 Under the doctrine of claim preclusion, “a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 58 L.Ed. 2d 552 (1979); *Jet Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854 (Fed. Cir. 2000). Because the earlier proceeding involved the cause of action brought by LUCI to cancel JAC's mark, and the instant proceeding involves the cause of action brought by JAC to oppose registration of LUCI's mark, the cause of action is not the same in the two proceedings.⁵

Issue preclusion, as distinguished from claim preclusion, does not include any requirement that the claim (or cause of action) be the same: “[W]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether in the same or a different claim”. *Restatement (Second) of Judgments* §27 (1982). See also *Mother's Restaurant, Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394 (Fed. Cir. 1983). The requirements which must be met for issue preclusion are:

- (1) the issue to be determined must be identical to the issue involved in the prior action;
- (2) the issue must have been raised, litigated and actually adjudged in the prior action;
- (3) the determination of the issue must have been necessary and essential to the resulting judgment; and
- (4) the party precluded must have been fully represented in the prior action.

Mother's Restaurant Inc. v. Mama's Pizza, Inc., *supra*; Marc A. Bergsman, *TIPS FROM THE TTAB: The Effect of Board Decisions in Civil Actions; Claim Preclusion and Issue Preclusion in Board Proceedings*, 80 Trademark Rep. 540 (1990).

The first two of the four required elements are clearly present in this case. In Cancellation No. 92026649, the Board determined the issues of priority of use and likelihood of confusion between the marks in Application Serial No. 75057432 and Registration No. 1790050, and those identical issues are raised in the notice of opposition. Following trial, Cancellation No. 92026649 concluded with a final order deciding the pleaded issues, and thus priority and likelihood of confusion were raised, litigated, and adjudged by the Board.

JAC disputes that the latter two requirements were met. To the extent that issue preclusion requires a full and fair opportunity to litigate the issue to be precluded, JAC argues that it was not fully represented in the prior action. Specifically, JAC contends (Opposer's Memorandum in Opposition to Summary Judgment, p.1):

*5 [LUCI] is not entitled to summary judgment based on Judicial Estoppel, Collateral Estoppel, or Res Judicata because [JAC] did not take the position in the prior cancellation proceeding that [JAC's] mark EQ SYSTEM and [LUCI's] mark SHADES EQ were confusingly similar.

Rather, JAC contends, JAC maintained the consistent position that LUCI lacked priority and failed to establish likelihood of confusion, points adopted by the Board in its final order. JAC argues that this order should not “deny [JAC] the right to successfully and competently prove that which [LUCI] was unable to prove on its own, the manifest likelihood of confusion between [the parties' marks].”

However, the standard for issue preclusion is not whether the parties actually advanced all possible evidence and arguments in the prior proceeding, but whether they were afforded the opportunity to do so. “To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Montana v. United States*, 440 U.S. 147, 153-154, 99 S.Ct. 970, 59 L. Ed. 2d 210 (1979).

JAC also contends that issue preclusion is inapplicable because the Board's determination of likelihood of confusion was mere dicta, and not necessary to the Board's judgment in Cancellation No. 92026649. Specifically, JAC argues that the Board's determination that LUCI failed to establish priority made moot the determination of likelihood of confusion. At the outset, it is important to note that the requirement that a finding be “necessary” to a judgment does not mean that the finding must be so crucial that, without it, the judgment could not stand. Rather, the purpose of the requirement is to prevent the incidental or collateral determination of a nonessential issue from precluding reconsideration of that issue in later litigation. See *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, *supra*, at 1571, citing *Restatement (Second) of Judgments* §27 comment h (1982).

Accordingly, the Board will consider the earlier proceeding between the parties to determine whether JAC had a full and fair opportunity to try the issue of likelihood of confusion such that JAC is considered to have been “fully represented” in that proceeding, and whether the trial of the likelihood of confusion issue was such that it should be deemed necessary to the Board's judgment in the cancellation proceeding.

Cancellation No. 92026649

In the earlier action, JAC filed its answer denying the allegations of priority and likelihood of confusion between the marks in Application Serial No. 75057432 and Registration No. 1790050, participated in discovery, cross-examined Cosmair's witnesses, submitted trial evidence, briefed the case on the merits, and attended an oral hearing before the Board. In its final decision in Cancellation No. 9202664, the Board specified that the record comprised the involved registration and application files; the trial testimony depositions, with accompanying exhibits, of corporate officers for both parties, a corporate officer for a third party

salon company, and JAC's chemist; Cosmair's notice of reliance on the discovery depositions, with accompanying exhibits, of JAC's chief executive officer; portions of the discovery deposition of a senior vice president of Cosmair; JAC's notice of reliance upon JAC's responses to interrogatories; excerpts from the publication *Modern Salon*; and dictionary definitions.

*6 With respect to priority, the Board determined that Cosmair's earlier version of its mark, in use since 1988, was not the legal equivalent of its current version, modernized around 1992 and the subject of the instant application, and that Cosmair was not permitted to "tack on" its dates of use for the earlier version of the mark. The Board concluded that Cosmair had not established priority of use of the mark shown in the application with respect to JAC's date of first use in its registration, July 5, 1990.

With respect to the determination of likelihood of confusion, the Board considered the evidentiary factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). When evaluating whether the marks of the parties are similar, the Board considered both versions of Cosmair's mark "in case on further review, it is determined that petitioner's original and modernized marks are legal equivalents." The Board found that while all three design marks featured the same two letters EQ, the parties' marks had significant differences in sound, appearance, meaning, and commercial impression. Citing the testimony of each party in its evaluation of the meaning of the marks, the Board found that EQ SHADES "suggests color shades that are equalized when applied to hair" and that EQ SYSTEM "suggests a system that keeps hair in equilibrium with the right balance of hair care products." In its consideration of the relationship between the goods of the two parties, the Board found that the parties used the marks on identical or related hair care products. The Board specifically addressed "the opinion and attitudes of the parties in regard to the issue of likelihood of confusion." The Board found that the witnesses of the parties testified that confusion is unlikely or the witnesses were equivocal about the likelihood of confusion. The Board also noted that neither party testified that there were any instances of actual confusion. The Board considered the overlap between some of the goods of the parties, the extensive promotion by Cosmair, and the significant differences between the marks which, when applied to hair products are neither unique nor arbitrary, the six years of co-existence without actual confusion, and the testimony of parties' witnesses which indicated that confusion might be possible, but was hardly likely. After considering all the evidence, and weighing all the relevant *Dupont* factors, the Board concluded that there was no likelihood of confusion between JAC's mark and Cosmair's original and modernized marks. Accordingly, the Board denied the petition to cancel on the ground that Cosmair had established neither priority of use nor likelihood of confusion.

"[A]n inter partes decision of the Trademark Board, whether reviewed by the Federal Circuit or not, must be carefully examined to determine exactly what was decided and on what evidentiary basis.... [W]here the Trademark Board has indeed compared conflicting marks in their entire marketplace context, the factual basis for the likelihood of confusion issue is the same, the issues are the same, and collateral estoppel is appropriate." 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §32:101 (4th ed. 2004). Here, the Board made detailed and specific findings in its determination of both priority and likelihood of confusion, and the determination of no likelihood of confusion in the market place was necessary to the final judgment. This is not a case where the Board made incidental determinations on an issue which was not before it. The issue of likelihood of confusion was the focus of the parties' pleadings and was fully litigated before the Board. See *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, *supra*, at 1571.

LUCI's Motion For Summary Judgment GRANTED

*7 After careful review of the record and the applicable law, the Board finds that there is no genuine issue of material fact, and that LUCI is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The pleaded affirmative defense of issue preclusion applies here, and the Board's final decision in Cancellation No. 92026649 finding no likelihood of confusion between the parties' marks bars relitigation of that issue.⁶ Summary judgment is entered for LUCI, and the opposition is dismissed with prejudice.

Footnotes

- 1 The October 1, 2002 assignment of application Serial No. 75057432 from L'OREAL USA, INC. to L'OREAL USA CREATIVE, INC. is recorded with the U. S. Patent and Trademark Office Assignment Branch at Reel 2606, Frame 0990. Accordingly, the Board's institution and trial letter incorrectly listed applicant's predecessor as party defendant. The parties are ordered to use the above case title in future filings with the Board.
- 2 In support of its motion for judgment on the pleadings, LUCI submitted the declaration of attorney Robert Sherman, and the pleadings and the Board's final order in Cancellation No. 92026649. In its opposition to JAC's motion to convert, LUCI ignores its submission of Mr. Sherman's declaration, and argues that the Board may take judicial notice of the pleadings and final orders. However, it is well settled that the Board does not take judicial notice of the records of this Office. *In re The Clausen Co.*, 222 USPQ 455, 456 n.2 (TTAB 1984); *International Association of Lions Clubs v. Mars, Inc.*, 221 USPQ 187, 189 n.8 (TTAB 1984). Moreover, LUCI's motion for judgment on the pleadings does not ask that the Board take judicial notice of the pleadings and the Board's final order in Cancellation No. 92026649, but refers to the papers submitted with the motion. In sum, LUCI submitted matters outside the pleadings with its motion, and JAC moved to convert the motion to one for summary judgment. In these circumstances, the Board's decision to treat the motion as a motion for summary judgment does not require further briefing by the parties. *See* TBMP §528.04.
- 3 On June 21, 2000, in the course of the proceeding, Cosmair changed its name to L'Oreal USA, Inc. The name change is recorded with the USPTO Assignment Branch (Reel 2429, Frame 0352). As noted in footnote 1, L'Oreal USA, Inc. subsequently assigned application Serial No. 75057432 to the defendant in this case, L'Oreal USA Creative, Inc.
- 4 Trademark Act Section 19 states:
In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable, may be considered and applied.
- 5 Preclusion of the cause of action, or claim, occurs:
When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
See Vitaline Corp., *supra* at 275, quoting *Restatement (Second) of Judgments* §24(1)(1982).
- 6 Accordingly, we need not reach the issue of whether judicial estoppel is also applicable to this proceeding.

2004 WL 1942062 (Trademark Tr. & App. Bd.)

2008 WL 2515108 (Bd.Pat.App. & Interf.)

THIS OPINION IS NOT A PRECEDENT OF THE T.T.A.B.

Trademark Trial and Appeal Board

Patent and Trademark Office (P.T.O.)

Schering Corporation

v.

Diagnostic Test Group LLC

Opposition No. 91179748

June 12, 2008

*1 Before [Quinn](#), [Rogers](#), and [Mermelstein](#)
Administrative Trademark Judges

By the Board:

Diagnostic Test Group LLC¹ (hereafter “applicant”) seeks to register the mark CLARITY and Design (shown below)



for goods identified as “diagnostic agents, preparations and substances for medical purposes; diagnostic preparations for clinical or medical laboratory use; medical diagnostic reagents and assays for testing of body fluids; medical diagnostic test strips for use in the field of monitoring and detecting infection, hormone levels, and chemistry in blood, urine, and stool samples; and medical test kits for diabetes monitoring for home use.”²

Schering Corporation (hereafter “opposer”) opposes the registration of the applied-for mark on the ground of likelihood of confusion. In support of its claim, opposer essentially alleges priority based on common law rights accruing from “continuous and uninterrupted” use of the marks CLARITIN and CLARINEX (and marks “dominated by CLARITIN and CLARINEX”) since the dates of first use of those marks, and pleads ownership of thirteen trademark registrations for the marks CLARITIN, CLARINEX, and CLARITIN and CLARINEX formative marks for, *inter alia*, antihistamines, decongestants, anti-allergy preparations, downloadable electronic newsletters and newsletters on the subject of allergies, and for providing medical information on the subject of allergies.³ An answer has not yet been filed in this proceeding.

This case now comes up on opposer's fully briefed motion (filed October 24, 2007) for summary judgment in its favor on the basis that applicant's mark is barred from registration by the doctrine of *res judicata*.

Preliminary Matters

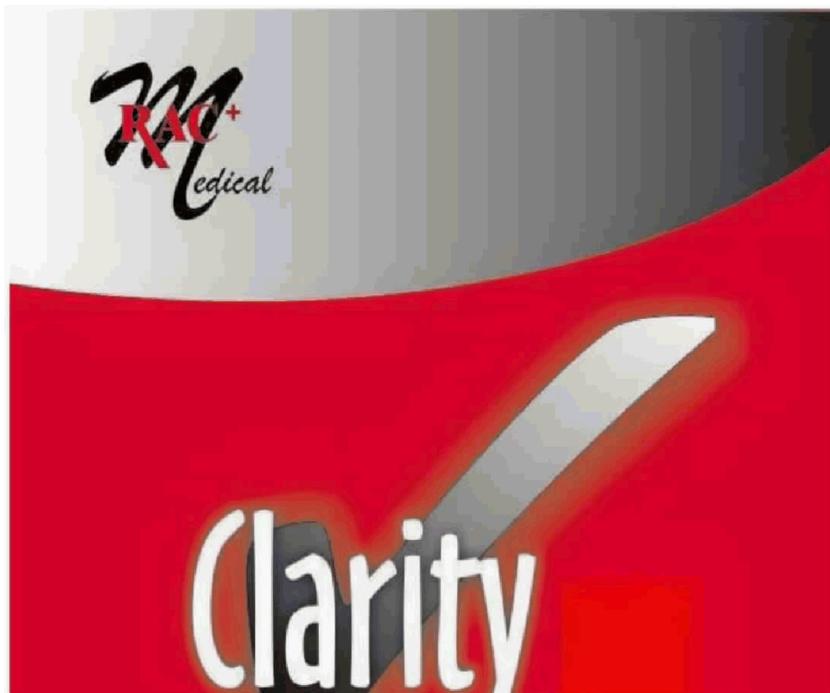
The Board notes applicant's alternative motion for discovery under Federal Rule 56(f). Because the motion was filed more than thirty days after the date of service of opposer's motion for summary judgment, applicant's alternative motion is untimely and will not be considered. See [Trademark Rule 2.127\(e\)\(1\)](#).

We also note that opposer does not plead in the notice of opposition that applicant's registration is barred by the doctrine of *res judicata*. A party may not obtain summary judgment on an issue that has not been pleaded. See [Fed. R. Civ. P. 56\(a\)](#) and [56\(b\)](#); [S. Industries Inc. v. Lamb-Weston Inc.](#), 45 USPQ2d 1293, 1297 (TTAB 1997). However, inasmuch as the parties, in briefing opposer's motion, have addressed the issue of *res judicata* on its merits, and applicant did not object to the motion on the ground that it is based on an unpleaded issue, the Board hereby deems opposer's pleading to have been amended, by agreement of the parties, to allege a claim based on the doctrine of *res judicata*. See [Paramount Pictures Corp. v. White](#), 31 USPQ2d 1768, 1772 (TTAB 1994); TBMP § 528.07(a) (2d ed. rev. 2004).

Background

*2 Before turning to the merits of the motion for summary judgment, we note the following facts, which in part provide the basis for opposer's motion.

Applicant's predecessor, R.A.C. Medical Group, Inc. (hereafter may be referred to as RAC), previously filed an application for registration of the mark MEDICAL RAC⁺ CLARITY and Design (shown below) for use in connection with "medical diagnostic point-of-care test kits and supplies, namely diagnostic test strips for testing urine, blood and stool samples."⁴



Opposer and its sister corporation, Schering-Plough HealthCare Products, Inc., opposed said application in Opposition No. 91168189 also on the ground of likelihood of confusion and, in support thereof, pleaded, *inter alia*, the same thirteen CLARITIN, CLARINEX, and CLARITIN and CLARINEX formative marks that opposer pleads in the present opposition. The due date for RAC's answer was reset to accommodate settlement discussions, however, RAC never filed an answer.

On January 25, 2007, because RAC had not filed an answer or another request for an extension of time to file its answer, the Board issued a notice of default judgment in Opposition No. 91168189.⁵

On January 30, 2007, applicant filed its new application for the mark CLARITY and Design.

On February 23, 2007, because neither RAC nor applicant responded to the notice of default, the Board entered a default judgment against RAC in Opposition No. 91168189 and refused registration. The judgment was not appealed and is final.

We reiterate that RAC was represented in the prior opposition proceeding by the same counsel that currently represents applicant. We note further that, prior to the issuance of the notice of default in the prior case, RAC sought and was granted two extensions of time to file its answer and a six-month suspension of the proceeding to pursue settlement discussions between the parties.

Summary Judgment Motion

Opposer contends that as a consequence of the default judgment entered against RAC in the prior opposition, applicant's current mark is barred from registration under the doctrine of *res judicata* and offers two reasons therefor. First, opposer argues that the transactional facts of the proceedings are the same, *i.e.* the mark involved in the present opposition creates substantially the same commercial impression as the mark involved in the prior opposition, the goods in the prior application include the goods set forth in the later-filed application, and the involved parties are legally the same. Opposer also argues that the doctrine of *res judicata* should be applied in this case to achieve judicial economy and to protect opposer from having to relitigate issues settled by the default judgment in the prior opposition.

Applicant argues in opposition that summary judgment is not proper in this case because applicant's new application was not filed in order to avoid the *res judicata* effect of a prior adverse ruling against it. Specifically, applicant claims that it abandoned its prior mark because it did not use the tradename "MEDICAL RAC" after its purchase of R.A.C. Medical Group, Inc. in June 2005, and that it filed the second application before the entry of default judgment in the earlier proceeding. Applicant also argues that the transactional facts of the two proceedings are dissimilar because the marks and the goods in the respective applications are not the same. In support of its arguments, applicant has provided the declaration of its Chief Executive Officer, Rick Simpson.

*3 Summary judgment is an appropriate method of disposing of a case in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *See Fed. R. Civ. P. 56(c)*. The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). A factual dispute is genuine, if, on the evidence of record, a reasonable finder of fact could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992); and *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Further, the evidence must be viewed in a light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *See Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993); and *Opryland USA*, *supra*.

The form of *res judicata* involved in this proceeding is claim preclusion because the pleaded ground of likelihood of confusion was not litigated and decided in the prior opposition, and issue preclusion cannot arise when issues are not tried and necessary to a final decision. *See Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 448 F.3d 1368, 79 USPQ2d 1376, 1378 (Fed. Cir. 2006). Under the doctrine of claim preclusion, the entry of a final judgment "on the merits" of a claim in a proceeding serves to preclude the relitigation of the same claim in a subsequent proceeding between the parties or their privies, even in those cases where the prior judgment was the result of a default or consent. *See Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955); *Chromalloy American Corp. v. Kenneth Gordon, Ltd.*, 736 F.2d 694, 222 USPQ 187 (Fed. Cir. 1984); and *Flowers Industries, Inc. Interstate Brands Corp.*, 5 USPQ2d 1580 (TTAB 1987). Thus, it is well established that "a default judgment can operate as *res judicata* in appropriate circumstances." *ThinkSharp*, 79 USPQ2d at 1371, *citing Morris v. Jones*, 329 U.S. 545, 550-551 (1947)(internal quotations and citations omitted). *See also International Nutrition Co. v. Horphag Research Ltd.*, 55 USPQ2d 1492, 1494 (Fed. Cir. 2000).

*4 Further, for claim preclusion to apply, there must be (1) an identity of parties or their privies, (2) a final judgment on the merits of the prior claim, and (3) the second claim must be based on the same transactional facts as the first and should have been litigated in the prior case. *Parklane Hosiery Co. v. Shore* 439 U.S. 322, 327 n.5 (1979); *Jet Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000). Stated otherwise, “so long as opposing parties had an adequate opportunity to litigate disputed issues of fact, *res judicata* is properly applied.” *ThinkSharp*, 79 USPQ2d at 1379, citing *Kremer v. Chemical Construction Corporation*, 456 U.S. 461, 485 n.26 (1982).

With respect to the current Board proceeding, the parties do not dispute the identity of the parties⁶ whether there was a final judgment on the merits of the prior claim. Accordingly, no genuine issues of material fact exist regarding the first two factors of the *res judicata* analysis. Rather, the parties dispute whether the present claim, *i.e.*, applicant’s entitlement to registration of the mark CLARITY and Design, is based on the same set of transactional facts as RAC’s claim of right to registration in the prior opposition. Specifically, the parties disagree whether the marks are the same and whether the goods identified in the application that was the subject of the prior opposition are the same as the goods identified in the current application. Thus, the issue for the Board to consider is whether genuine issues of material fact exist regarding the third claim preclusion factor, *viz.*, whether the mark in this proceeding evokes the same commercial impression as the mark involved in the prior opposition and whether the goods in the involved application are identical to or could be encompassed by the goods in the prior application.

To determine whether the two particular opposition proceedings involve the same mark for purposes of claim preclusion, the Board applies the analysis adopted by the U.S. Court of Appeals for the Federal Circuit in *Chromalloy*, *supra*, specifically, Section 24 of the Restatement [Second] of Judgments (1982). In view thereof, we must consider whether the involved marks are the same or are legally equivalent in terms of commercial impression. See *Institut National Des Appellations d’Origine v. Brown-Forman Corp.*, 47 USPQ2d 1875, 1894 (TTAB 1998).

Applying this analysis to the present case, we find that the mark in the application that was the subject of the prior opposition proceeding, MEDICAL RAC+ CLARITY and Design, is the same mark in terms of commercial impression, as CLARITY and Design, the mark involved in this proceeding. Clearly, the mark CLARITY and Design evolved out of the mark MEDICAL RAC+ CLARITY and Design. Both marks contain the same dominant term CLARITY shown in the color white on a red background in front of a checkmark. In addition, each checkmark design fades from black to gray to white at the top of the checkmark design. As a result of these common elements, each mark projects virtually identical commercial impressions. Further, we find the deletion of the small MEDICAL RAC+ and design shown in the top left corner of the earlier mark is a minor alteration. As such, the mark shown in the second application does not rise to the level of a new mark with a different commercial impression, sufficient to allow applicant to seek registration herein and avoid the judgment in the prior case. See *Miller Brewing Co. v. Coy Int’l Corp.*, 230 USPQ 675 (TTAB 1986) (finding claim preclusion with respect to a design mark which evolved out of an earlier design mark which had been the subject of an opposition proceeding between the parties, finding any changes to the mark were minor and did not change the commercial impression); *Aromatique Inc. v. Langu*, 25 USPQ2d 1359 (TTAB 1992) (finding claim preclusion with respect to a mark which had minor alternations in typeface and capitalization to an earlier mark that was the subject of an opposition between the parties, finding the commercial impression the same).

*5 In regard to the goods described in the prior and current applications, applicant’s argument that the goods are different is unavailing. The identification of goods described in the first application, namely, “*diagnostic test strips for testing urine, blood and stool samples*” encompasses “*medical diagnostic test strips for ... blood, urine, and stool samples*” (in the involved application) inasmuch as both goods are instruments for testing body fluids and “*medical diagnostic test strips*” are a type of “*diagnostic test strip*.” See *General Electric Company v. Raychem Corporation*, 204 USPQ 148, 150 (TTAB 1979) (the doctrine of *res judicata* is applicable not only with respect to an identical description of goods as had been previously litigated, but with respect to all goods that could be said to be encompassed by that [prior] description), citing *Toro Co. v. Hardigg Industries, Inc.*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977). Cf. *J.I. Case Co. v. F.L. Indus., Inc.*, 229 USPQ 697 (TTAB 1986) (finding issue preclusion with respect to a stylized mark wherein the mark in the earlier proceeding was typed and the goods covered in the present application were encompassed within the broad designation of goods in the prior application).

Further, “*diagnostic agents, preparations and substances for medical purposes*,” “*diagnostic preparations for clinical or medical laboratory use*” and “*medical test kits for diabetes monitoring for home use*” are also instruments for testing body fluids. While these goods are not *per se* identical to “*diagnostic test strips for testing urine, blood and stool samples*”

(described in the first application) and these items may present a new question, because these goods are embedded in the identification of goods in the second application that lists the above-referenced items within the first application, the refusal must apply to the entire identification of goods. Moreover, an applicant cannot avoid the estoppel effect of the decision of a prior disposition by insignificantly changing its identification of goods. See *J.I. Case Co.*, 229 USPQ at 697; and *Domino's Pizza Inc. v. Little Caesar Enterprises Inc.*, 7 USPQ2d 1359, 1365 n.10 (TTAB 1988). In view thereof, there is no genuine issue of fact regarding the third factor of the *res judicata* analysis.

Inasmuch as there are no genuine issues of fact as to whether *res judicata* (claim preclusion) applies to this proceeding, we now turn to whether any facts of record would preclude entry of summary judgment in opposer's favor on the claim of *res judicata* as a matter of law. See, e.g., *ThinkSharp*, 79 USPQ2d at 1379 (in denying the preclusive effect of the other proceeding, the Board gave weight to the undisputed fact that the separate applications, filed within four months of each other, were not filed in order to evade a prior adverse judgment); and *Metromedia Steakhouses Inc. v. Pondco II Inc.*, 28 USPQ2d 1205, 1208 (TTAB 1993)(summary judgment on *res judicata* denied because, *inter alia*, "both applications had been filed long before opposer objected to registration of the first mark [and] ... when the second application was filed, the opposition to the first had not yet even been instituted"). Specifically, we review applicant's arguments concerning its rationale for "abandoning the prior mark and filing a new application." (Brief, page 7)

*6 As noted *supra*, applicant contends that claim preclusion is inapplicable to the involved application because applicant filed the second application before the entry of default judgment against RAC in the prior proceeding. Applicant also asserts that it stopped using the tradename "RAC MEDICAL" and the trademark "MEDICAL RAC CLARITY and design" in commerce after its purchase of R.A.C. Medical in June 2005. (Brief page 3; Simpson dec., ¶¶ 3-4) These facts allegedly show that applicant had no intent to avoid the preclusive effect of the default judgment against RAC. Further, because removal of the "MEDICAL RAC" portion of the prior mark would have been considered a material alteration, applicant contends that it "had no choice but to proceed in that fashion." (Brief, page 6) In short, applicant argues that, because it could not have amended the prior application, "this left Diagnostic Test with the choice of committing a fraud on the Board by continuing to pursue a trademark that it no longer used or planned to use in commerce, or bandoning the prior mark and filing a new application." (Brief, page 7)

Contrary to applicant's arguments, the facts of record show that claim preclusion is properly applied here. We are also not persuaded by applicant's explanation that it had limited choices. As noted *supra*, applicant's counsel represented RAC in the prior proceeding, filed two extensions of time to file an answer, and should have known the consequences of not filing an answer to the notice of opposition after the notice of default was issued. Moreover, applicant waited more than eighteen months after it had changed its tradename (*i.e.* from June 2005 to January 2007), and waited until after the suspension period had expired in the prior proceeding and after the apparent failure of the parties to reach a settlement, to file the application for its new mark. These facts weigh against a finding that the filing of the new application just days after the notice of default issued was not an attempt to circumvent what would become the preclusive effect of the default judgment entered in the prior opposition proceeding. Furthermore, neither the record of the prior opposition proceeding,⁷ nor any assertion in the briefs or evidence now before us, indicate that RAC or applicant was deprived of or lacked full opportunity to defend the prior proceeding. In short, applicant clearly allowed judgment on the merits to be entered, and such judgment was final. In view thereof, we find that no circumstances exist that would support a finding that opposer is not entitled to judgment on the issue of *res judicata* as a matter of law.

In sum, there exist no genuine issues of material fact regarding the requisite elements for claim preclusion (*res judicata*) and we find that opposer is entitled to judgment as a matter of law.

Accordingly, opposer's motion for summary judgment is granted on the ground of *res judicata*, judgment is hereby entered against applicant, the opposition is sustained, and registration of applicant's mark is refused.

Footnotes

¹ The involved application was published in the name of "Diagnostic Test Group, Inc." and the opposition was thus correctly filed against applicant in that name. The declaration (¶7) of Rick Simpson, Chief Executive Officer of applicant (attached to applicant's brief in opposition to opposer's pending motion for summary judgment) clarifies that applicant's correct name is Diagnostic Test Group LLC. Accordingly, the caption of this proceeding has been changed as shown above. TBMP § 512.04 (2d ed. rev. 2004).

- ² Application Serial No. 77094617, filed January 30, 2007 based on applicant's claimed use of the mark in commerce. Applicant has claimed the colors white, red, black and gray as features of the mark.
- ³ The pleaded registrations for the CLARITIN, CLARINEX, and CLARITIN and CLARINEX formative marks are: Reg. No. 1498292, issued August 2, 1988; Reg. No. 1912214, issued August 5, 1995; Reg. No. 2816780, issued February 24, 2004; Reg. No. 2819388, issued March 2, 2004; Reg. No. 2824753, issued March 23, 2004; Reg. No. 2862382, issued July 13, 2004; Reg. No. 3096051, issued May 23, 2006; Reg. No. 3140850, issued September 12, 2006; Reg. No. 2455742, issued on May 29, 2001; Reg. No. 2595718, issued July 16, 2002; Reg. No. 2660350, issued December 10, 2002; Reg. No. 2705267, issued April 8, 2003; and Reg. No. 2805613, issued January 13, 2004.
- ⁴ Application Serial No. 78369843, filed February 18, 2004 based on claimed use of the mark in commerce. RAC claimed the colors white, red, black and gray as features of the mark. In June 2005, applicant acquired RAC, causing applicant to become the interested party. (see ¶¶ 3-4 of the Simpson declaration, *supra*, footnote 1)
- ⁵ Nor had applicant stepped forward in RAC's place to file an answer or request for extension, despite being represented by the same counsel as RAC.
- ⁶ In support of opposer's allegation that the prior applicant, R.A.C. Medical Group, Inc., and the present applicant are the same party, opposer provided a copy of a letter dated May 8, 2006 written to opposer's counsel by applicant's counsel, which confirmed that Diagnostic Test Group and R.A.C. Medical Group, Inc. are the same company. (see Exhibit 6 to opposer's motion) Applicant's statements regarding the identity of the parties are set forth at page 3 of its brief and in ¶¶ 3-4 of the Simpson declaration, *supra*, footnote 1.
- ⁷ See Exhibits 2, 3 and 4 to opposer's motion.

2008 WL 2515108 (Bd.Pat.App. & Interf.)

EXHIBIT B

Sirketi. Specifically, this document indicates that on December 15, 2010, "Merve Optik Sanayi Ve Ticaret Limited Sirketi" converted from a limited company to a joint stock company, and is now trading under the name "Merve Optik Sanayi Ve Ticaret Anonim Sirketi." The excerpt further reveals that Applicant, Merve Optik Sanayi Ve Ticaret Anonim Sirketi, assumed all of the assets and liabilities of the prior entity upon transfer.

4. Accordingly, Merve Optik Sanayi Ve Ticaret Anonim Sirketi is the successor to Merve Optik Sanayi Ve Ticaret Limited Sirketi.

Pursuant to 28 U.S. Code § 1746, I, Isilay Simsek Cengiz, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On: October 23, 2015

Av. İşılay ŞİMŞEK CENGİZ
Tunalı Hilmi Cad. No: 64/10
Kavaklıdere / ANKARA
Kavaklıdere V.D. 425 831 023 20

Isilay Simsek Cengiz
Attorney At Law
Cengiz & Camer Law Firm
Tunalı Hilmi Cd. 64/10 Kavaklıdere Ankara
- Turkey
T. +90 (312) 468 50 20
F. +90 (312) 468 50 23
Email: isilay@cengizcamer.com

EXHIBIT B-1

(Başarılı 498. Sayfada)
3 (üç) yıl için Atahan Kısacıkoğlu
şirket müdürü seçilmiştir.

Temsil
Madde: 9

Şirketi müdürler temsil ve ilzam ederler. Şirketi temsil ve ilzam edecek imzalar ortaklar kurul, tarafından tespit, tescil ve ilan ettirilir. İlk 3 (Üç) yıl için müdür seçilen Atahan Kısacıkoğlu münferit imzaları ile şirketi temsil ve ilzama yetkili kılınmıştır.

Hesap Dönemi
Madde: 10

Şirketin hesap yılı 1 Ocak – 31 Aralık tarihleri arasıdır. İlk hesap yılı tescil tarihinden itibaren 31 Aralık gününe kadardır.

Yedek Akçe
Madde: 11

Safî kârdan her yıl öncelikle % 5 ihtiyat akçesi ayrılır. İhtiyat akçesi şirket ödenmiş sermayesinin % 20'sine çıkıncaya kadar ayrılır. Kanuni ve ihtiyari yedek akçeler, kanun ve bu ana sözleşme hükümlerine göre ayrılması gereken miktar safî kârdan ayrılmadıkça hissedarlara kâr dağıtılmaz.

Karın Dağıtım
Madde: 12

Şirketin safî karı, şirket adına yapılmış her türlü masrafların çıkarılmasından sonra kalan miktardır.

Kanuni yedek akçe ayrıldıktan sonra kalan miktar ortaklar kurulunca alınacak karara göre hissedarlara hisseler, oranında dağıtılır. Ödenmiş sermayenin %5'i nispetinde ilk temettü ayrılır.

Kanuni Hükümler
Madde: 13

Bu ana sözleşmede bulunmayan hususlar hakkında T.T.K. hükümleri uygulanır.

Ortak
Timuçin Paköz imza

Ortak
Atahan Kısacıkoğlu imza

(5/A)(4/3176)

KOOPERATİFLER

İSTANBUL

İstanbul Ticaret Sicili
Memurluğundan

Sicil Numarası: 408201

Ticaret Ünvanı
TASFİYE HALİNDE S.S.
EKŞİOĞLU AKASYA EVLERİ
KONUT YAPI KOOPERATİFİ

Ticari Merkezi: İstanbul Tuzla İstasyon Mah.Hatboyu Cad. Ekşioğlu Çamlıkent Sit.No.126

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan Kooperatifin 8.12.2010 tarihli

olağan genel kurul kararının, İ.İ.K.nün 44.maddesine göre düzenlenmiş mal beyannamesinin tescil ve ilanı istenmiş olmakla, 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 31.12.2010 tarihinde tescil edildiği ilan olunur.

Genel Kurul Tutanağı

Tasfiye Halinde Sınırlı Sorumlu Ekşioğlu Akasya Evleri Konut Yapı Kooperatifinin 2009 hesap yılı olağan ve Kapanış genel kurul toplantısı yapılmak üzere 08/12/2010 günü, saat 17.00 de İstasyon Mah. Hatboyu Cad. Ekşioğlu Çamlıkent Sit. No: 126 Tuzla/İstanbul adresinde Sanayi ve Ticaret Bakanlığı Temsilcisi Aysun Hafizoğlu'nun gözetiminde toplanıldı.

Genel kurul toplantısına başlamadan önce yapılan incelemelerde;

a) Ortaklara gündemi içeren çağrı mektuplarının 10.11.2010 tarihinde Hazirunda kayıtlı 7 ortağa elden tebliğ edildiği tespit edilmiştir.

b) Yönetim Kurulunca 1163 sayılı Kooperatifler Kanununun 26. maddesindeki niteliklere ve Ortaklar Kayıt Defterindeki kayıtlara uygunluğu onaylanarak hazırlanan ve ortakların incelemesine sunulan Ortaklar Listesinde kayıtlı 7 ortaktan 7 ortağın asaleten toplantıda hazır bulunduğu, ana sözleşme gereği aranan yasal toplantı nisabının mevcut olduğu,toplantının yapıldığına ve ortaklık durumlarına herhangi bir itirazın olmadığı görüldükçe toplantı yönetim kurulu başkanı tarafından açıldı.

Gündem Maddeleri:

Madde 1: Açılış yoklama yapıldı.

2.- Divan Başkanlığına Gökhan Hızır Ekşioğlu Yazmanlığa Adil Tüfekçi Oy sayım Memurluğuna Hasan Dağlı oy birliği ile seçildiler.Toplantı Tutanaklarını imzalama yetkisi oy birliği ile verildi.

3.- Atatürk ve Türk Büyüklere için saygı duruşunda bulundular.

4.- Yönetim Kurulu faaliyet raporu ve Denetleme Kurulu raporu okundu.

5.- 31.12.2009 tarihli bilanço okundu. Raporlar ve bilanço müzakereye açıldı. Söz alan olmadığından Divan Başkanı raporlar ve bilançooyu genel kurulun oyuna sundular, oy birliği ile kabul edildi.

6.- Yönetim,denetim ve tasfiye kurulları ayrı ayrı oybirliği ile ibra edildiler.

7.- Kooperatiften alacaklı bulunan üçüncü şahıslar belgeleri ile birlikte bir yıl içinde müracaat etmeleri gerektiğine dair 24 Temmuz 2009 tarih ve 7361 sayılı 394 sayfada ilan fesih ve tasfiye

1.İlan 29 Temmuz 2009 tarih, sayfa 638 sayı 7364 2.İlan 05 Ağustos 2009 tarih sayfa 638 sayı 7369 3.İlan 12 Ağustos 2009 tarih,sayfa 638 sayı 7374 ticaret sicil gazetesinde ilan tescili yapılmıştır.

Kooperatif aktif mal mevcudu, borcu, alacağı bulunmamaktadır. İşlemleri tamamlayan tasfiye memurları Ali Ekşi ve Eyüp Ekşi oy birliği ile ibra edildi. Kanunen saklanması gereken evrak, defter, beyanname ve diğer evrakların Kurtköy Narin Sok. No: 9 Pendik/İstanbul adresinde muhkim T.C. uyruklu Tasfiye Memuru Ali Ekşi tarafından T.T.K. 68. maddesi hükümlerine göre saklanması oy birliği ile kabul edildi.

Kooperatif amaç ve gayesini yerine getirdiğinden kooperatifin tasfiye ile ilgili işlemler tamamlanmış olduğundan kooperatifin kesin kayıtlarının Ticaret Sicil Memurluğundan, ticaret odası ve diğer resmi kuruluşlardan terkin edilmesine oy birliği karar verilmiştir.

8.- Toplantıya itiraz olmadığından Divan Başkanı toplantıyı 18.00'da kapatıldı. İş bu tutanak toplantı mahallinde düzenlendi,okunarak imzalandı.

Divan Başkanı
Gökhan Hızır Ekşioğlu imza

Yazman
Adil Tüfekçi imza

Oy Sayım Memuru
Hasan Dağlı imza

Bakanlık Temsilcisi
Aysun Hafizoğlu imza

Tasfiye Halinde S.S. Ekşioğlu Akasya Evleri Konut Yapı Kooperatifi İcra İflas Kanunu'nun 44. Maddesi Gereğince Yapılan 08/12/2010 Tarihli Mal Beyanı

Aktif: Yoktur.
Pasif: Yoktur.

Firmanın üçüncü kişilere karşı alacağı ve borcu yoktur.
Kaşe ve imza

(5/A)(4/6997)

STATÜ TADİLLERİ

İSTANBUL

İstanbul Ticaret Sicili
Memurluğundan

Sicil Numarası: 238262

Eski Ticaret Ünvanı
MERVE OPTİK SANAYİ VE
TİCARET LİMİTED ŞİRKETİ

Yeni Ticaret Ünvanı
MERVE OPTİK SANAYİ VE
TİCARET ANONİM ŞİRKETİ

Ticari Merkezi: İstanbul Fatih Eminönü Şeyh Mehmet Geylani Mah.Mimar Kemalettin Cad.No: 22- 24 K.4/62

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan

Şirketin Nevi değişikliği nedeniyle tanzim edilen Bakırköy 15.noterliğince 14, 12, 2010 tarih 45730 sayı ile düzenlenen anonim şirket esas mukavelesinin tescil ve ilanı istenmiş ve aynı noterliğin 08, 12, 2010 tarih 44819 sayı ile onaylı imza beyannamesi memuriyetimize verilmiş olmakla 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 15.12.2010 tarihinde tescil edildiği ilan olunur.

Merve Optik Sanayi Ve Ticaret Anonim Şirketi Esas Mukavelesi

Kuruluş
Madde 1-

Aşağıda adları, soyadları, ikametgahları ve uyrukları yazık kurucular arasında Türk Ticaret Kanununun Anonim Şirketlerin anı surette kurulmaları hakkındaki hükümleri ve İstanbul Ticaret Sicili Memurluğu'nun 238262 Sicil numarasında kayıtlı Merve Optik Sanayi Ve Ticaret Limited Şirketi ünvanlı şirketin Türk Ticaret Kanununun 152 nci maddesine göre nevi değiştirerek bir Anonim Şirket kurulmuştur.

- Ali Demirel, Şenlikköy Mahallesi Fuatpaşa Sokak No: 15A/8 Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29449538554)

- Arif Mahmut Demirel, Beykoz Acarkent Sitesi 59.Sokak 10. Cadde B- 699 Beykoz- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29443538772)

- Ömer Fahrettin Demirel, Şenlikköy Mahallesi Beyazkent Sitesi C Blok No: 5/7 Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29452538480)

- Hikmet Demirel, Basınköy Mahallesi Gülistan Sokak No: 12/B Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29461538198)

- Mücteba Fatih Demirel, Basınköy Mahallesi Gülistan Sokak No: 12/B Florya- Bakırköy- İstanbul adresinde mukim T.C. Uyruklu (T.C. Kimlik No: 29434539054)

Şirketin Ünvanı
Madde 2-

Şirketin Ünvanı Merve Optik Sanayi ve Ticaret Anonim Şirketi'dir.

Amaç Ve Konu
Madde 3-

Şirketin amaç ve konusu başlıca şunlardır.

A- Optik Ürünler Ve Hediyeelik Eşya

1- Her nevi optik emtia,alet cihaz ve makineleri, kontrol ölçü cihazları, gözlük, gözlük çerçeveleri, gözlük camı, güneş gözlükleri, kayak gözlükleri, optik camlar, güneş camları ve diğer gözlük aksamları, muhafaza gözlükleri, sanayi gözlükleri, gözlükçülük malzemeleri, vitrin süs ve dekorları, gözlük

aksesuarları ile sap, vida, menteşe, kılıf ve silme bezleri, teşhir çantaları, lens ve lens yardımcı malzemelerinin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını, tamir bakım ve montaj işlerini yapabilir veya fason olarak başkalarına yaptırabilir.

2- Şirket her nevi dereceli, dinlendirici ve güneş gözlüklerinin, optik, kolormatik, renkli lens, kontak lens, lens solüsyonu, antirefleli gözlük cam ve çerçeveleri ile bunlara ait her türlü malzemelerin imalatını, alımı, satımı, ithalatını, ihracatını toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

3- Her nevi, görme kusurunun giderilmesine mahsus olan ve olmayan gözlük camları ve kontak lenslerin, göz içi lenslerinin, optik çerçevelerin, güneş gözlüklerinin ve bunlara ait malzemelerin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, pazarlamasını ve dağıtımını yapmak.

4- Her nevi optik malzemelerinin, her marka gözlük ve makinelerin, bunların hammadde yarı mamul ve mamul malzemelerinin bunların aksesuarlarının imalatı, alımı, satımı, ithalatı, ihracatı toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

5- Şirket konusu ile ilgili her nevi organik, inorganik maddelerin imalatı, ithali, ihracatını yapmak. Yurt içinde bunların toptan veya perakende satışını yapmak.

6- Konuları ile ilgili olan, her türlü malzemenin, ekipmanın ve ürünlerin ithalatını, ihracatını, alım, satımını yapmak.

7- Şirket konusu ile ilgili olarak resmi veya özel kurum ve kuruluşların açmış olduğu ihalelere katılabilir. Konusu ile ilgili taahhütlerde bulunabilir.

8- Şirket, her türlü saat, mücevherat ve aksesuarlarının ithali, ihracı, toptan veya perakende ticareti ve mümessilliğini yapmak,

9- Saat ile ilgili her türlü hammadde, yardımcı madde, makine, aksesuar yedek parça ithalatı, ihracatı, ticareti ve mümessilliğini yapmak,

10- Şirket faaliyetleri ile ilgili her türlü işletmecilik, komisyonculuk, mümessillik ve acentelik faaliyetlerinde bulunmak,

11- Her türlü pil, saat kordonları, saat kordonları ve diğer malzemelerin alımı, satımı, ithalatı ve ihracatını yapmak,

12- Konusu ile ilgili olarak Müşavirlik ve organizasyon hizmetlerinde bulunmak.

13- Her türlü bay, bayan, çocuk kol saatleri bunların aksesuarları, malzemeleri, alet ve edevatlarının, alımını, satımını ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak. Bayilik almak, bayilik vermek.

14- Her türlü saatleri, duvar saatleri, şehir saat sistemleri, çalar saatler, cami saatleri ve her türlü Saat düzenekleri kordonları, askılıkları, pilleri, camları ve aksesuarlarının, malzemelerinin alımını, satımını, ithalatını

(Devamı 500 . Sayfada)

(Başarılı 499. Sayfada)
ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak, bununla ilgili bayilikler almak ve bayilikler vermek.

15- Her türlü saatlerin tamirini, bakım onarımını ve montajını yapmak, bununla ilgili gerekli malzemelerin alımını, satımını, ithalatını, ihracatını yapmak.

B- İnşaat

1- Türkiye sınırları içinde veya yabancı ülkelerde, resmi ve özel kurum ve kuruluşları tarafından kapalı zarf, açık arttırma, eksiltme, teklif alma ve pazarlık usulü ile ihaleye çıkarılacak her türlü küçük ve büyük yapıların, her türlü inşaat, mekanik, elektrik ve tesisat işlerini bunlarla ilgili bütün ekipman ve malzemelerin imalatını alımı, satımı ve anahtar teslimi taahhüt etmek. Her türlü banka, Banka Genel Müdürlüğü, Toplu konut ve siteler, okul, hastane, otel, motel, pansiyon, fabrikalar, hava meydanları, limanlar, sulama kanalları, köprü, yol, yol çizgi işleri, yol kenarlarındaki bariyerlerin düzenlemesi işlerini, sınırlı yapı ve fabrika inşaat işlerini taahhüt etmek yapmak ve yaptırmak veya emaneten yapımı olarak bu işleri üstlenmek.

2- Kat karşılığı arsa almak, parsellemek sureti ile aracılık yapmamak kaydıyla satmak, takas etmek ve kat karşılığı inşaat yapmak.

3- Yurt içinde ve yurt dışında turistik tesisler, toplu konutlar, mesken inşa etmek.

4- Konusu ile ilgili Her nev'i resmi ve özel ihalelere katılmak, bu ihaleleri almak, ihale konularını yapmak, yaptırmak devretmek, her türlü resmi ve özel inşaat taahhüt, tesisat işleri yapmak ve yaptırmak.

5- Şirket ihtiyacı için inşaat makineleri alet ve edevatlarını alabilir, kiralayabilir, satabilir, kiraya verebilir, ithalatı, ihracatı ve pazarlamasını yapabilir.

6- Konusu ile ilgili olarak taahhüt işleri yapabilir, yol Bina, fabrikaların inşaatlarının bakım, tamir ve onarımını yapmak.

7- Kendisinin yapmış olduğu inşaatların Kalorifer ve doğalgaz tesisatı işlerini yapmak.

8- Konusu ile ilgili olarak projelerin çizimi ve müşavirlik ve danışmanlık hizmetlerinde bulunabilir.

9- Her Türlü inşaat malzemeleri, inşaatlarda kullanılan her türlü demir, çimento, kum, çakıl, tuğla, briket, hazır beton, prefabrik yapı elemanları, ahşap yapı malzemelerinin alımı, satımı, ithalatı, ihracatı ve ticaretini yapmak.

10- Her türlü yapı projeleri çizmek ve çizdirmek, etüdler hazırlamak, ilgili kamu kuruluşlarından tescillerini yaptırmak, ruhsatlarını ve iskanlarını almak ve aldirmek.

11- İmar, imar ıslah, imar aplikasyon planları hazırlamak arazi üzerine ifraz ve tevhid işlemlerini hazırlamak, yapmak veya üçüncü şahıslara yaptırmak.

12- Konuları ile ilgili her türlü harfiyat işleri yapmak, her türlü inşaatların malozlarını, malzemelerini taşımak başkalarına taşıtmak işlerini yapabilir.

13- Şirket her türlü mimari plan proje çizimini ve taahhüdünü yapmak

14- Çizmiş olduğu projeler üzerinde tadilat yapmak ve uygulamak.

15- Üç boyutlu modelleme çizimi yapmak, peyzaj projesi ve uygulaması yapmak,

16- Yurt içinden ve yurt dışından almış olduğu plan projelerin çizimi ve uygulamasını yapmak veya başka bir firma ile birlikte yürütmek.

17- Etüt ve işletme haritaları, kentsel ve kırsal arazi ve arsa düzenlemeleri, parselasyon ve planları, hâlihazır harita, imar planı ve mevzii imar planı ve çizimi, aplikasyon, ifraz, tevhid, yola terk, tescile konu olan harita ve planları yapmak.

18- Her türlü arazi ölçümü, yer kontrol noktalarının tesisi, deformasyon ölçmeleri, plankote, hidrografik ölçmeler, yeraltı ölçmeleri, konum belirlemeleri, karayolu ve enerji nakil hatları proje ve aplikasyon işlerini, kanalizasyon projeleri, köprü ve baraj proje ve aplikasyonu yürütmek.

19- Her türlü projelerin arazine uygulama işlerini yapmak, tapu ve kadastro teknik hizmetleri ve işlemlerini yürütmek.

20- Yurt içinde ve yurt dışında her türlü otel, motel, okul, banka, hastane, otopark, benzinlik, iş merkezi, plaza, konut ve diğer her türlü resmi ve özel yapı tasarımlarının yapılması, projelendirilmesi, onaylatılması ve bu proje ve planların kontrolü ve kontrollüğünün yapılması ve yapılması,

21- Yurt içi ve yurt dışı her türlü mühendislik ve mimarlık hizmetlerini vermek ve almak, menfi mesuliyeti üstlenmek hak ediş düzenlemek, geçici ve kesin kabulleri yapmak ve yaptırmak, yurt içi ve yurt dışında mühendislik ve mimarlık çalışmalarını yapmak ve yaptırmak üzere ofis ve bürolar açmak.

22- Ket türlü Emlak, gayrimenkuller, konutlar, siteler, daireler, marketler, depolar, iş hanları, iş merkezleri, plazalar, villalar ve tatil köyleri, devre mülkler apart otel, motel camping ve turistik tesisler, organize sanayi bölgeleri, arsalar, araziler ve her türlü taşınmazın alımını, satımını pazarlamasını ve ticaretini yapabilir, devir alabilir, devredebilir kiralayabilir ve kiraya verebilir.

23- Şirket amaç ve konusuna uygun olarak hizmetlerini üstlenmiş olduğu binaların, sitelerin, dairelerin ve buna benzer gayrimenkullerin uygun şekilde kullanılmasının sağlanması, gayrimenkullerin bakım ve onarımı için gerekli çalışmaların gerçekleştirilmesi, gerekli hizmetlerin oluşturulması, gayrimenkul içerisindeki ortak alanların onarımı, bakımı, faaliyeti ve kullanımına ilişkin işlemler, teknik ve spesifikasyonlar çerçevesinde dahili düzenleme dekorasyon onarım ve değişikliklere uyması gereken zorunlu ilkeleri belirten dahili düzenlemelerin hazırlanması gayrimenkullere ait birimlerin kiralanması, her türlü yönetim

hizmetlerinin sağlanması ve gayrimenkul sahipleri tarafından kendisine yüklenen görevlerin yerine getirilmesi işlerini yapmak.

24- Dekorasyon malzemeleri, dekorasyon malzemelerinin imalatında kullanılan her türlü mamullerin alımı satımı, ithalatı ve ihracatını yapabilir. Dekorasyon işlerini yapabilir. Çevre ve mekan düzenleme ve tanzim işlerini yapar. Ev ve işyerlerinin resmi ve özel büroların dekorasyon işlerini yapabilir.

25- Dekorasyon ve mobilya malzemeleri, ahşap ve metalden büro ve ev mobilyaları, her türlü mutfak dolapları ve mutfak dekorasyon işleri yatak odaları, oturma odaları, koltuk, masa ve sandalye, yatak ve her türlü mobilya imalatı, alımı, satımı, pazarlaması, ithalatı ve ihracatını yapmak. Mobilya ve dekorasyon malzemelerini satışı ve teşhiri için gerekli olan satış mağazaları, teşhir salonları kiralayabilir, kiraya verebilir alabilir ve satabilir.

26- Ev, Büro ve işyerlerinde kullanılan her türlü mobilya ve dekorasyon malzemelerinin, Hammadde ve yardımcı maddelerinin, mobilya aksesuarlarının imalatını, alımını, satımını, ithalatını ve ihracatını yapmak.

27- Her türlü pvc kaplama, pimapan pencere sistemlerinin montajını, alımını, satımını, ithalatını, ihracatını toptan ve perakende ticaretini yapmak.

28- Her türlü sauna ve modem banyo araç ve gereçlerinin her türlü aksesuarlarının alımını, satımını, ithalatı ve ihracatını toptan ve perakende ticaretini yapmak.

C- Otomotiv

1- Motorlu ve motorsuz elektrikli,elektronik her çeşit kara vasıtaları olan otomobil, kamyon, kamyonet, otobüs, minibüs ve benzeri araçların her türlü tamir bakımını ve tamir ekipmanlarının alımını, satımını, ithalatını, ihracatını toptan ve perakende ticaretini yapmak, yedek parça, modernizasyonu, rutin teknik kontrollerini yapmak. Bu işlere ilgili her türlü servis ağı kurmak, işletmek.

2- Otomotiv sanayi ile ilgili yıkama yağlama servisi kurmak, işletmek, kullanılacak malzemelerin alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

3- Her türlü otopark hizmeti vermek.

4- Her türlü nakil vasıtasına ait yedek parçanın alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

5- Otomotiv sektörü ile ilgili her türlü mekanik, elektrikli, elektronik motor ve bütünleyici aksesuarlarını her türlü yedek parçalarının alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

6- Her türlü oto direksiyonu alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

7- Motorlu kara nakil vasıtalarının akülerinin alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

8- Her türlü oto yedek parçalarının yurt dışındaki ve yurt içindeki imalatçı firmaları ile anlaşmalar yaparak, bu firmaların mümessillik, distribütörlük ve acenteliklerini yapmak,

9- Her türlü motorlu taşıt ticareti, ithalat ve ihracatı yapmak.

10- Şirket otomotiv sanayi ile ilgili olarak otobüs, minibüs, midibüs, kamyon, kamyonet, traktör, taksi, motorsiklet, bisiklet, trayler ve bunlara benzer motorlu ve motorsuz kara, hava, deniz taşıtlarının, grayder, silindir, v.b. ağır iş sanayi makinelerinin, yükleme, boşaltma iş makinelerinin yurt içinde ve yurt dışında ticaretini yapmak, acente, bayilik ve mümessillik almak, ithalat, ihracat, toptan ve perakende ticaretini yapmak.

11- Motorlu kara nakil vasıtalarının iç ve dış lastikleri, jantları alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaretini, dağıtım ve pazarlamasını yapmak.

12- Yurt içinde ve yurt dışında kurulu bulunan kara, hava ve deniz vasıtalarına ait iç ve dış lastik fabrikalarının bayiliklerini, mümessillikleri almak, vermek ve servislerini açmak, işletmek.

13- Oto galerileri açmak, işletmek veya işletirmek.

D- Tekstil

1- Her türlü tekstil ve konfeksiyon ürünü, kot pantolon, blucin, eşofman, gömlek, ceket, bebe ve çocuk giyimi, her türlü hakiki ve sun'i deriden mamul giyim eşyası, battaniye, pike, çarşaf, nevresim, havlu ve çeyiz eşyası, her nev'i, tekstil ürünleri imalatı ve her türlü konfeksiyon ürünlerinin imalatı, pazarlaması, toptan ve perakende dahili ticareti, ithalatı ve ihracatını yapmak. Başkalarına fason olarak yapmak, yaptırmak.

2- Her Türlü giyim eşyaları aksesuarları ile her türlü Pamuklu, yünlü, keten, ipek, sun'i deri, ve sentetik elyaftan mamul her türlü kumaşlardan her türlü iç ve dış giyim her türlü tekstil ürünlerinin ve dokuma ve baskı etiket ile tekstil ile konfeksiyon sanayinde kullanılan tüm aksesuar çeşitlerinin imalatını, alımını, satımını, ihracı, ithali, toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

3- Tekstil konuları ile ilgili yurt içi ve yurt dışında firmalara danışmanlık hizmetleri verebilir.

4- Her türlü pamuk, yün ve diğer ipliklerden mamul örme ve dokuma kumaşların imalini, ithalatını, ihracatını, toptan ve perakende dahili ticaretini ve pazarlamasını yapmak.

5- Her türlü kumaş ve tülden, dantelden imal edilen gelinlik, gelin şapkası, gelin çiçeği, taç, eldiven, ve her türlü gelinlik malzemeleri ile gelinlik iç ve dış giyim eşyalarının ihracatı, ithalatı ve pazarlamasını yapmak.

6- Konusu ile ilgili her türlü mamullerin yünlü, ipeklili, pamuklu, sun'i ve sentetik elyaftan ve

deriden mamul her türlü kumaş üzerine renk, şekil, boya, baskı ve empirme işleri imalatı, imal ettirilmesi işlerini yapmak.

7- Her türlü Fermuar, çit, çit, astar, lastik, vizovat, elyaf, tela, etiket, aksesuar, iplik ve her türlü konfeksiyon ürünleri ve yan sanayi ürünlerinin imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

8- Her nevi metal sentetik ve tabii maddelerden yapılabilen düğmeler, agraf, toka, askı, fermuar, cırt, tela, lastik kaytan, fitil, etiket, bijuteri, taklit mücevherat ve aksesuarları ile her türlü konfeksiyon sanayi ve yan sanayi ürünlerinin imalatını, alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

9- Şirket konusu ile ilgili madde, hammadde, yardımcı madde ara madde, yarı mamul maddelerin alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

10- Tekstil, Konfeksiyon ve boya sanayinde kullanılan her nevi kimyevi boyalar, yardımcı madde ve malzemeleri ile tüm aksesuarlarının imalatını, alımını, satımını, ithalatını, ihracatını, toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

11- Her türlü elektrikli, elektronik ve manuel tekstil ve konfeksiyon makinelerinin, bunların yedek parça ve tüm aksesuarlarının imalatını, alımını, satımını, ithalatını, ihracatını toptan ve perakende dahili ticaret ve pazarlamasını yapmak.

12- Şirket ihtiyacı için gerekli olan makine ve teçhizat ile alet ve edevatları satın alabilir, satabilir, kiralayabilir veya kiraya verebilir, gerekli olan atölye ve imalathane ile fabrikaları, kurabilir, işletebilir, kiralayabilir veya kiraya verebilir. Şirket ayrıca Üretimini veya ticaretini yaptığı mamullerin ambalaj ve kalite kontrolünü yapabilir.

13- Her türlü metraj baskı ve parça baskı, desen tasarım, grafik, çizim, şablon çekimi ve her türlü baskı çeşidi (Pigment, reaktif plastik, serigrafik, varak kabartma, plastik transfer ve flog baskı) işlerini yapmak.

14- Konusu ile ilgili her türlü konfeksiyon ve tekstil malzemeleri, fermuar, desinatör malzemeleri, gerekli boya ve şekil veren malzemelerin, emprime baskı alet ve edevatları ile yedek parça ve aksesuarlarının ithali, ihracı ve pazarlamasını yapmak.

15- Konuları ile ilgili olarak bakım, onarım, eğitim, müşavirlik ve servis hizmetlerinde bulunabilir.

16- Pamuk, yün, ipek, keten, kıl ve sun'i elyaftan ve bunların karışımından ve diğer maddelerden Türk el ve makine haklarının, seccadelerinin, kilimlerinin, imali, ihracı, ithali, dahili ticaret ve pazarlamasını yapmak.

17- Konusu ile ilgili olarak boya ve apre işlerini yapmak veya başkalarına yaptırmak.

18- Ham, Yarı Mamul ve mamul deri, Deriden mamul konfeksiyon mamulleri deri ürünleri, deriden mamul ayakkabı, çanta, mont,

(Baştarafı 500. Sayfada)
kemer, kravat, deriden mamul hediyeelik eşya, saraciye malzemeleri ile ayakkabı sanayinde kullanılan mamullerin ihracı, ithali, toptan ve perakende ticaretini yapmak.

E- Şirket Konusu ile ilgili Reeksport ve transit ticaret yapabilir. Konusu ile ilgili olarak resmi ve özel kurum ve kuruluşların açmış olduğu ihalelere iştirak edebilir, taahhütlerde bulunabilir.

F- Konuları ile ilgili depo, soğuk hava depoları, Antrepo, kamyonlar için garaj ve park yerleri yapılması ya da bunlardan hazır ve mevcut olanların kiralanması, kiraya verilmesi veya işletilmesi

G- Şirket için lüzum gösteren taşıtları (Gemiler dahil) alabilir, devir edebilir, bunlar üzerinde aynı ve şahsi tasarruflarda bulunabilir.

H- Şirket Yurt içinde ve Yurt Dışında mümessillik, distribütörlük alabilir veya verebilir. Ardiye, özel antrepo, özel depo işletmeciliği ve taahhüt işleri ile uğraşabilir. İhalelere iştirak edebilir. Konusu ile ilgili olarak fuarlara ve organizasyonlara iştirak edebilir.

İ- Şirket Konuları ile ilgili yerli ve yabancı gerçek ve tüzel kişilerle işbirliği yaparak yeni şirketler kurabilir, kurulmuş şirketlere iştirak edebilir. Yurt içinde veya dışında temsilcilikler açabilir.

J- Şirket konularına giren malların depolanması, nakli, tevzii için gerekli her türlü tesisat, teçhizat, vasıta, arazi ve bina satın alabilir, satabilir veya başkalarından kiralayabilir, kiraya verebilir. Şirket mallarının teşhiri için teşhir ve satış yerleri açabilir.

K- Şirket Konuları ile ilgili ve bu faaliyetleri için faydalı knowhow, izin, ruhsatname, ihtira beratları, lisans, imtiyaz, marka ve emsali gibi hakları istihsal ve iktisap edebilir veya üçüncü şahıslara kısmen ya da tamamen kiralayabilir, devir edebilir, başkalarına ait olanların devrini alabilir.

L- Şirket ihtiyacı için gerekli iç ve dış kredileri dahili ve harici finansman kurumları yerli ve yabancı işletmelerden temin edebilir. Bunlar için gerekli her türlü tasarruflarda bulunabilir.

M- Şirket konusu ile ilgili olarak her türlü gayrimenkul iktisap edebilir, kiralayabilir veya kiraya verebilir, alabilir, satabilir, sahibi bulunduğu menkul ve gayrimenkulleri üçüncü şahıslar lehine ipotek verebilir, tesis ve tescil edebilir, kefil olabilir veya bunlar üzerinde her türlü hakları iktisap edebilir.

Şirket maliki bulunduğu menkul ve gayrimenkulleri gerek kendi borçları için gerekse üçüncü gerçek ve tüzel kişilerin borçları için ipotek edebilir, kefalet olarak verebilir, alabilir, teminat olarak gösterebilir ve alacaklarına karşılık da menkul ve gayrimenkulleri ipotek alabilir, verebilir ve bu ipotekleri farkedebilir.

Şirket yukarıda sayılanlar dışında konusu ile ilgili başka işler de yapmak istediği takdirde, Genel Kurul tarafından karar alınıp tescil ve ilan edildikten sonra yapabilir.

Şirketin Merkezi Madde 4-

Şirketin Merkezi İstanbul İli Fatih İlçesi'ndedir. Adresi Şeyh Mehmet Geylani Mahallesi Mimar Kemalettin Caddesi No: 22-24 Kat: 4/62 Eminönü-Fatih-İstanbul'dur. Adres değişikliğinde yeni adres, ticaret siciline tescil ve Türkiye Ticaret Sicil Gazetesinde ilan ettirilir. Tescil ve ilan edilmiş adrese yapılan tebligat şirkete yapılmış sayılır. Tescil ve ilan edilmiş adresinden ayrılmış olmasına rağmen yeni adresini süresi içinde tescil ettirmemiş şirket için bu durum fesih sebebi sayılır. Şirket yurt içinde ve yurt dışında şubeler açabilir.

Süre Madde 5-

Şirketin süresi tescil ve ilan edildiği tarihten başlamak üzere Süresizdir.

Sermaye Madde 6-

Şirketin sermayesi beheri 1.(Bir) TL kıymetinde nama yazılı 15.700.00. (Onbeşmilyon yediyüzbin) adet hisseye ayrılmış olup 15.700.000.- (Onbeşmilyonyediyüzbin) TL'dir. Bu Sermayenin

5.535.250. Adet hisseye karşılık 5.535.250.- TL'si Ali Demirel

3.240.625. Adet hisseye karşılık 3.240.625.- TL'si Arif Mahmut Demirel

2.757.575. Adet hisseye karşılık 2.757.575.- TL'si Ömer Fahrettin Demirel

2.757.575. Adet hisseye karşılık 2.757.575.- TL'si Mücteba Fatih Demirel

1.408.975. Adet hisseye karşılık 1.408.975.- TL'si Hikmet Demirel

Tarafından muvazaadan ari olarak tamamen taahhüt edilmiştir.

15.700.000.- TL olan şirket sermayesinin Tamamı Türk Ticaret Kanununun 152 nci maddesine göre nev'i değiştiren İstanbul Ticaret Sicili Memurluğu'nun 238262 Sicil numarasında kayıtlı Merve Optik Sanayi Ve Ticaret Limited Şirketi Ünvanlı Şirketin Ödenmiş sermayesinden karşılanmıştır. Nev'i değiştiren Merve Optik Sanayi Ve Ticaret Limited Şirketi'nin özvarlığı, Bakırköy 3. Asliye Ticaret Mahkemesi'nin 18.06.2010 Tarih ve Esas No: 2010/253 D.İş. Karar No: 2010/253 sayılı Değişik İş Kararı ile atanan bilirkişilerce 25.06.2010 Tarih ve Dosya No: 2010/253 D.İş Sayılı rapor ile tespit edilmiştir.

Limited Şirket iş bu anonim şirkete bütün aktif ve pasifleri ile birlikte devrolunmuştur.

Hisse Senetleri Nama Yazılıdır.Yönetim Kurulu hisse senetlerini bir veya daha fazla hisseyi ihtiva eden kupürler halinde bastırmaya ve dağıtmaya yetkilidir.

Yönetim Kurulu Hisse senetleri bastırılıp dağıtılincaya kadar geçerli olmak üzere nama yazılı muvakkat pay ilmühaberi çıkarabilir ve dağıtabilir.

Hisselerin Devri Madde 7-

Şirket hissedarlarından birisi şirketteki hisselerini devir etmek istediği takdirde öncelikle mevcut ortaklara hisse devir miktarı ve devir bedelini belirten bir yazı ile bildirecektir. Mevcut ortaklar 15 gün içerisinde bu devri kabul ettiklerine dair bir bildirimde bulunmazlar ise hisselerin devir edecek olan ortak mevcut ortaklara teklif ettiği bedelden daha aşağı olmamak üzere hisselerini üçüncü şahıslara devir edebilecektir. Devir işleminin geçerli olabilmesi için yönetim kurulunca karar alınıp pay defterine işlenmesi şarttır. Yönetim Kurulu hiçbir sebep göstermeksizin yapılan devir işlemi pay defterine işlemekten imtina edebilir.

Yönetim Kurulu Ve Süresi: Madde 8-

Şirketin işleri ve idaresi genel kurul tarafından Türk Ticaret Kanunu hükümleri dairesinde hissedarlar arasından seçilecek en az üç üyeden oluşan bir yönetim kurulu tarafından yürütülür. Yönetim kurulu üyeleri en çok üç yıl için seçilirler. Seçim süresi sona eren yönetim kurulu üyeleri yeniden seçilebilirler. Genel kurul lüzum görürse yönetim kurulu üyelerini her zaman değiştirebilir.

Şirketin Temsil Ve İlamı Madde 9-

Şirketin yönetimi ve dışarıya karşı temsili yönetim kuruluna aittir. Şirket tarafından verilecek bütün belgelerin ve yapılacak sözleşmelerin geçerli olabilmesi için bunların şirketin ünvanı veya kaşesi altına konmuş şirketi temsil ve ilzama yetkili kişi veya kişilerin imzasını taşıması gereklidir.

Murakıp ve Görevleri Madde 10-

Genel kurul, gerek hissedarlar arasından, gerekse dışarıdan en çok üç yıl için bir veya birden fazla murakıp seçer. Bunların sayısı beşi geçmez. Murakıplar Türk Ticaret Kanununun 353 ve 357 nci maddelerinde sayılan görevleri yapmakla yükümlüdür.

Genel Kurul Madde 11-

a) Davet Şekli: Genel kurullar olağan veya olağanüstü olarak toplanır. Bu toplantılara davet de Türk Ticaret Kanununun 355, 365, 366 ve 368 nci madde hükümleri uygulanır.

b) Toplantı Vakti: Olağan genel kurul, şirketin hesap devresinin sonundan itibaren 3 ay içerisinde ve senede en az bir defa, olağanüstü genel kurullar ise şirket işlerinin icap ettirdiği hallerde ve zamanlarda toplanır.

c) Rey Verme ve Vekil Tayini: Olağan ve olağanüstü genel kurul toplantılarında hazır bulunan hissedarların veya vekillerinin bir hisse için bir oyu vardır. Genel kurul toplantılarında hissedarlar kendilerini diğer hissedarlar veya hariçten tayin edecekleri vekil vasıtası ile temsil ettirebilirler.

Şirkette hissesi olan vekiller kendi oylarından başka temsil ettikleri hissedarların da sahip olduğu oyu kullanmaya yetkilidirler.

d) Müzakerelerin Yapılması ve Karar Nisabı: Şirket genel kurul toplantılarında Türk Ticaret Kanununun 369 ncu maddesinde yazılı hususlar müzakere edilerek gerekli kararlar alınır. Genel kurul toplantıları ve toplantılardaki karar nisabı Türk Ticaret Kanununda daha yüksek bir oran öngörülmemişse Şirket Sermayesinin % 63'ünü temsil eden hissedarların katılımı ile toplanır ve kararlar şirket sermayesinin kanunda daha yüksek bir oran öngörülmemişse şirket sermayesinin %63'ünü temsil eden hissedarların olumlu oyu ile alınır.

e) Toplantı Yeri: Genel kurullar şirketin yönetim merkezi binasında veya yönetim merkezinin bulunduğu şehrin elverişli bir yerinde ya da İstanbul' da toplanır.

Toplantıda Bulunması Madde 12-

Gerek olağan ve gerekse olağanüstü genel kurul toplantılarında Sanayi ve Ticaret Bakanlığı Komiserinin bulunması ve toplantı zabıtlarını ilgililerle birlikte imza etmesi şarttır. Komiserin gıyabında yapılacak genel kurul toplantılarında alınacak kararlar ve komiserin imzasını taşımayan genel kurul toplantı zabıtları geçerli değildir.

İlan Madde 13-

Şirkete ait ilanlar Türk Ticaret Kanununun 37.nci maddesinin 4 ncü fıkrası hükümleri saklı kalmak şartıyla şirket merkezinin bulunduğu yerde çıkan en az bir gazete ile asgari 15 gün evvel yapılır. Mahallinde gazete yayınlanmadığı takdirde ilan en yakın yerdeki gazete ile yapılır. Ancak genel kurulun toplantıya çağırılmasına ait ilanlar Türk Ticaret Kanununun 368.nci maddesi hükümleri gereğince ilan ve toplantı günleri hariç olmak üzere en az iki hafta evvel yapılması zorunludur. Sermayenin azaltılmasına veya tasfiyeye ait ilanlar için kanununun 397 ve 438 nci maddesi hükümleri uygulanır.

Hesap Dönemi Madde 14-

Şirketin hesap yılı Ocak ayının birinci günü başlar ve aralık ayının sonuncu günü biter. Yalnız ilk hesap yılı şirketin kesin olarak kurulduğu tarihten başlar ve o senenin aralık ayının sonuncu günü biter.

Kar'ın Tespiti Ve Dağıtım Madde 15-

Şirketin genel masrafları ile muhtelif amortisman bedelleri gibi şirkette ödenmesi veya ayrılması zorunlu olan miktar hesap yılı sonunda tespit edilen gelirlerden indirildikten sonra geriye kalan miktar safi karı teşkil eder Bu suretle meydana gelecek kardan öncelikle % 5 kanuni ihtiyat akçesi ayrılır. Kalandan itfa edilmemiş

hisse senetlerinin bedelleri ödenen kısmına % 5 oranında birinci temettü verilmesine yetecek miktar çıkarılır. Geriye kalan kısmı genel kurulun tespit edeceği şekil ve surette dağıtılır.

Kurucular ve yönetim kurulu üyeleri ile memur ve hizmetlilere ayrılacak miktarlar ikinci temettü hissesi olarak hissedarlara dağıtılması kararlaştırılan ve kara iştirak eden kuruluşlara dağıtılan paradan Türk Ticaret Kanununun 466 nci maddesi 2 nci fıkrasının 3 numaralı bendi gereğince % 10 kesilerek adi ihtiyat akçesine eklenir.

İhtiyat Akçesi Madde 16-

Şirket tarafından ayrılan ihtiyat akçeleri hakkında Türk Ticaret Kanununun 466 ve 467 nci madde hükümleri uygulanır.

Kanuni Hükümler Madde 17-

Bu ana sözleşmede bulunmayan hususlar hakkında Türk Ticaret Kanunu hükümleri uygulanır.

Geçici Madde 1- Yönetim Kurulu üyeliklerine 3 yıl süre ile vazife görmek üzere Hikmet Demirel, Ali Demirel, Arif Mahmut Demirel Ve Mücteba Fatih Demirel seçilmişlerdir.

Yönetim Kurulu Başkanlığına Ali Demirel

Yönetim Kurulu Başkan Vekillğine Hikmet Demirel

Yönetim Kurulu Üyeliklerine de Arif Mahmut Demirel ve Mücteba Fatih Demirel Seçilmişlerdir.

Şirketi Temsil ve İlam Aşağıdaki Şekilde olacaktır.

1- Gayrimenkul Alım ve Satımı ile Şirkete ait markaların devir işlemlerinde Yönetim Kurulu Başkanı Ali Demirel ve Yönetim Kurulu Başkan Vekili Hikmet Demirel Şirketin Ticaret ünvanı veya kaşesi altına atacakları Müşterek İmzaları ile Şirketi temsil ve ilzama yetkili kılınmışlardır.

2- Bankalar ve Finans kurumlarıyla yapılacak kredi sözleşmelerinde Yönetim Kurulu Başkanı Ali Demirel ve Yönetim Kurulu Başkan Vekili Hikmet Demirel Şirketin Ticaret ünvanı veya kaşesi altına atacakları münferit imzaları ile şirketi temsil ve ilzama yetkili kılınmışlardır.

3- Yukarıda (1. Ve 2. Maddede) yazılı hususların dışındaki iş ve işlemlerde Yönetim Kurulu Başkanı Ali Demirel, Yönetim Kurulu Başkan Vekili Hikmet Demirel ve Yönetim Kurulu Üyeleri Arif Mahmut Demirel Şirketin Ticaret Ünvanı veya kaşesi altına atacakları Münferit İmzaları ile şirketi temsil ve ilzama yetkili kılınmışlardır.

Geçici Madde 2- İlk olağan genel kurul toplantısına kadar bir yıl süre ile vazife görmek üzere Kısıklı Caddesi Masaldan İş Merkezi No: 46 A Blok Kat 2 Üsküdar- İstanbul adresinde mukim T.C. uyruklu Hüseyin Çetin

Şirket Murakıby olarak seçilmiştir.

(Devamı 502. Sayfada)

(Baştarafı 501. Sayfada)
Kurucu Ortaklar
Ali Demirel İmza
Arif Mahmut Demirel İmza
Ömer Fahrettin Demirel İmza
Hikmet Demirel İmza
Mücteba Fatih Demirel İmza

(20/A)(17/610811)

**İstanbul Ticaret Sicili
Memurluğundan**

Sicil Numarası: 750749

**Ticaret Ünvanı
ES MALİ YATIRIM VE
DANIŞMANLIK ANONİM
ŞİRKETİ**

Ticari Merkezi: İstanbul
Bahçelievler Yenibosna Basın
Ekspres Yolu Kavak Sok: Ser
Plaza A Blok No: 3 K.2- 3

Ticari Merkezi ile sicil numarası ve ünvanı yukarıda yazılı bulunan Şirketin 09.12.2010 tarihli olağanüstü genel kurul kararının ve ana sözleşme tadil metninin tescil ve ilanı. Kısmi Bölünme sözleşmesinin ve pay cetvelinin ilanları istenmiş olmakla, 6762 sayılı Türk Ticaret Kanunu hükümlerine uygun olarak ve memurluğumuzdaki vesikalara dayanılarak 31.12.2010 tarihinde tescil edildiği ilan olunur.

**Es Mali Yatırım Ve
Danışmanlık Anonim Şirketi'nin
09.12.2010 Tarihinde Yapılan
Olağanüstü Genel Kurul
Toplantı Tutanağı**

Es Mali Yatırım Ve Danışmanlık Anonim Şirketinin Olağanüstü Genel Kurul Toplantısı 09/12/2010 tarihinde Saat 13.00'da İstanbul, Yenibosna, Basın Ekspres Yolu Kavak Sokak No:3 Ser Plaza A blok Kat: 3 adresinde, İstanbul il Sanayi ve Ticaret Müdürlüğü'nün 08.12.2010 tarih ve 72698 Sayılı yazılılarıyla görevlendirilen Bakanlık Komiseri Hüseyin Sımrıcı'nın gözetiminde ve T.T.K. 370. maddesine istinaden toplanmıştır.

Haziran cetvelinin tetkikinden, şirketin toplam 50.000,00 TL'lik sermayesine tekabül eden 50.000 adet hisseden, 50.000- TL'lik sermayeye karşılık 50.000 adet hissenin asaleten olmak üzere toplantıda bütün ortakların temsil edildiğinin ve böylece gerek kanun ve gerekse ana sözleşmede öngörülen asgari toplantı nisabının mevcut olduğunun anlaşılması üzerine toplantı Yönetim Kurulu Başkanı Sayın Ethem Sancak Tarafından açılarak gündemin görüşülmesine geçilmiştir.

1. Buna göre; Divan Başkanlığına Ethem Sancak, Oy Toplayıcılığına Necat Sancak, Katipliğe Özer Sancak'ın seçilmelerine oybirliği ile karar verilmiştir.

2. Genel kurul toplantı tutanaklarının imzalanması için divan heyetine yetki verilmesine oybirliğiyle karar verilmiştir.

3. Gündemin üçüncü maddesi gereğince; 5520 Sayılı Kurumlar Vergisi Kanunu'nun 19. ve 20.

Maddelerinin ilgili hükümleri uyarınca, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümlerine uygun olarak,

26.10.2010 tarihli Olağanüstü Genel Kurul Toplantısında Yönetim Kurulumuza verilen yetki ile Sancak İnşaat Tur. Nak. Ve Dış. Tic. A.Ş.'nin 31.07.2010 tarihli bilanço ve mali kayıtları esas alınarak Bakırköy 3. Asliye Ticaret Mahkemesi'nin 2010/434 D. İş sayılı dosyası kapsamında istihsal olunan 22/11/2010 tarihli Bilirkişi Raporu ile de uygun bulunan kısmi bölünme işlemini konu eden ve Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi ile 18.11.2010 tarihinde imzalanan ve işbu tutanağa ekli Kısmi Bölünme Sözleşmesi'nin ve kısmi bölünme işlemlerinin onaylanmasına oy birliği ile karar verilmiştir.

Ayrıca, Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'nin kısmi bölünmesi sebebiyle bölünen şirketin aktifinde kayıtlı olan 26.452.477,00- TL tutarındaki Hedef- Alliance Holding A.Ş. hisselerinin şirketimize devri karşılığında şirketimiz tarafından ihraç edilecek hisselerin tamamının Kısmi Bölünme Sözleşmesi'nin "Kısmi Bölünmenin Uygulanma Şekli" başlıklı 5. maddesinde ayrıntılı olarak belirtildiği üzere; mevcut ortağımız Sn. Ethem Sancak'a verilmesine oybirliği ile karar verilmiştir.

4. Şirketimizde; Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'nin kısmi bölünmesi suretiyle devralınan iştirak hisselerine bağlı olarak sermaye maddesinin tadil edilmesi hususunun görüşülmesine geçilmiştir. Bakırköy 3. Asliye Ticaret Mahkemesi'nin 2010/434 D. İş sayılı dosyası kapsamında istihsal olunan 22/11/2010 tarihli Bilirkişi Raporunda da görülen, Sancak İnşaat Turizm Nakliyat ve Dış Ticaret Anonim Şirketi'ne ait toplam kayıtlı değeri 122.876.090,00- TL tutarında olan Hedef-Alliance Holding A.Ş. iştirak hisselerinin 26.452.477,00- TL'lik kısmının şirketimiz ES Mali Yatırım ve Danışmanlık AŞ.'ye devri mukabilinde şirket sermayemizin 26.452.477,00- TL tutarında artırılmasına ve aynı sermaye karşılığı ihraç edilen hisselerin ortağımız Sn. Ethem Sancak'a verilmesine oybirliği ile karar verilmiştir.

Buna göre, şirket ana sözleşmesinin "Sermaye" başlıklı 6. maddesinin aşağıdaki şekilde tadil edilmesine oybirliği ile karar verilmiştir.

**Yeni Şekil
Madde 6
Sermaye**

Şirket'in sermayesi 26.502.477- TL (Yirmialtımyüzbeşyüz ikibindörtüzyetmişyedi TL) olup; bu sermaye her biri 1.- TL nominal değerinde toplam 26.502.477 adet hisseye ayrılmıştır.

Şirketin önceki sermayesi olan 50.000 TL (ellibin) tamamen ödenmiştir. Bu defa kısmi bölünme suretiyle arttırılan 26.452.477 TL aynı sermaye Bakırköy Asliye 3. Ticaret Mahkemesinin 2010/434 D.İş sayılı dosya kapsamında istihsal olunan 22.11.2010 tarihli bilirkişi raporunda yer aldığı üzere bölünme sözleşmesi doğrultusunda, bölünen şirket Sancak İnşaat Turizm Nakliyat ve Dış Ticaret AŞ'den devralınan Hedef- Alliance Holding AŞ iştirak hisselerinin kayıtlı değerinden karşılanmıştır.

Hisse senetleri nama yazılıdır. Sermayenin dağılımı aşağıdaki gibidir.

Ortağın İsmi: Ethem Sancak
Hisse Adedi: 26.502.473
Nominal Değeri (TL): 26.502.473

Ortağın İsmi: Özer Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Fuat Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Necat Sancak
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Ortağın İsmi: Nurten Yıldırım
Hisse Adedi: 1
Nominal Değeri (TL): 1,00

Toplam
Hisse Adedi: 26.502.477
Nominal Değeri (TL): 26.502.477 TL

5. Gündemde yer alan hususlar görüşülmüş olup, toplantıda görüşülecek başka bir husus kalmadığından toplantıya Divan Başkanı huzurunda dilek ve temennilerle son verildi.

Komiser Divan Başkanı
Hüseyin Sımrıcı İmza
Oy Toplayıcı
Ethem Sancak İmza
Oy Toplayıcı
Necat Sancak İmza
Katip
Özer Sancak İmza

Şirketin Ünvanı: Es Mali Yatırım Ve Danışmanlık Anonim Şirketi

Şirketin Adresi: Yenibosna, Basın Ekspres Yolu Kavak Sokak No: 3 Ser Plaza A Blok Kat: 3

Ticaret Sicil Memurluğu: İstanbul Ticaret Sicil Memurluğu 750749 Sicil No

Önceki Sermayesi: 50.000 TL
Şimdiki Sermayesi: 26.502.477 TL

Genel Kurul Tarihi: 09.12.2010

Sermaye Artırımına İştirak Eden Pay Sahiplerinin:

Adı Soyadı Ünvanı: Ethem Sancak
Artırım Öncesi Pay Miktarı YTL: 49.996

Artırım Sonrası Pay Miktarı YTL: 26.502.473

Taahhüt Ettiği Pay Miktarı: 26.452.477
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Özer Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Fuat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Nurten Yıldırım
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Adı Soyadı Ünvanı: Necat Sancak
Artırım Öncesi Pay Miktarı YTL: 1

Artırım Sonrası Pay Miktarı YTL: 1
Taahhüt Ettiği Pay Miktarı:
Ödediği Miktar:
Ödemeyi Yaptığı Banka: İmza

Toplam
Artırım Öncesi Pay Miktarı YTL: 50.000 TL
Artırım Sonrası Pay Miktarı YTL: 26.502.477

Yukandaki bilgilerin doğruluğu tasdik olunur.

Es Mali Yatırım Ve Danışmanlık Anonim Şirketi Yönetim Kurulu

Ethem Sancak
Yönetim Kurulu Başkanı
Necat Sancak
Yönetim Kurulu Bşk. Vekili
Nurten Yıldırım İmza
Yönetim Kurulu Üyesi
Özer Sancak İmza
Yönetim Kurulu Üyesi

Kısmi Bölünme Sözleşmesi

**Madde 1-
Kısmi Bölünmeye Tabi Şirket
Ve Bölünmenin Ana Unsurları**

İstanbul Ticaret Sicil Memurluğu'nun "492418" Sicil Numarasında kayıtlı ve "Göztepe Mah. Orhangazi Cad. Karanfil Sok: No: 64 Kat: 4 D: 2 Bağcılar/İstanbul" adresinde yerleşik "Sancak İnşaat Turizm Nakliyat Ve Dış Ticaret Anonim Şirketi" (Bundan böyle kısaca "Bölünen Şirket" yada "Devreden" olarak anılacaktır); 5520 sayılı Kurumlar Vergisi Kanunu'nun 19. maddesinin 3. fıkrasının (b) bendi ile 20. maddesinin 3. fıkrası, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümleri gereğince, malvarlığında bulunan "Hedef-Alliance Holding A.Ş." iştirak hisselerinden 26.452.477 TL değerindeki hisseleri mukayyet değerleri üzerinden kısmi bölünme suretiyle İstanbul Siciline 750749

numarası ile kayıtlı ES Mali Yatırım ve Danışmanlık Anonim Şirketi'ne (Bundan böyle kısaca "Devralan şirket" olarak anılacak) aynı sermaye olarak devredilecektir. Aynı sermaye karşılığı ihraç edilecek olan hisseler ise, Bölünen Şirket ortaklarından Ethem Sancak'a verilecektir

**Madde 2-
Kısmi Bölünmenin Hukuksal
Dayanağı**

İşbu Kısmi Bölünme Sözleşmesi; Bakırköy (3) Asliye Ticaret Mahkemesi'nin 2010/434 D.İş sayılı dosyasında mevcut olan, Mahkeme'nin 22.10.2010 tarihli kararı ile atanmış bulunan üç kişilik bilirkişi heyeti tarafından Bölünen Şirket'in 31.07.2010 tarihli bilançoları esas alınmak sureti ile hazırlanan Bilirkişi Raporunda belirtilen hususlar dahilinde 18.12.2010 tarihinde Bölünen Şirket ve Devralan Şirket tarafından imzalanmıştır.

5520 sayılı Kurumlar Vergisi Kanunu'nun 19. maddesinin 3. fıkrasının (b) bendi ile 20. maddesinin 3. fıkrası, 16.09.2003 tarih ve 25231 sayılı Resmi Gazete'de yayınlanan "Anonim ve Limited Şirketlerin Kısmi Bölünme İşlemlerinin Usul ve Esaslarının Düzenlenmesi Hakkında Tebliğ" hükümleri, Türk Ticaret Kanunu'nun ilgili maddeleri ve Bölünen Şirket'in gerçekleştirmiş olduğu 29.09.2010 tarihli Olağanüstü Genel Kurul Toplantısında alınan ve 30.09.2010 tarihinde tescil edilen kararlar işbu Kısmi Bölünme Sözleşmesine hukuksal dayanak teşkil ederler.

**Madde 3-
Kısmi Bölünmeye Esas Alınan
Mali Tablo Ve Bilanço**

İşbu Kısmi Bölünme işlemi, Bölünen Şirket'e ait 31.07.2010 tarihli bilanço ve ekli mali tablolar üzerinden gerçekleştirilecektir. Kısmi bölünmeye konu iştirak hisselerinin değerlerinin belirlenmesinde kayıtlı değerler esas alınacaktır.

**Madde 4-
Kısmi Bölünmenin Konusu**

Bölünen Şirkete ait Olağanüstü Genel Kurul toplantısında alınan kararlarda; Bölünen Şirket'in aktifinde kayıtlı ve dökümü aşağıda yer alan "Hedef- Alliance Holding A.Ş." iştirak hisselerinin 26.452.477,00- TL tutarındaki kısmının 5. maddede ayrıntılı olarak belirtildiği şekilde, kısmi bölünme tarihi itibarıyla kısmi bölünme yoluyla aktiften çıkartılarak ES Mali Yatırım ve Danışmanlık Anonim Şirketi'ne aşağıda belirtilen miktarlar nispetinde kayıtlı değerleri ile devredilmesine karar verilmiştir.

Bu kapsamda Bölünen Şirket'in malvarlığında bulunan "Hedef- Alliance Holding A.Ş." iştirak hisselerinin toplamda tamamı 122.876.090,00- TL tutarındaki kısmından 96.423.613,00- TL tutarındaki kısmını kısmi bölünme planı ile kurulacak 3 yeni şirkete ve

(Devamı 503 . Sayfada)