

TTAB

In Re Registration No. 2458695  
Registered on June 5, 2001

75220737

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

Reply! Inc.	)	Cancellation No. 92044067
	)	
Petitioner,	)	
	)	
v.	)	
	)	
J.D. Power Clubs, Inc.	)	
	)	
Respondent.	)	
_____	)	

Commissioner of Trademarks  
Attn: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**RESPONSE TO TTAB INQUIRY**

This is written in response to a communication received from the Trademark Trial & Appeal Board in which a question was raised regarding the legal representation of the parties. Although the Petitioner is actually the owner of the subject registration, it seeks to cancel said registration so that its pending application, Serial No. 78/334267 may proceed instead to registration. Petitioner acquired the subject registration in 2001, as evidenced by the Trademark Assignment attached hereto as Exhibit A. Attached as Exhibit B and Exhibit C are documents showing the respective name changes of the parties in interest. Notwithstanding said assignment, the Petitioner has decided to cancel this registration.



Because Petitioner is actually the owner of the registration, this office has been made the legal correspondent. As such we do represent both parties. However, we do not believe that there is any ethical issue since there is no actual adverse party.

We believe the foregoing is fully responsive to the concern raised in the recent communication. As such, we request that the TTAB issue a default notice and cancel Registration No. 2458695.

Dated: October 6, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

By: 

Allyn Taylor

**DLA PIPER RUDNICK GRAY CARY**

2000 University Avenue

East Palo Alto, CA 94303-2215

Telephone: (650) 833-2170

Attorneys for Petitioner

Reply! Inc.

CERTIFICATE OF MAILING

I, Allison V. Burn, do hereby certify that the foregoing document is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, Trademark Trial & Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451, on this date of October 6, 2005.



Date of Deposit: 10/6/05



## TRADEMARK ASSIGNMENT AGREEMENT

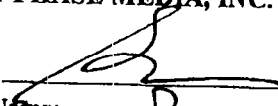
This Trademark Assignment Agreement (the "Assignment Agreement") is entered into by and between Next Phase Media, Inc., a California corporation ("Assignee"), on the one hand, and Consumers Car Club, Inc., a California corporation ("Assignor"), on the other hand.

1. Assigned Mark. The term "Assigned Mark" shall refer to the word service mark "carclub.com" Reg. No. 2,458,695 filed with the U.S. Patent and Trademark Office.

2. Assignment. Assignor hereby assigns and conveys to Assignee all of Assignor's right, title and interest in and to the Assigned Mark, and Assignee hereby accepts and assumes all of Assignor's right, title, interest and obligations in and to the Assigned Mark. These rights shall include, but shall not be limited to, all rights to use, copy, modify and exploit the Assigned Mark; the right to exclude others from using the Assigned Mark; the right to license, assign, convey, and pledge the Assigned Mark to others; the right to sue others and to collect damages for future infringements of the Assigned Mark; the right to create derivatives of the Assigned Mark and to retain full ownership of such derivatives; and the right to file and prosecute applications to protect trademark rights in the Assigned Mark.

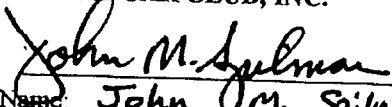
### ASSIGNEE:

NEXT PHASE MEDIA, INC.

By:   
Print Name: Peyman Zamani  
Its: CEO  
Dated: 7/12/01

### ASSIGNOR:

CONSUMERS CAR CLUB, INC.

By:   
Print Name: John M. Spilman  
Its: Chief Legal Officer & Secretary  
Dated: July 12, 2001



R0547216

FOURTH RESTATED ARTICLES OF INCORPORATION  
OF  
CONSUMERS CAR CLUB

RECORDED AND  
INDEXED  
In the Office of the Secretary of State  
of the State of California

JUN 15 2000

BILL JONES, Secretary of State

The undersigned, Michael London and Michael Rogers, hereby certify that:

ONE: They are the duly elected and acting President and Chief Financial Officer, respectively, of Consumers Car Club, a California corporation (the "Corporation");

TWO: The Articles of Incorporation, as amended, of the corporation are amended and restated to read in full as follows:

ARTICLE I

The name of this corporation is J.D. Power Clubs, Inc.

ARTICLE II

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

ARTICLE III

The Corporation is authorized to issue 500,000,000 shares of its capital stock, all of the same class, designated as "Common Stock."

ARTICLE IV

The liability of the directors of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. This Corporation is also authorized, to the fullest extent permissible under California law, to indemnify its agents (as defined in Section 317 of the California Corporations Code), whether by bylaw, agreement or otherwise, in excess of the indemnification expressly permitted by Section 317 and to advance defense expenses to its agents in connection with such matters as they are incurred. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or

advancement of such defense expense to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended. Any repeal or modification of this Article IV shall only be prospective and shall not affect the rights under this Article IV in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

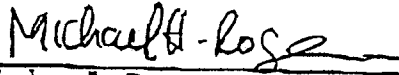
THREE: The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.

FOUR: The foregoing amendment and restatement of the Corporation's Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with the Articles of Incorporation of the Corporation and Sections 902 and 903 of the California Corporations Code. The Corporation has one class of shares outstanding that is entitled to vote with respect to the amendment and restatement. The number of outstanding shares of the Corporation is 267,522,743 shares of Common Stock. The number of shares voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than 50% of the outstanding Common Stock.

We further declare under penalty of perjury under the laws of the State of California that matters set forth in this Certificate are true and correct of our own knowledge.

Date: May 31, 2000

  
Michael London, President

  
Michael Rogers, Chief Financial Officer









# State of California



## SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 3 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this day of

MAY - 8 2004



*Kevin Shelley*  
Secretary of State

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
NEXT PHASE MEDIA, INC.

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

MAY - 3 2004

KEVIN SHELLEY  
Secretary of State

Payam Zamani certifies that:

1. He is the President and Secretary of Next Phase Media, Inc., a California corporation (the "*Corporation*").
2. The Articles of Incorporation of this corporation shall be amended and restated to read in full as follows:

**ARTICLE I**

The name of the corporation is Reply! Inc.

**ARTICLE II**

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

**ARTICLE III**

The Corporation is authorized to issue only one class of shares of stock, which shall be designated "Common Stock," without par value. The total number of shares which the corporation is authorized to issue is Twenty Million (20,000,000).

Effective upon filing this Amended and Restated Articles of Incorporation, each outstanding share of Common Stock shall be split into Two (2) shares of Common Stock. All references to the number of shares of Common Stock herein shall be on a post-split basis, unless otherwise indicated.

## ARTICLE IV

The Corporation shall provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the California Corporations Code, subject to the applicable limits on indemnification set forth in Sections 204 and 317(f) of the California Corporations Code. Any repeal or modification of this Article V, or the adoption of any provision of the Articles of Incorporation inconsistent with this Article V, shall only be prospective and shall not adversely affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to indemnification.

\* \* \*

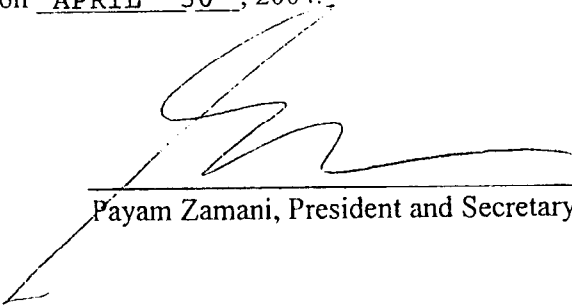
3. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.

4. The foregoing amendment and restatement of the Articles of Incorporation has been duly approved by the required vote of the shareholders of the Corporation in accordance with Sections 603 and 903 of the California General Corporation Law. The total number of outstanding shares of the Corporation entitled to vote with respect to the foregoing amendment and restatement of the Articles of Incorporation was 5,055,000 shares of Common Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required, such required vote being a majority of the outstanding shares of Common Stock.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The undersigned certifies under penalty of perjury under the laws of the State of California that he has read the foregoing Amended and Restated Articles of Incorporation and knows the contents thereof, and that the statements therein are true.

Executed in Palo Alto, California, on APRIL 30, 2004.

  
Payam Zamani, President and Secretary

