

CT CORPORATION SYSTEM

476849

FILED  
OCT 26 PM 2:42  
TALLAHASSEE, FLORIDA

CORPORATION(S) NAME

Essilor Laboratories of America, Inc.

Merging:

Kosh Ophthalmic, Inc.

EFFECTIVE DATE

11/1/01

100004655441--5

-10/26/01--01073--003

\*\*\*\*\*70.00 \*\*\*\*\*70.00

<input type="checkbox"/> Profit	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Merger
<input type="checkbox"/> Nonprofit		
<input type="checkbox"/> Foreign	<input type="checkbox"/> Dissolution/Withdrawal	<input type="checkbox"/> Mark
	<input type="checkbox"/> Reinstatement	
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Annual Report	<input type="checkbox"/> Other
<input type="checkbox"/> LLC	<input type="checkbox"/> Name Registration	<input type="checkbox"/> Change of RA
	<input type="checkbox"/> Fictitious Name	<input type="checkbox"/> UCC
<input type="checkbox"/> Certified Copy	<input type="checkbox"/> Photocopies	<input type="checkbox"/> CUS
<input type="checkbox"/> Call When Ready	<input type="checkbox"/> Call If Problem	<input type="checkbox"/> After 4:30
<input checked="" type="checkbox"/> Walk In	<input type="checkbox"/> Will Wait	<input checked="" type="checkbox"/> Pick Up
<input type="checkbox"/> Mail Out		

Name \_\_\_\_\_ 10/26/01 \_\_\_\_\_ Order#: 4874207  
Availability \_\_\_\_\_  
Document \_\_\_\_\_  
Examiner \_\_\_\_\_ Ref#: \_\_\_\_\_  
Updater \_\_\_\_\_  
Verifier \_\_\_\_\_  
W.P. Verifier \_\_\_\_\_

Amount: \$

660 East Jefferson Street  
Tallahassee, FL 32301  
Tel. 850 222 1092  
Fax 850 222 7615

A CCH LEGAL INFORMATION SERVICES COMPANY

RECEIVED  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

OCT 26 PM 1:40

RECEIVED

File not MS  
\*00789, 00524, 00672

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

KOSH OPHTHALMIC, INC., a Florida corporation 476849  
,

INTO

**ESSILOR LABORATORIES OF AMERICA, INC.**, a North Carolina entity not  
qualified in Florida.

File date: October 26, 2001, effective November 1, 2001

Corporate Specialist: Annette Ramsey



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

October 29, 2001

CT Corporation System  
660 East Jefferson St.  
Tallahassee, FL 32301

SUBJECT: KOSH OPHTHALMIC, INC.  
Ref. Number: 476849

RECEIVED  
01 OCT 30 PM 3:04  
FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

We have received your document for KOSH OPHTHALMIC, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

This merger can not be filed until the qualification is filed.

If you have any questions concerning the filing of your document, please call (850) 245-6907.

Annette Ramsey  
Corporate Specialist

Letter Number: 601A00059175

To: Thelma

Please back date 10-26-01  
& have Effective date  
Nov. 1, 2001

Thanks, Melaine/CT

Pick-up  
3:00  
10-30-01

ARTICLES OF MERGER  
OF  
KOSH OPHTHALMIC, INC.  
(A FLORIDA CORPORATION)

INTO

ESSILOR LABORATORIES OF AMERICA, INC.  
(A NORTH CAROLINA CORPORATION)

\* \* \* \* \*

Under Section 607.1105, Florida Statutes

EFFECTIVE DATE  
11/1/01

FILED  
01 OCT 26 PM 2:42  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1105 of the *Florida Statutes*, the undersigned hereby certify by these Articles of Merger as follows:

**FIRST:** The name and jurisdiction of the surviving corporation is ESSILOR LABORATORIES OF AMERICA, INC., a North Carolina corporation.

**SECOND:** The name and jurisdiction of the merging corporation is KOSH OPHTHALMIC, Inc., a Florida corporation.

**THIRD:** The Agreement and Plan of Merger is attached hereto as Exhibit A and incorporated herein by reference in its entirety.

**FOURTH:** The merger shall become effective at 12:01 a.m. on November 1, 2001.

**FIFTH:** The Agreement and Plan of Merger was duly adopted by the sole shareholder of the surviving corporation on October 15, 2001.

**SIXTH:** The Agreement and Plan of Merger was duly adopted by the sole shareholder of the merging corporation on October 15, 2001.

IN WITNESS WHEREOF, each of the constituent entities to the merger has caused these Articles of Merger to be executed on its behalf by its duly authorized representative this 24<sup>th</sup> day of October, 2001.

KOSH OPHTHALMIC, INC.,  
a Florida corporation

By: [Signature]  
Chris Paddison, President

ESSILOR LABORATORIES OF AMERICA,  
INC.,  
a North Carolina corporation

By: [Signature]  
Chris Paddison, President

EXHIBIT A

**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of October 15, 2001, is entered into by and among ESSILOR LABORATORIES OF AMERICA, INC., a North Carolina corporation formerly known as Southern Optical Company ("ELOA"), and the following corporations (each referred to individually as a "Disappearing Corporation" and collectively referred to as the "Disappearing Corporations"):

- (i) OPTICAL SUPPLY, INC., a Michigan corporation;
- (ii) DBL MANAGEMENT, INC., a Delaware corporation;
- (iii) KOSH OPHTHALMIC, INC., a Florida corporation;
- (iv) ESSILOR LABORATORIES OF AMERICA, INC., a Kansas corporation;
- (v) BELL OPTICAL LABORATORY, INC., a Ohio corporation;
- (vi) TWIN CITY OPTICAL COMPANY, a Minnesota corporation;
- (vii) BARTLEY OPTICAL SALES, INC., a California corporation; and
- (viii) DBL LABS, INC., a Minnesota corporation.

**RECITALS**

WHEREAS, ELOA is a wholly owned subsidiary of Essilor Laboratories of America Holding Co., Inc., a Florida corporation ("Holding Company"), and each of the Disappearing Corporations are direct or indirect subsidiaries of Holding Company; and

WHEREAS, all of the issued and outstanding stock of Holding Company is held by Essilor of America, Inc., a Delaware corporation ("EOA"); and

WHEREAS, EOA has decided to undertake a corporate reorganization with respect to certain of its direct and indirect subsidiaries in order to simplify the organizational structure of EOA and its subsidiaries (the "Simplification Plan"); and

WHEREAS, as a part of the Simplification Plan, ELOA and the Disappearing Corporations desire to enter into this Agreement to provide for the merger of the Disappearing Corporations with and into ELOA, with ELOA being the surviving corporation in the merger (the "Merger").

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

## **1. THE MERGER; CLOSING; EFFECTIVE TIME**

### **1.1. The Merger.**

Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as hereinafter defined), each Disappearing Corporation shall be merged with and into ELOA, and the separate corporate existence each Disappearing Corporation shall thereupon cease. ELOA shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"), and the separate corporate existence of ELOA with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. The Merger shall have the effects specified in the North Carolina Business Corporation Act (the "North Carolina Act") and, to the extent applicable, the appropriate corporate statute of the state of incorporation of each Disappearing Corporation.

### **1.2. Closing.**

The closing of the Merger (the "Closing") shall take place immediately after the last to be satisfied or waived of the conditions set forth in Section 7 hereof (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement (the "Closing Date").

### **1.3. Effective Time.**

As soon as practicable following the Closing, ELOA and each Disappearing Corporation will cause Articles of Merger reflecting the provisions set forth in this Agreement (the "Articles of Merger") to be executed and delivered for filing to the Department of State of the State of North Carolina (the "North Carolina Department") as provided in the North Carolina Act and the Departments of State (or other appropriate places for filing) of each of the states in which the Disappearing Corporations are incorporated (as provided in their respective corporate statutes) (the "Other State Agencies"). The Merger shall become effective at the time when the Articles of Merger have been duly filed with the North Carolina Department and the Other State Agencies or at such later time agreed to by the parties and provided in the Articles of Merger (the "Effective Time"). Unless otherwise agreed to by the parties, the Effective Time shall occur as of 12:01 a.m., November 1, 2001.

## **2. ARTICLES OF INCORPORATION AND BYLAWS OF THE SURVIVING CORPORATION**

### **2.1. The Articles of Incorporation.**

The articles of incorporation of ELOA as in effect immediately prior to the Effective Time shall be the articles of incorporation of the Surviving Corporation (the "Articles"), until duly amended as provided therein or by applicable law.

## **2.2. The Bylaws.**

The bylaws of ELOA in effect at the Effective Time shall be the bylaws of the Surviving Corporation (the "Bylaws"), until thereafter amended as provided therein or by applicable law.

## **3. OFFICERS AND DIRECTORS OF THE SURVIVING CORPORATION**

### **3.1. Directors.**

The directors of ELOA at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Articles and the Bylaws as in effect from time to time.

### **3.2. Officers.**

The officers of ELOA at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Articles and the Bylaws.

## **4. EFFECT OF THE MERGER ON CAPITAL STOCK; TRANSFERS OF CAPITAL STOCK**

### **4.1. Effect on Capital Stock.**

At the Effective Time, as a result of the Merger and without any action on the part of the holder of any capital stock of ELOA or the Disappearing Corporations:

4.1.(a) Disappearing Corporations. Each share of the common stock of the Disappearing Corporations, and each share of every other class of capital stock of the Disappearing Corporations, issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall be cancelled and retired and shall cease to exist, and each certificate formerly representing any of such shares shall be cancelled and retired without payment of any consideration therefor.

4.1.(b) ELOA. Each share of common stock, par value \$1.00 per share, of ELOA issued and outstanding immediately prior to the Effective Time shall remain outstanding and shall continue to constitute one share of common stock, par value \$1.00 per share, of the Surviving Corporation.

4.2. Transfers. After the Effective Time, there shall be no transfers on the stock transfer books of the Disappearing Corporations of the shares that were outstanding immediately prior to the Effective Time.

## **5. REPRESENTATIONS AND WARRANTIES OF ELOA**

ELOA hereby represents and warrants to the Disappearing Corporations that:

### **5.1. Organization, Good Standing and Qualification.**

ELOA is a corporation duly organized, validly existing and in good standing or of active status, as applicable, under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own and operate its properties and assets and to carry on its business as presently conducted.

### **5.2. Corporate Authority; Approval.**

ELOA has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger. This Agreement has been duly executed and delivered by ELOA, and assuming due authorization, execution and delivery of this Agreement by the Disappearing Corporations, is a valid and legally binding agreement of ELOA enforceable against ELOA in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

## **6. REPRESENTATIONS AND WARRANTIES OF DISAPPEARING CORPORATIONS**

Each Disappearing Corporation hereby represents and warrants to ELOA that:

### **6.1. Organization, Good Standing and Qualification.**

Such Disappearing Corporation is a corporation duly organized, validly existing and in good standing or of active status, as applicable, under the laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own and operate its properties and assets and to carry on its business as presently conducted.

### **6.2. Corporate Authority; Approval.**

Such Disappearing Corporation has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger. This Agreement has been duly executed and delivered by such Disappearing Corporation, and assuming due authorization, execution and delivery of this Agreement by ELOA and the other Disappearing Corporations, is a valid and legally binding agreement of such Disappearing Corporation enforceable against such Disappearing Corporation in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.



## 7. CONDITIONS

The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

7.1. Shareholder Approval. This Agreement shall have been duly approved by the sole shareholder of ELOA and each of the Disappearing Corporations.

7.2. Litigation. No court or governmental entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order that is in effect and permanently enjoins or otherwise prohibits consummation of the Merger.

## 8. MISCELLANEOUS AND GENERAL

### 8.1. Modification or Amendment.

Subject to the provisions of applicable law, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement by written agreement executed and delivered by duly authorized officers of the respective parties.

### 8.2. Waiver of Conditions.

The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law.

### 8.3. Counterparts.

This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

### 8.4. Governing Law.

THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF NORTH CAROLINA WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

### 8.5. Entire Agreement.

This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof.

8.6. No Third Party Beneficiaries.

This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

8.7. Severability.


The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.


ESSILOR LABORATORIES OF AMERICA,  
INC., a North Carolina corporation f/k/a  
Southern Optical Company

By:   
Chris Paddison, President

OPTICAL SUPPLY, INC., a Michigan  
corporation

By:   
Chris Paddison, President


DBL MANAGEMENT, INC., a Delaware  
corporation

By:   
Chris Paddison, President

KOSH OPHTHALMIC, INC., a Florida  
corporation

By:   
Chris Paddison, President


ESSILOR LABORATORIES OF AMERICA,  
INC., a Kansas corporation

By:   
Chris Paddison, President


BELL OPTICAL LABORATORY, INC., a  
Ohio corporation

By:   
Chris Paddison, President


TWIN CITY OPTICAL COMPANY, a  
Minnesota corporation

By:   
Chris Paddison, President

BARTLEY OPTICAL SALES, INC., a  
California corporation

By:   
Chris Paddison, President

DBL LABS, INC., a Minnesota corporation

By:   
Chris Paddison, President