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B. KOHR

MAY 1 2008

EXAMINER



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 540668 7270423

AUTHORIZATION :

COST LIMIT : ~~\$50.00~~

ORDER DATE : May 1, 2008

ORDER TIME : 8:00 AM

ORDER NO. : 540668-025

CUSTOMER NO: 7270423

70.00

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08 MAY - 1 PM 3:12  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

ONE:ONE COFFEE LLC

INTO

APPLICA CONSUMER PRODUCTS,  
INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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XX PLAIN STAMPED COPY

CONTACT PERSON: Kathy Drake

EXAMINER'S INITIALS: \_\_\_\_\_

**ARTICLES OF MERGER**  
**(Profit Corporation and Other Business Entity)**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The following Articles of Merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1109, F.S.

**First:** The name and jurisdiction of the **surviving** corporation is the following:

<u>Name</u>	<u>Jurisdiction</u>	<u>Charter Number</u>
Applica Consumer Products, Inc. ("ACP")	Florida	P96000028274

**Second:** The name and jurisdiction of the **merging** limited liability company is the following:

<u>Name</u>	<u>Jurisdiction</u>
One:One Coffee LLC ("One:One")	Delaware

**Third:** The Agreement and Plan of Merger is attached hereto as Exhibit A.

**Fourth:** The merger shall become effective at 12:00 PM EST on May 1, 2008.

**Fifth:** The Agreement and Plan of Merger was adopted by the Board of Directors and sole shareholder of ACP on May 1, 2008.

**Sixth:** The Agreement and Plan of Merger was adopted by the sole member of One:One on May 1, 2008.

IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf of each of ACP and One:One by its authorized officer as of this 1<sup>st</sup> day of May, 2008.

APPLICA CONSUMER PRODUCTS, INC.

By: *Lisa R. Carstarphen*  
Name: Lisa R. Carstarphen  
Title: Corporate Secretary

ONE:ONE COFFEE LLC

By: *Lisa R. Carstarphen*  
Name: Lisa R. Carstarphen  
Title: Corporate Secretary

**EXHIBIT A**

**Agreement and Plan of Merger**

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**AGREEMENT AND PLAN OF MERGER**

**among**

**ONE:ONE COFFEE LLC**

**and**

**APPLICA CONSUMER PRODUCTS, INC.**

**Dated as of May 1, 2008**

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## **AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of May 1, 2008, by and among One:One Coffee LLC, a Delaware limited liability company ("One:One"), and Applica Consumer Products, Inc., a Florida corporation ("ACP").

### **WITNESSETH:**

WHEREAS, Section 18-209(b) of the Delaware Limited Liability Company Act (the "DLLCA") permits the merger of a domestic limited liability company into a foreign corporation and Section 607.1108 of the Florida Business Corporation Act (the "FBCA") permits the merger of a foreign limited liability company into a domestic corporation;

WHEREAS, One:One is a direct wholly owned subsidiary of Salton, Inc., a Delaware corporation ("Salton");

WHEREAS, ACP is a direct wholly owned subsidiary of APN Holding Company, Inc., a Delaware corporation ("APN"), which is a direct wholly owned subsidiary of Salton;

WHEREAS, Salton, APN, One:One and ACP deem it advisable and in their best interests to merge One:One with and into ACP pursuant to the provisions of the laws of the State of Delaware and the laws of the State of Florida upon the terms and conditions hereinafter set forth;

WHEREAS, the Board of Directors of ACP and the sole member of One:One have each approved and adopted this Agreement and the transactions contemplated by this Agreement, in each case after making a determination that this Agreement and the transaction contemplated hereby are advisable and fair to, and in the best interests of, such entities and their respective stockholders and members;

WHEREAS, the stockholders of ACP have adopted and approved this Agreement;

NOW, THEREFORE, in furtherance of the foregoing and in consideration of the premises and the covenants herein contained, the parties hereto agree as follows:

## **ARTICLE I**

### **MERGER**

1.1 Merger. At the Effective Time (as defined below), One:One shall be merged with and into ACP (the "Merger") in accordance with the applicable provisions of the DLLCA and the FBCA, and the separate existence of One:One will thereupon cease. ACP shall be the surviving entity in the Merger (as such, the "Surviving Entity"). The Merger shall have the effects specified in the DLLCA and the FBCA.

1.2 Effective Time. One:One and ACP shall cause (i) the Certificate of Merger to be duly prepared, executed and filed with the Secretary of State of the State of



Delaware in accordance with Section 18-209(c) of the DLLCA (the "Delaware Certificate") and (ii) the Articles of Merger to be duly prepared, executed and filed with the Secretary of State of the State of Florida in accordance with Section 607.1109 of the FBCA (the "Florida Certificate"), both at such time as they shall mutually agree. The Merger shall become effective at 12:00 PM EST on May 1, 2008, as provided in the Florida Certificate and the Delaware Certificate and in accordance with the FBCA and the DLLCA. The time and date on which the Merger becomes effective is herein referred to as the "Effective Time."

1.3 Governing Documents of the Surviving Entity. The Certificate of Incorporation and the Bylaws of ACP in effect at the Effective Time shall become the Certificate of Incorporation and Bylaws of the Surviving Entity until thereafter amended as provided therein or by the FBCA.

1.4 Directors and Officers of the Surviving Entity.

(a) The sole member of the board of directors of ACP immediately prior to the Effective Time shall be the sole member of the board of directors of the Surviving Entity and shall continue to serve as the sole member of the board of directors of the Surviving Entity until his successor has been duly elected or appointed and qualified or until his earlier death, resignation or removal in accordance with the Certificate of Incorporation or Bylaws of the Surviving Entity.

(b) The officers of ACP immediately prior to the Effective Time shall be the officers of the Surviving Entity and shall continue to serve as officers of the Surviving Entity until their respective successors have been appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and Bylaws of the Surviving Entity, or as otherwise provided by the FBCA.

1.5 Merger, Assumption of Liabilities. As of the Effective Time, One:One shall be deemed merged into ACP as provided by the FBCA, the DLLCA and this Agreement. All rights, privileges, and powers of One:One, and all property, real, personal and mixed, and all debts due to One:One, as well as all other things and causes of action belonging to One:One, shall be vested in the Surviving Entity, and shall thereafter be the property of the Surviving Entity as they were of One:One and the title to any real property vested by deed, or otherwise under the laws of the State of Delaware in One:One shall not revert or be in any way impaired but all rights of creditors and all liens upon any property of One:One shall be preserved unimpaired and all debts, liabilities and duties of One:One shall thenceforth attach to the Surviving Entity and may be enforced against the Surviving Entity to the same extent as if said debts, liabilities and duties had been incurred and contracted by it.

## ARTICLE II

### TREATMENT OF EXISTING SECURITIES

2.1 Treatment of Membership Interests and Capital Stock of One:One and ACP. At the Effective Time, by virtue of the Merger and without any action on the part of the members or stockholders of One:One or ACP, (i) all of the shares of capital stock of ACP issued

and outstanding prior to the Effective Time shall remain outstanding shares of capital stock of the Surviving Entity and (ii) all of the membership interests of One:One outstanding immediately prior to the Effective Time shall be automatically cancelled.

### ARTICLE III

#### CONDITIONS TO MERGER

3.1 Conditions Precedent. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver of each of the following conditions:

(a) No court or governmental entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law or order (whether temporary, preliminary or permanent) that is in effect and has a material adverse effect on One:One or ACP or enjoins or otherwise prohibits consummation of the transactions contemplated by this Agreement and no judicial or administrative proceeding that seeks any such result shall continue to be pending.

(b) All required approvals, licenses and certifications from, and notifications and filings to, governmental entities and non-governmental third parties shall have been obtained or made, as applicable.

### ARTICLE IV

#### TERMINATION AND AMENDMENT

4.1 Termination. This Agreement may be terminated at any time prior to the Effective Time by the mutual written agreement of each of the parties, notwithstanding any prior approvals hereof. In the event of such termination, this Agreement shall become null and void and have no effect.

4.2 Amendment. This Agreement may be amended, modified or supplemented at any time by the mutual written agreement of each of the parties.

### ARTICLE V

#### GENERAL PROVISIONS

5.1 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to contracts to be made and performed entirely therein without giving effect to the principles of conflicts of law thereof or of any other jurisdiction, except to the extent that the provisions of the FBCA are mandatorily applicable with respect to the Merger.

5.2 Entire Agreement. This Agreement (including the documents and the instruments referred to herein), together with all exhibits, schedules, appendices, certificates, instruments and agreements delivered pursuant hereto and thereto, if any, (a) constitutes the

entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) except as provided herein, is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

5.3 Headings. Headings of the articles and sections of this Agreement, the table of contents are for convenience of the parties only, and shall be given no substantive or interpretative effect whatsoever.

5.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be deemed to be an original and all of which shall together be considered one and the same agreement.

5.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns.

5.6 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

ONE:ONE COFFEE LLC

By: *Lisa R. Carstarphen*  
Name: Lisa R. Carstarphen  
Title: Corporate Secretary

APPLICA CONSUMER PRODUCTS, INC.

By: *Lisa R. Carstarphen*  
Name: Lisa R. Carstarphen  
Title: Corporate Secretary