

1 order to try to fit them in. 11:54:32

2 Q. Do you have any evidence of what 11:54:34

3 you're describing right now that that was what 11:54:35

4 was going on in the minds of the engraver? 11:54:38

5 A. No, I don't have evidence of it. 11:54:40

6 But it would have required a major rearrangement 11:54:44

7 of the page. There is simply no room to fit in 11:54:46

8 Happy Birthday To You in addition to the words 11:54:48

9 to Good Morning To You. There is no room. 11:54:48

10 There is no space 11:54:52

11 Q. Could that be the reason just as 11:54:55

12 well that it was widely known? 11:54:57

13 A. It could be, but I think the two go 11:54:59

14 hand in hand. If you want people to know what 11:55:00

15 they are singing you either have to figure out 11:55:01

16 a way to layout the page. The solution was 11:55:04

17 clear to me. You have to find a shorter part 11:55:06

18 song for the bottom half of the page and be 11:55:10

19 able to space out the staves a little bit so 11:55:12

20 you can fit in Happy Birthday. 11:55:15

21 It seems, again, we don't know what 11:55:18

22 the engraver was thinking, but it seems that 11:55:19

23 the engraver didn't feel it was necessary to 11:55:21

24 put in those words. Probably, I have to say

25 probably because people knew the words.

1 Q. But again, the same question, you 11:55:34  
2 don't have any evidence that people knew the 11:55:36  
3 words at the time other than the documents that 11:55:38  
4 you have been provided by Mr. Rifkin? 11:55:39

5 A. That's right. 11:55:41

6 Q. We haven't done any independent 11:55:44  
7 study about how widely, quote unquote, widely 11:55:47  
8 the lyrics to Happy Birthday To You were known 11:55:48  
9 at this time, correct? 11:55:49

10 A. Well as I explained to you before, 11:55:53  
11 yes, I don't see how you could do that. You're 11:55:55  
12 talking about lyrics that may be associated 11:55:59  
13 with hundreds of thousands, millions of people 11:56:03  
14 perhaps even who never wrote down yesterday we 11:56:06  
15 sang Happy Birthday or who may have written it 11:56:08  
16 down but those letters can't be found anywhere 11:56:11  
17 or if you went through 500,000 letters you 11:56:13  
18 might find two that referred to it. But that 11:56:16  
19 doesn't prove anything because it is not the 11:56:19  
20 sort of thing that you bother writing about. 11:56:22

21 Look at it this way, you write Dear 11:56:24  
22 Granny we went yesterday or we had yesterday my 11:56:28  
23 birthday party and we sang Happy Birthday. Do 11:56:30  
24 you think that letter is going to be preserved  
25 somewhere.

1	all singing Happy Birthday.	11:58:44
2	Q. But you're not aware of that	11:58:45
3	sitting here today?	11:58:47
4	A. No.	11:58:53
5	Q. Paragraph 21 The Golden Book Of	11:58:53
6	Favorite Songs.	11:58:59
7	A. Yes	11:59:12
8	Q. Look at tab F. Look at the piece	11:59:16
9	of music again similar to the one, the previous	11:59:16
10	one; is that correct	11:59:19
11	A. Yes, the same thing with the	11:59:20
12	backward base.	11:59:21
13	Q. My questions are the same, is there	11:59:23
14	any evidence from this document that this was	11:59:28
15	authorized by the Clayton F. Summy Co., this	11:59:35
16	printing in tab F?	11:59:37
17	A. No, although as I think about it it	11:59:43
18	is another Chicago company and maybe that would	11:59:45
19	have been a little dangerous.	11:59:48
20	Q. When you say a little dangerous,	11:59:48
21	what do you mean?	11:59:57
22	A. To Hall & McCreary. The publisher	11:59:59
23	of this excerpt.	12:00:00
24	Q. What I'm asking you is do you have	
25	any evidence that it was authorized by the	

1 point that you're making in paragraph 28, fine. 12:55:34  
2 If there are other documents that you feel you 12:55:38  
3 need to include in your report, then I want you 12:55:39  
4 to have the opportunity to do that. Maybe we 12:55:39  
5 don't take that now. Maybe we take a break and 12:55:40  
6 you identify it in the production which ones 12:55:40  
7 you think -- 12:55:42  
8 A. No, I could tell you right now. I 12:55:45  
9 just want to look back at that paragraph to see 12:55:48  
10 what I actually referred to, but the various 12:55:57  
11 samples start in the big black binder, Exhibit 49, 12:56:06  
12 up to tab 38 and continue to tab 50. 12:56:09  
13 Q. Look at paragraph 28 where it says 12:56:11  
14 "Various samples of this piece differ in their 12:56:15  
15 cover information, design, publisher or price. 12:56:21  
16 Some say Summy Publishing Company, (Summy 12:56:23  
17 3075)." What does Summy 3075 refer to there? 12:56:25  
18 A. The publication number so you can 12:56:28  
19 find it among the various samples, some of them 12:56:32  
20 have different numbers to indicate what they 12:56:32  
21 are. That is standard. 12:56:35  
22 Q. If I look at J and I see the 12:56:39  
23 publication number, I see the number 3075 in 12:56:40  
24 the lower left corner?  
25 A. Yes, that is the one.

1 Q. Is that what you're referring to? 12:56:44

2 A. Yes. 12:56:45

3 Q. What does that number tell you? 12:56:49

4 A. Normally when a publisher puts a 12:56:51

5 number it is the number of their publication. 12:56:54

6 It is his 3,075th publication. 12:56:57

7 Q. So is it sequential? 12:57:04

8 A. It should be. It may be in some 12:57:06

9 periods it is called a plate number for the 12:57:07

10 engraving plate. 12:57:11

11 Q. My question is the one before it 12:57:16

12 the engraving plates would be number. And 12:57:17

13 3074 would be something else? 12:57:19

14 A. Yes. And 76 would follow it. 12:57:22

15 Q. Can you look at Exhibit L for a 12:57:31

16 moment. You see in the lower left-hand corner 12:57:32

17 that is 3076? 12:57:33

18 A. That is probably the next one. 12:57:34

19 Q. The next what? 12:57:36

20 A. The next thing they published. 12:57:40

21 That would be my inference based on what I know 12:57:42

22 that they would number sequentially. 12:57:49

23 Q. Let's look back at paragraph 28 to 12:58:00

24 make sure that I'm done there. Did you review

25 the certificate for the copyright registration,

1 E 51990, in preparing your report that is 12:58:10

2 referred to in paragraph 28? 12:58:11

3 A. I think I did. I don't remember 12:58:12

4 the number offhand. 12:58:15

5 Q. It is referred to here in paragraph 12:58:15

6 28? 12:58:16

7 A. Then I did. 12:58:19

8 Q. It says it suggests that it may be 12:58:22

9 the print for the December 6th, 1935 copyright 12:58:24

10 certificate which says, "arrangement as easy 12:58:28

11 piano solo with text." You said the thing that 12:58:33

12 led you to believe that about Exhibit J is that 12:58:37

13 it was copyright 1935. Does the fact that the 12:58:40

14 cover of Exhibit J also says it is underlined 12:58:43

15 piano with words, does that also support that? 12:58:46

16 A. Yes. However there are a few of 12:58:48

17 them and that is what is in 30 whatever is the 12:58:50

18 number I just gave you that do that and there 12:58:53

19 are certain differences among them. They seem 12:58:56

20 possibly to be reprinted later, who knows. But 12:58:59

21 some of them have Preston Ware Orem's name and 12:59:02

22 some don't and that is peculiar, but that is 12:59:02

23 what it is. 12:59:04

24 Q. The fact that this says this is the

25 piano solo with words version also supports

1 that it is the copy of copyright 51990? 12:59:13

2 MR. RIFKIN: What are we referring 12:59:16

3 to that says piano solo with words? 12:59:17

4 MS. LE MOINE: Exhibit J. 12:59:19

5 MR. RIFKIN: I thought you were 12:59:20

6 referring to Exhibit J. 12:59:21

7 MS. LE MOINE: I am. 12:59:22

8 MR. RIFKIN: Where does it say 12:59:22

9 that. 12:59:24

10 MS. LE MOINE: The title page. 12:59:25

11 MR. RIFKIN: I thought you were 12:59:28

12 looking at plate number 3074. 12:59:29

13 MS. LE MOINE: No I'm asking the 12:59:31

14 professor if the fact that that piano solo with 12:59:33

15 words is underlined that that is the indication 12:59:36

16 that this is this piece of music. 12:59:46

17 A. As far as I could say yes. 12:59:49

18 Q. Let's look at paragraph 29 which 12:59:58

19 refers to tab K. If you look at tab K it has 13:00:02

20 the Hill sisters both names in the upper right 13:00:04

21 and arranged by Preston Ware Orem underneath 13:00:04

22 that. 13:00:05

23 A. Yes. 13:00:07

24 Q. Do you have any opinion as to why

25 Mildred Hill and Patty Hill are listed in the

1 just know from Marc? 13:06:25

2 A. Well I assume there was some 13:06:25

3 copyright reason and whoever provided that 13:06:32

4 decided it was better at that point to not 13:06:34

5 provide the actual text lest it being an 13:06:36

6 infringement of some sort. 13:06:40

7 Q. Let's look at paragraph 30. 13:06:44

8 Paragraph 30 refers to tab L that we looked at 13:06:48

9 briefly. The sequential catalog number, right 13:06:51

10 or engraving plate number, I'm not sure what -- 13:06:54

11 A. Yes. I don't know what it is 13:06:57

12 called now but that is what it is. It is some 13:07:01

13 kind of publisher's index. 13:07:03

14 Q. And indicating the order in which 13:07:04

15 these items were published? 13:07:06

16 A. Yes, I assume so. That is what it 13:07:07

17 always does. 13:07:09

18 Q. You have here at the top arranged 13:07:10

19 by Mrs. R.R. Forman? 13:07:11

20 A. Yes. 13:07:14

21 Q. And again Mildred Hill's name on 13:07:14

22 the right? 13:07:14

23 A. Yes. 13:07:17

24 Q. And you say, "It is customary for 13:07:17

25 arrangers to appear either on the upper right

1 upper left of tab V it says traditional? 14:39:17

2 A. I sure did note that. 14:39:19

3 Q. You say, "This is consistent with 14:39:22

4 the convention for identifying the author or 14:39:27

5 authors of the words and music and acknowledges 14:39:29

6 that the lyrics were originally a traditional 14:39:30

7 adaptation of the earlier work Good Morning To 14:39:32

8 All." 14:39:35

9 What about this is consistent with 14:39:37

10 the convention for identifying the author or 14:39:39

11 authors of the words and music? 14:39:43

12 A. Because on the examples that I saw 14:39:47

13 at Julliard where the text was a traditional 14:39:54

14 text, in some cases a psalm or some spirituals 14:39:57

15 that were arranged, it will often say 14:40:00

16 traditional on the left-hand side. It clearly 14:40:03

17 doesn't refer to the music because a composer's 14:40:06

18 name is on the right as normal. This to me 14:40:10

19 says the text for Happy Birthday was a 14:40:13

20 traditional text and not something written by a 14:40:13

21 person. 14:40:15

22 Q. Tell me what a traditional text is? 14:40:22

23 A. Perhaps from a folk poem, folk 14:40:24

24 song. Let's see if I could think of one

25 offhand. Yankee Doodle which was originally an

1	more complicated interaction of composing and	16:02:59
2	dealing with words than simply putting text to	16:03:01
3	music because you may be dealing with a	16:03:09
4	preexisting melody.	16:03:10
5	MS. LE MOINE: Let's take five	16:03:10
6	minutes.	16:03:11
7	THE VIDEOGRAPHER: Going off the	16:08:27
8	record at 16:03.	16:08:27
9	(Recess taken.)	16:08:30
10	THE VIDEOGRAPHER: Returning to	16:08:41
11	the record at 16:08.	16:08:42
12	MS. LE MOINE: Professor Sachs,	16:08:46
13	thank for your time. That's all I have today.	16:08:50
14	You indicated you might do additional research	16:08:54
15	and if you were to amend your report we reserve	16:08:55
16	the right to take another deposition.	16:08:56
17	THE WITNESS: The only thing that I	16:08:59
18	would do is out of curiosity I would see	16:09:02
19	whether the Julliard Library has any Happy	16:09:04
20	Birthday prints and we will let you know if	16:09:04
21	they do.	16:09:07
22	MR. RIFKIN: Thank you very much.	16:09:09
23	THE WITNESS: Thank you, well	16:09:09
24	done.	
25	THE VIDEOGRAPHER: This concludes	

1 the videotape deposition at 16:09.

2 (TIME NOTED: 4:09 P.M.)

3

4

\_\_\_\_\_

JOEL SACHS, Ph.D.

6

7 Subscribed and sworn to before me

8 this \_\_\_\_\_ day of \_\_\_\_\_, 2014

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# **EXHIBIT 65**

Sept 27, 1957

VOL. 1834 PAGE 10

**CERTIFICATE OF AMENDMENT  
TO THE  
CERTIFICATE OF INCORPORATION**

**SUNNY PUBLISHING COMPANY**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

**FIRST:** That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

**RESOLVED** that the Certificate of Incorporation of Sunny Publishing Company be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"**FIRST:** The name of the corporation is Sunny-Birchard Publishing Company."

**SECOND:** That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 19th day of September 1957.

**THIRD:** That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 244 and 228 of Title 8 of The Delaware Code of 1953.

**IN WITNESS WHEREOF**, the said **SUNNY PUBLISHING COMPANY** has caused its corporate seal to be hereunto affixed and this certificate to be signed by David K. Sangstack, its Vice President, and Robert O. Olsen, its Assistant Secretary, this 20th day of September 1957.



**SUNNY PUBLISHING COMPANY**  
*[Signature]*  
**Assistant Secretary**

VOL. 1834 PAGE 10

STATE OF ILLINOIS }  
COUNTY OF COOK }

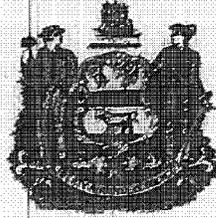
BE IT REMEMBERED, that on this 20th day of September, A.D. 1957, personally came before me Fred Poranco a Notary Public in and for the County and State aforesaid, David K. Sengstack, Vice President of Sunny Publishing Company, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said David K. Sengstack as such Vice President duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said Vice President and of the Assistant Secretary of said corporation to the said foregoing certificate are in the handwriting of the said Vice President and Assistant Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

*Fred Poranco*  
Notary Public

My Commission Expires August 2, 1960



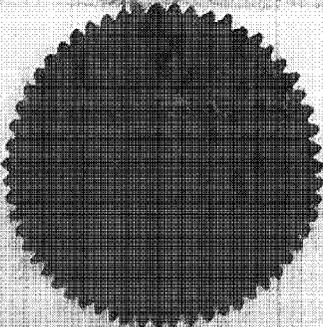


State  
of  
DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware,  
do hereby certify that the above and foregoing is a true and correct copy of  
Certificate of Amendment of the "SUMMY PUBLISHING COMPANY", as received and filed in  
this office the twenty-seventh day of September, A.D. 1957, at 10 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand  
and official seal at Dover this twenty-ninth day  
of February in the year of our Lord  
one thousand nine hundred and eighty.



*Glenn C. Kenton*

Glenn C. Kenton, Secretary of State

# **EXHIBIT 66**

Dec. 22, 1961

VOL. 1834 PAGE

**CERTIFICATE OF AMENDMENT  
OF  
SUMMY-BIRCHARD PUBLISHING COMPANY**

SUMMY-BIRCHARD PUBLISHING COMPANY, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the Board of Directors of said corporation, at a meeting duly convened and held, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

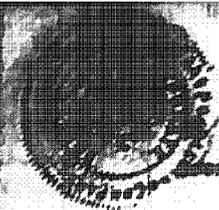
RESOLVED that the Certificate of Incorporation of Summy-Birchard Publishing Company be amended by striking out all of Article First of the Certificate of Incorporation, as amended, and inserting in lieu thereof a new Article First to be and read as follows:

"FIRST: The name of the corporation is Summy-Birchard Company"

SECOND: That the said amendment has been consented to and authorized by the holders of all the issued and outstanding stock, entitled to vote, by a written consent given in accordance with the provisions of Section 228 of Title 8 of the Delaware Code of 1953, and filed with the corporation on the 29th day of September, 1961.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 242 and 228 of Title 8 of The Delaware Code of 1959.

IN WITNESS WHEREOF, the said SUMMY-BIRCHARD PUBLISHING COMPANY has caused its corporate seal to be hereunto affixed and this certificate to be signed by David K. Seagstack, its President, and Robert O. Olson, its Assistant



Secretary, this 29th day of September, 1961.

~~SUNNY-BIRCHARD PUBLISHING COMPANY~~  
By [Signature]  
President

Attest: [Signature]  
Assistant Secretary

VOL. 1834 PAGE 11

STATE OF ILLINOIS }  
COUNTY OF COOK } ss,

BE IT REMEMBERED, that on this 29th day of September, A.D. 1961, personally came before me Lorraine Moburg, a Notary Public in and for the County and State aforesaid, David K. Bengstack, President of Sunny-Birchard Publishing Company, a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said David K. Bengstack as such President duly presented said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said President and of the Assistant Secretary of said corporation to the said foregoing certificate are in the handwriting of the said President and Assistant Secretary of said corporation respectively and that the seal affixed to said certificate is the common or corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

[Signature]  
Lorraine Moburg

commission expires: SEP 29 1962

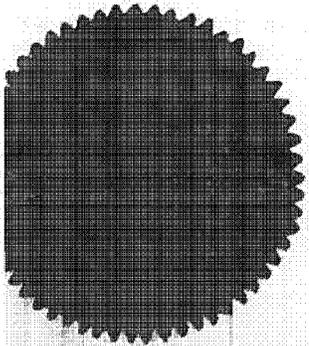


# State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton Secretary of State of the State of Delaware  
do hereby certify that the above and foregoing is a true and correct copy of  
Certificate of Amendment of the "SUMMY-BIRCHARD PUBLISHING COMPANY", as received and  
filed in this office the twenty-second day of December, A.D. 1961, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand  
and official seal at Dover this twenty-ninth day  
of February in the year of our Lord  
one thousand nine hundred and eighty.



*Glenn C. Kenton*

Glenn C. Kenton, Secretary of State

100 123

**EXHIBIT 67 -  
[ORIGINAL EXHIBIT MANUALLY LODGED  
& FILED PURSUANT TO L.R. 11-5.4]**

**[Copy of Original Exhibit Attached]**

## Additional Certificate of Registration of a Claim to Copyright

This is to certify that the statements set forth  
in the attached have been made a part of the  
records of the Copyright Office with claim  
of copyright registered under number

In testimony whereof, the seal of this office  
is affixed hereto on

**R 306185**

**June 12 2014**



*Maria A. Pallante*

Register of Copyrights and  
Associate Librarian for Copyright Services

c-731 - 06/2011-10,000

Original copyright claimant

(Name of claimant in original registration)

Complete all applicable spaces on next page.

Ex. 67

P006338 808

# Application for Registration of a Claim to Renewal Copyright

**FORM R**  
REGISTRATION NO.  
R 306185  
DO NOT WRITE HERE

**Instructions:** Make sure that all applicable spaces have been completed before you submit the form. The application must be signed at line 8. For further information, see page 4.

Pages 1 and 2 should be typewritten or printed with pen and ink. Pages 3 and 4 should contain exactly the same

information as pages 1 and 2, but may be carbon copies.

Mail all pages of the application to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with the registration fee of \$2. Make your remittance payable to the Register of Copyrights.

**1. Renewal Claimant(s), Address(es), and Statement of Claim:** Give the full name(s) and mailing address(es) of the claimant(s) of the renewal copyright. State the statutory category of each renewal claimant. It must be one of the categories described on page 4.

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire  
(Use the appropriate statement appearing on page 4)

(b) Name .....

Address .....

Claiming as .....

(c) Name .....

Address .....

Claiming as .....

**2. (a) Title:** Give the full title of the work. In the case of music give specific instrumentation.

HAPPY BIRTHDAY TO YOU! -- Unison Song

**(b) Renewable Matter:** If the work was a new version of a previous work, renewal may be claimed only in the new matter. If this work was a new version, state in general the new matter (e. g., arrangement, editing, illustrations, translation, etc.) upon which copyright was claimed.

Arrangement and revised text

**(c) Contribution to Periodical or Other Composite Work:** If the work was a contribution, give the title of the periodical or composite work in which it was published.

If a periodical, give: Vol. ....; No. ....; Date .....

**3. Authors of Renewable Matter:** Give the names of all authors who contributed copyrightable matter to this version, but not the names of authors of previous versions. Clayton F. Summy Co. (now, by change of name,

Summy-Birchard Company) as employer for hire of Mrs. R.R. Forman

**4. Facts of Original Registration:** The facts given here must agree with the Copyright Office records of the original registration.

Original registration number: Class E pub..... No. 51988

If registered as published, give date of publication December 6, 1935  
(Month, day, and year)

If registered as unpublished, give date of registration .....

Original copyright claimant Clayton F. Summy Co.  
(Name of claimant in original registration) *Complete all applicable spaces on next page.*

... is to be charged to a deposit account established in the Copyright Office, give name of account:

Summy-Birchard Company

6. Name and address of person or organization to whom correspondence or refund, if any, should be sent:

Name Brown, Jackson, Boettcher & Dienner Address 53 W. Jackson Blvd., Chicago 4,

Mr. C. Lyman Emrich, Jr.

7. Send certificate to:

(Type or print name and address)

Name  
Address

Summy-Birchard Company

1834 Ridge Avenue

(Number and street)

Evanston,

(City)

(Zone)

Illinois

(State)

8. Certification: (NOTE: Application not acceptable unless signed)

I CERTIFY that the statements made by me in this application are correct to the best of my knowledge.



*Antony J. Graves*

(Signature)

Antony J. Graves, Ass't. Sec'y.

Application Forms

Copies of the following forms will be supplied by the Copyright Office without charge upon request.

- Class A Form A—Published book manufactured in the United States of America.
- Class A Form A-B Foreign—Book or periodical manufactured outside the United States of America (except works subject to the ad interim provisions of the copyright law).
- Class A or B Form A-B Ad Interim—Book or periodical in the English language manufactured and first published outside the United States of America.
- Class B Form B—Periodical manufactured in the United States of America.
- Class B Form BB—Contribution to a periodical manufactured in the United States of America.
- Class C Form C—Lecture or similar production prepared for oral delivery.
- Class D Form D—Dramatic or dramatico-musical composition.
- Class E Form E—Musical composition the author of which is a citizen or domiciliary of the United States of America or which was first published in the United States of America.
- Class E Form E Foreign—Musical composition the author of which is not a citizen or domiciliary of the United States of America and which was not first published in the United States of America.
- Class F Form F—Map.
- Class G Form G—Work of art or a model or design for a work of art.
- Class H Form H—Reproduction of a work of art.
- Class I Form I—Drawing or plastic work of a scientific or technical character.
- Class J Form J—Photograph.
- Class K Form K—Print or pictorial illustration.
- Class K Form KK—Print or label used for an article of merchandise.
- Class L or M Form L-M—Motion Picture.
- Form R—Renewal of copyright.
- Form U—Notice of use of copyrighted music on mechanical instruments.

FOR COPYRIGHT OFFICE USE ONLY	
Application received	<i>Mildred J. Hill</i> <i>Ans. by</i>
DEC -6 1962	
Fee received	

**EXHIBIT 68 -  
[ORIGINAL EXHIBIT MANUALLY LODGED  
& FILED PURSUANT TO L.R. 11-5.4]**

**[Copy of Original Exhibit Attached]**

## Additional Certificate of Registration of a Claim to Copyright

This is to certify that the statements set forth  
in the attached have been made a part of the  
records of the Copyright Office with claim  
of copyright registered under number

In testimony whereof, the seal of this office  
is affixed hereto on

**R 306186**

**June 12 2014**



*Maui A. Pallante*

Register of Copyrights and  
Associate Librarian for Copyright Services

c-731 . 06/2011-10,000

Original copyright claimant

Clayton F. Summy Co.

(Month, day, and year)



Ex. 68

P006341<sup>812</sup>

# Application for Registration of a Claim to Renewal Copyright

<b>FORM R</b>	
REGISTRATION NO.	
R	306186
DO NOT WRITE HERE	

**Instructions:** Make sure that all applicable spaces have been completed before you submit the form. The application must be signed at line 8. For further information, see page 4. Pages 1 and 2 should be typewritten or printed with pen and ink. Pages 3 and 4 should contain exactly the same

information as pages 1 and 2, but may be carbon copies. Mail all pages of the application to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with the registration fee of \$2. Make your remittance payable to the Register of Copyrights.

**1. Renewal Claimant(s), Address(es), and Statement of Claim:** Give the full name(s) and mailing address(es) of the claimant(s) of the renewal copyright. State the statutory category of each renewal claimant. It must be one of the categories described on page 4.

(a) Name Summy-Birchard Company

Address 1834 Ridge Ave., Evanston, Ill.

Claiming as proprietor of copyright in a work made for hire  
(Use the appropriate statement appearing on page 4)

(b) Name .....

Address .....

Claiming as .....

(c) Name .....

Address .....

Claiming as .....

**2. (a) Title:** Give the full title of the work. In the case of music give specific instrumentation.

HAPPY BIRTHDAY TO YOU! -- easy piano solo with text

**(b) Renewable Matter:** If the work was a new version of a previous work, renewal may be claimed only in the new matter. If this work was a new version, state in general the new matter (e. g., arrangement, editing, illustrations, translation, etc.) upon which copyright was claimed.

Arrangement as easy piano solo with text

**(c) Contribution to Periodical or Other Composite Work:** If the work was a contribution, give the title of the periodical or composite work in which it was published.

If a periodical, give: Vol. ....; No. ....; Date .....

**3. Authors of Renewable Matter:** Give the names of all authors who contributed copyrightable matter to this version, but not the names of authors of previous versions. [Clayton F. Summy Co. (now, by change of name,

Summy-Birchard Company) as employer for hire of] Preston Ware Orem

**4. Facts of Original Registration:** The facts given here must agree with the Copyright Office records of the original registration.

Original registration number: Class E pub No. 51990

If registered as published, give date of publication December 6, 1935  
(Month, day, and year)

If registered as unpublished, give date of registration .....

Original copyright claimant Clayton F. Summy Co.  
(Name of claimant in original registration)

5. If registration fee is to be charged to a deposit account established in the Copyright Office, give name of account:  
Summy-Birchard Publishing Company

6. Name and address of person or organization to whom correspondence or refund, if any, should be sent:  
Name: Brown, Jackson, Boettcher & Diemer  
Mr. C. Lyman Emrich, Jr.  
Address: 53 W. Jackson Blvd., Chicago 4

7. Send certificate to:

(Type or print name and address)	Name	Summy-Birchard Company	
	Address	1834 Ridge Ave.	
		(Number and street)	
		Evanston, Ill.	
		(City)	(Zone) (State)

8. Certification: (NOTE: Application not acceptable unless signed)

I CERTIFY that the statements made by me in this application are correct to the best of my knowledge.



*Antony J. Graves*  
(Signature)

Antony J. Graves, Ass't. Sec'y.  
Application Forms

- Copies of the following forms will be supplied by the Copyright Office without charge upon request.
- Class A Form A—Published book manufactured in the United States of America.
  - Class A or B Form A-B Foreign—Book or periodical manufactured outside the United States of America (except works subject to the ad interim provisions of the copyright law).
  - Class B Form A-B Ad Interim—Book or periodical in the English language manufactured and first published outside the United States of America.
  - Class B Form B—Periodical manufactured in the United States of America.
  - Class B Form BB—Contribution to a periodical manufactured in the United States of America.
  - Class C Form C—Lecture or similar production prepared for oral delivery.
  - Class D Form D—Dramatic or dramatico-musical composition.
  - Class E Form E—Musical composition the author of which is a citizen or domiciliary of the United States of America or which was first published in the United States of America.
  - Class E Form E Foreign—Musical composition the author of which is not a citizen or domiciliary of the United States of America and which was not first published in the United States of America.
  - Class F Form F—Map.
  - Class G Form G—Work of art or a model or design for a work of art.
  - Class H Form H—Reproduction of a work of art.
  - Class I Form I—Drawing or plastic work of a scientific or technical character.
  - Class J Form J—Photograph.
  - Class K Form K—Print or pictorial illustration.
  - Class K Form KK—Print or label used for an article of merchandise.
  - Class L or M Form L-M—Motion Picture.
  - Form R—Renewal copyright.
  - Form U—Notice of use of copyrighted music on mechanical instruments.

Application received		FOR COPYRIGHT OFFICE USE ONLY	
DEC -6 1962		By Mildred J. Hill	
Fee received		<i>[Signature]</i>	

# **EXHIBIT 69**

# JOHN SENGSTACK, ACCOUNTANT, 77

Senior Partner in Lybrand,  
Ross Bros. Is Dead

John F. Sengstack, a certified public accountant and a leader in the music industry, died on Sunday at the age of 77. He lived at 40 Fifth Avenue and in Springfield, N. J.

Mr. Sengstack was for many years a senior partner of Scovell, Wellington & Co., and upon the merger of the firm with Lybrand, Ross Bros. & Montgomery, he continued as a senior partner.

He had been president of the Music Publishers Association for 15 years and was a member of the board of appeals of the American Society of Composers, Authors and Publishers.

At one time Mr. Sengstack was general manager of Theodore Presser & Co., a magazine and music publisher. Later he acquired the Clayton F. Summy Company, now the Summy-Birchard Company, also music publishers, and served as its president and chairman for many years.

He was one of the early exponents of cost accounting. In the 1930's, as a partner at Scovell, Wellington, Mr. Sengstack was in charge of the installation of standard cost-accounting systems, inventory and production control and other management services for the United States Steel Company and its principal operating subsidiaries.

Mr. Sengstack was an early member of the Association of Consulting Management Engineers and served as its secretary-treasurer. He was also a member of the American Institute of Certified Public Accountants, the National Association of Accountants, the Union League Club and the Downtown Athletic Club.

He also was a director of Doubleday & Co., the book publisher.

Mr. Sengstack took part in many of the tournaments of the senior golf associations of which he was a member. He was a member of the Baltusrol Golf Club, the Pine Valley Golf Club and the Pinehurst Country Club.

A memorial service will be held at 11 A.M. on Thursday, at All Souls Unitarian Church, Lexington Avenue at 80th Street.

The New York Times

Published: October 13, 1970  
Copyright © The New York Times

Ex. 69

P006354 816

# **EXHIBIT 70**

# SYLVINE OF ILLINOIS

ORIGINATOR  
OF THE SYMBIOTIC AIRBORNE SYMBIOTE



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of amendment to the Articles of Incorporation duly signed and verified of  
EDUCATIONAL MUSIC BUREAU

have been filed in the Office of the Secretary of State on the 31st day of July A.D. 1973, as provided by "THE BUSINESS CORPORATION ACT" of Illinois, in force July 13, A.D. 1933.

Now Therefore, I, ~~Michael J. Howlett~~ Secretary of State of the State of Illinois, by virtue of the powers vested in me by law do hereby issue this certificate of amendment, and attach thereto a copy of the Articles of Amendment to the Articles of Incorporation of the aforesaid corporation.

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois, Done at the City of Springfield this 31st day of July A.D. 1973 and of the Independence of the United States the one hundred and 98th.

(SEAL)

Michael J. Howlett  
SECRETARY OF STATE

1713-375-6  
 (Do not write in this space)  
 Date Paid 7-31-77  
 License Fee \$  
 Franchise Tax \$  
 Filing Fee \$25.00  
 Clerk

(File in Duplicate)

**ARTICLES OF AMENDMENT**  
 TO THE  
**ARTICLES OF INCORPORATION**  
 OF

VOL. 1834, PAGE 147

EDUCATIONAL MUSIC BUREAU

P A I D

1977

To JOHN W. LEWIS  
 Secretary of State  
 Springfield, Illinois

Michael J. H.  
 Secretary of State

The undersigned corporation, for the purpose of amending its Articles of Incorporation and pursuant to the provisions of Section 55 of "The Business Corporation Act" of the State of Illinois, hereby executes the following Articles of Amendment:

ARTICLE FIRST: The name of the corporation is:

EDUCATIONAL MUSIC BUREAU

ARTICLE SECOND: The following amendment or amendments were adopted in the manner prescribed by "The Business Corporation Act" of the State of Illinois:

Article 3 of the Articles of Incorporation is hereby amended to read as follows:

"Article 3. The duration of the corporation is perpetual."

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE THIRD: The number of shares of the corporation outstanding at the time of the adoption of said amendment or amendments was 367 shares common stock; and the number of shares of each class entitled to vote as a class on the adoption of said amendment or amendments, and the designation of each such class were as follows:

Class	Number of Shares
Common	367

Previously there were 400 shares issued and outstanding, 33 of which were reacquired by the corporation, held as treasury stock, and subsequently retired.

(Disregard separation into classes if class voting does not apply to the amendment voted on.)

ARTICLE FOURTH: The number of shares voted for said amendment or amendments was 367 common shares; and the number of shares voted against said amendment or amendments was None. The number of shares of each class entitled to vote as a class voted for and against said amendment or amendments, respectively, was:

Class	Number of Shares Voted	
	For	Against

(Disregard separation into classes if the amendment restates the articles of incorporation.)

Item 1. On the date of the adoption of this amendment, restating the articles of incorporation, the corporation had \_\_\_\_\_ shares issued, itemized as follows:

Class	Series (If Any)	Number of Shares	Par value per share or statement that shares are without par value

Item 2. On the date of the adoption of this amendment restating the articles of incorporation, the corporation had a stated capital of \$ \_\_\_\_\_ and a paid-in surplus of \$ \_\_\_\_\_ or a total of \$ \_\_\_\_\_.

Disregard this Article where this amendment contains no such provisions.

ARTICLE FIFTH: The manner in which the exchange, reclassification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, provided for in, or effected by, this amendment, is as follows:

VOL. 1834 PAGE 149

Disregard this Paragraph where amendment does not affect stated capital or paid-in surplus.

ARTICLE SIXTH: Paragraph 1: The manner in which said amendment or amendments effect a change in the amount of stated capital or the amount of paid-in surplus, or both, is as follows:

Disregard this Paragraph where amendment does not affect stated capital or paid-in surplus.

Paragraph 2: The amounts of stated capital and of paid-in surplus as changed by this amendment are as follows:

	Before Amendment	After Amendment
Stated capital	\$	\$
Paid-in surplus	\$	\$

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Amendment to be executed in its name by its \_\_\_\_\_ President, and its corporate seal to be hereto affixed, attested by its \_\_\_\_\_ Secretary, this 16<sup>th</sup> day of July, 1973

EDUCATIONAL MUSIC BUREAU

(Exact Corporate Name)

By

Jeffrey S. Sengstack  
President

Place  
(CORPORATE SEAL)  
Here

ATTEST:

Dennis M. Siegel  
Secretary

STATE OF Missouri  
COUNTY OF St. Louis } ss.

I, Barbara M. Bacon, a Notary Public, do hereby certify that on the 16<sup>th</sup> day of July, 1973, Jeffrey S. Sengstack, personally appeared before me and, being first duly sworn by me, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Place  
NOTARIAL SEAL  
Here

Barbara M. Bacon  
Notary Public  
My Comm. Expires October 3, 1976

Form No. 1003  
Box 1213 File

ARTICLES OF AMENDMENT  
to the  
ARTICLES OF INCORPORATION  
of

**F I L E D**

JUL 31 1973

Michaëly Brownell  
Secretary of State

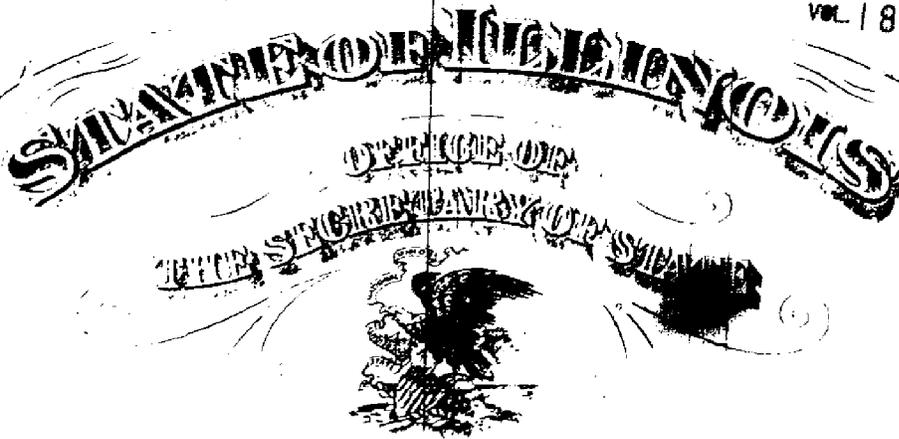
FILE IN DUPLICATE

Filing Fee \$25.00

Filing Fee for Re-Filed Articles \$100.00

(2005-124-872) 10-674

# **EXHIBIT 71**



To all to whom these Presents Shall Come, Greeting:

Whereas, Articles of MERGER duly signed and verified of SUMMY-BIRCHARD COMPANY, a Delaware Corporation, merged into EDUCATIONAL MUSIC BUREAU, an Illinois Corporation, and name of surviving corporation changed to SUMMY-BIRCHARD COMPANY

have been filed in the Office of the Secretary of State on the 28th day of December 1973 as provided by THE BUSINESS CORPORATION ACT of Illinois in force July 13, 1933 as amended.

Now Therefore, I, Michael J. Howlett Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate of MERGER and attach thereto a copy of the Articles of MERGER of the aforesaid corporation

In Testimony Whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Illinois.

Done at the City of Springfield this 28th day of December AD 1973 and of the Independence of the United States the one hundred and 92th

(SEAL)

Michael J. Howlett

SECRETARY OF STATE

1713-375-6  
(Do not write in this space)  
Date Paid 15-38-73  
Filing Fee \$ 100.00  
Clerk [Signature]

ARTICLES OF MERGER  
OF DOMESTIC AND FOREIGN  
CONSOLIDATION  
CORPORATION  
(Strike Inapplicable Words)

JOHN W. LEWIS  
to ~~PAUL POWERS~~ Secretary of State,

625 48  
VOL. 1836 PAGE 167

The undersigned corporations, pursuant to Section 69a of "The Business Corporation Act" of the State of Illinois, hereby execute the following articles of ~~consolidation~~ merger:

ARTICLE ONE

The names of the corporations proposing to ~~consolidate~~ merge and the names of the States under the laws of which such corporations are organized, are as follows:

Name of Corporation	State of Incorporation
EDUCATIONAL MUSIC BUREAU	ILLINOIS
SUMMY-BIRCHARD COMPANY	DELAWARE

**PAID**  
JAN 7 1974

ARTICLE TWO

The laws of Delaware corporation in Delaware State under which such foreign corporations are organized, permit such ~~consolidation~~ merger.

ARTICLE THREE

The name of the ~~consolidating~~ surviving corporation shall be SUMMY-BIRCHARD COMPANY and it shall be governed by the laws of the State of ILLINOIS.

ARTICLE FOUR

The plan of ~~consolidation~~ merger is as follows:

See Exhibit A attached hereto and made a part hereof.

**ARTICLE FIVE**

As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of the shares of any class entitled to vote as a class, are: VOL. 1931

Name of Corporation	Total Number of Shares Outstanding	Total Number of Shares Entitled to Vote	Designation of Class Entitled to Vote as a Class (if any)	Number of Shares of Such Class (if any)
<u>Educational Music Bureau</u>	<u>367*</u>	<u>367</u>	<u>D.N.A.</u>	<u>D.N.A.</u>
<u>Summy-Birchard Company</u>	<u>1500</u>	<u>1500</u>	<u>D.N.A.</u>	<u>D.N.A.</u>
<u>An additional 33 shares held in treasury</u>				

**ARTICLE SIX**

As to each corporation, the number of shares voted for and against the plan, respectively, and the number of shares of any class entitled to vote as a class voted for and against the plan, are:

Name of Corporation	Total Shares Voted for	Total Shares Voted Against	Class	Shares Voted for	Shares Voted Against
<u>Educational Music Bureau</u>	<u>367</u>	<u>0</u>			
<u>Summy-Birchard Company</u>	<u>1500</u>	<u>0</u>			

**ARTICLE SEVEN**

All provisions of the laws of the State of Illinois and the State of Delaware applicable to the proposed ~~merger~~ merger have been complied with.

ARTICLE EIGHT

(Delete this article if surviving or flow corporation is to be governed by the laws of the State of Illinois.)

It is agreed that, upon and after the issuance of a certificate of merger by the Secretary of State of the State of Illinois: VOL. 183

1. The surviving corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the merger and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving or new corporation;

2. The Secretary of State of the State of Illinois shall be and he irrevocably appointed as the agent of the surviving corporation to accept service of process in any such proceedings; and

3. The surviving corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the merger the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act" of the State of Illinois with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF each of the undersigned corporations has caused these articles of merger to be executed in its name by its president or vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, this 21st day of December, 1973

Place (Corporate Seal) Here

EDUCATIONAL MUSIC BUREAU

By [Signature] Its President Vice President

ATTEST:

[Signature] Secretary Assistant Secretary

Place (Corporate Seal) Here

BUMMY-BIRCHARD COMPANY

By [Signature] Its President Vice President

ATTEST:

[Signature] Secretary Assistant Secretary

(over)

STATE OF ILLINOIS  
COUNTY OF COOK

ss.

I, MARLENE MEYER, a Notary Public, do hereby certify that on the 21st day of  
December, A.D. 19 73, personally appeared before me JEFFREY SENGSTACK

who declares that he is the President of Educational Music Bureau, one of the corporations executing  
the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of  
merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

VOL. 1834 PAGE 170

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Marlene Meyer  
Notary Public

Place  
(Notarial Seal)  
Here

STATE OF ILLINOIS  
COUNTY OF COOK

ss.

I, MARLENE MEYER, Notary Public, do hereby certify that on the 21st day of  
December, A.D. 19 73, personally appeared before me DAVID SENGSTACK,

who declares that he is the President of Sunny-Birchard Company one of the corporations executing  
the foregoing documents, and being first duly sworn, acknowledged that he signed the foregoing articles of  
merger ~~consolidation~~ in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Marlene Meyer  
Notary Public

Place  
(Notarial Seal)  
Here

Form BCA-69a  
1713  
File 32576

ARTICLES OF  
MERGER  
CONSOLIDATION

OF

EDUCATIONAL MUSIC BUREAU

AND

SUNNY-BIRCHARD COMPANY

(File in Duplicate)

Filing Fee \$100.00

If merger involves more than two corpora-  
tions, \$50.00 for each additional  
corporation.

Ill. Rev. Stat. Ch. 117, Sec. 1-1.1

# **EXHIBIT 72**

PLAN AND AGREEMENT OF MERGER

VOL 1834 PAGE 171

THIS PLAN and AGREEMENT OF MERGER is made and entered into this 21st day of December, 1973, by and between SUMMY-BIRCHARD COMPANY, a Delaware Corporation (hereinafter called "SUMMY") and EDUCATIONAL MUSIC BUREAU, an Illinois Corporation (hereinafter called "EMB").

WITNESSETH:

WHEREAS, the Board of Directors of SUMMY and the Board of Directors of EMB deem it advisable that SUMMY merge with and into EMB under and pursuant to the terms and conditions hereinafter set forth:

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

1. Pursuant to the provisions of section 69a of the Illinois Business Corporation Act and section 253 of the Delaware Corporation Law, SUMMY shall be merged into EMB as a single corporation which shall be the surviving corporation. The terms and conditions of the merger and the mode of carrying it into effect are as hereinafter set forth.

2. The Articles of Incorporation of EMB in force at the effective date of the merger shall remain and be the Articles of Incorporation after the merger until altered or amended as provided by law.

3. The By-Laws of EMB in force at the effective date of the merger shall remain and be the By-Laws after the merger until the same shall be altered or amended.

4. The directors of EMB on the effective date of the merger shall remain and be the directors after the merger and thereafter until their respective successors are chosen or appointed.

5. The officers of EMB on the effective date of the merger shall remain and be the officers after the merger and thereafter until the Board of Directors shall otherwise determine.

6. The manner and basis of converting the shares of SUMMY into shares or other securities or obligations of EMB is as follows:

PL 1034 PAGE 172

a. Forthwith on the effective date of the merger and without further act on the part of either corporation or its stockholders, 2.712 shares of the common stock, without par value, of SUMMY issued and outstanding on the effective date of the merger shall be converted into one share of fully paid and assessable common stock, par value \$100.00 per share, of EMB. Certificates representing shares of the common stock of SUMMY shall thenceforth represent shares of the common stock of EMB on the basis hereinabove provided, and the holder thereof shall be entitled to the same rights as though he held certificates issued by EMB.

b. Upon the surrender of certificates of SUMMY to EMB, the holder of the certificates surrendered shall receive in exchange a certificate or certificates of EMB for *ONE* share of common stock of EMB for 2.712 shares of common stock of EMB represented by such surrendered certificate.

7. This Plan and Agreement of Merger shall be submitted to the respective stockholders of SUMMY and EMB as provided by law, and, for the merger to become effective, must be approved and adopted by the affirmative vote of stockholders of both SUMMY and EMB in the manner and as provided by law. Anything herein to the contrary notwithstanding, this Plan and Agreement of Merger may be abandoned by either SUMMY or EMB by appropriate resolution of its Board of Directors at any time prior to its approval or adoption by the stockholders thereof.

8. Upon the effective date of this merger, the separate existence of SUMMY shall cease and said corporation shall be merged, in accordance with the provisions of the agreement, into EMB which shall survive such merger and shall continue in existence and shall

without other transfer, succeed to the possession of all the rights, privileges, powers, franchises and immunities, as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties of SUMMY and of EMB; and all and singular the rights, privileges, powers, franchises and immunities of SUMMY and of EMB, and all property, real, personal and mixed, and all debts due to SUMMY or EMB on whatever account, including subscriptions to shares, and all other choses in action belonging to SUMMY and EMB, shall be vested in EMB; and all property, rights, privileges, powers and franchises, and all and every other interest, shall be thereafter as effectually the property of EMB as they were of the several and SUMMY and EMB; the title to any real estate, vested by deed or otherwise, under the laws of the States of Illinois or Delaware, or of any of the other states of the United States, in either SUMMY or EMB, shall not revert or be in any way impaired by reason of the merger; provided that all rights of creditors and all liens upon any property of SUMMY and EMB shall be preserved unimpaired, limited to the property affected by such liens at the time of such merger, and all debts, liabilities and duties of SUMMY and EMB, shall thenceforth attach to EMB and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

9. If at any time before or after the effective date of this merger EMB shall consider or be advised that any instruments of further assurance are necessary or desirable to vest or to perfect or confirm, of record or otherwise, the title of EMB to any property of SUMMY acquired or to be acquired by reason of or as a result of the merger provided for by this agreement, SUMMY and its proper officers and directors shall and will execute and deliver any and all such proper deeds, assignments and assurances and do all things necessary or proper so to vest, perfect or confirm title to such property in EMB and otherwise to carry out the purposes of this Plan and Agreement of Merger.

10. The Articles of Incorporation of EMB shall be amended

- ~~as follows:~~
- a. To change the name of the corporation to "Summy-Birchard Company" and
  - b. To change the number of authorized shares to 953 shares of common stock, par value of \$100.00 per share.

11. This Plan and Agreement of Merger, or adoption thereof by the stockholders of the Company, shall be subject to the requirements of the laws of the state of Illinois and of the state of Delaware, and upon the execution, filing and recording of such documents and the doing of such acts and things as shall be required for accomplishing the merger under the provisions of the laws and statutes of the state of Illinois and of the state of Delaware as heretofore amended and supplemented, shall become effective at the close of business on the date this Plan and Agreement of Merger is filed with the Secretary of State of Illinois and a Certificate of Merger is issued by the Secretary of State of Illinois.

IN WITNESS WHEREOF, the parties to this agreement, pursuant to the approval and authority duly given by resolutions adopted by their respective boards of directors have caused those presents to be executed by the President and attested by the Secretary of each party hereto, and have caused to be affixed their respective corporate seals.

[CORPORATE SEAL]

SUMMY-BIRCHARD COMPANY

By [Signature]  
Its President

ATTEST:

[Signature]  
Its Secretary

[CORPORATE SEAL]

EDUCATIONAL MUSIC BUREAU

By [Signature]  
Its President

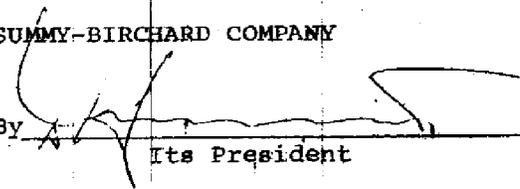
ATTEST:

[Signature]  
Its Secretary

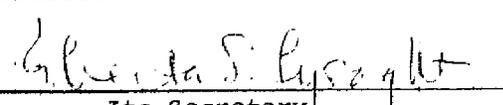
THE ABOVE PLAN AND AGREEMENT OF MERGER, has been executed on behalf of each corporate party thereto, and has been adopted separately by the stockholders of each corporate party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware, and the Business Corporation Act of the State of Illinois, the President of each corporate party thereto does now hereby execute the said Plan and Agreement of Merger and the Secretary of each corporate party thereto does now hereby attest the said Plan and Agreement of Merger, as the respective act, deed and agreement of each of said corporations, and that the facts stated herein are true, on this 21st day of December, 1973.

[CORPORATE SEAL]

SUNNY-BIRCHARD COMPANY

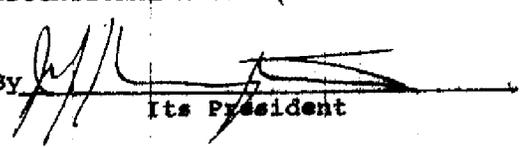
By   
Its President

ATTEST:

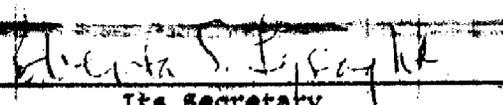
  
Its Secretary

[CORPORATE SEAL]

EDUCATIONAL MUSIC BUREAU

By   
Its President

ATTEST:

  
Its Secretary

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

VOL 1834 PAGE 7

BE IT REMEMBERED that on this 21st day of December, 1973, personally came before me, Marlene Meyer, a Notary Public in and for the county and state aforesaid, David Sengstack, President of Sunny-Birchard Company, a corporation of the state of Delaware and one of the corporations described in and which executed the foregoing Plan and Agreement of Merger, known to me personally to be such, and he, as such President, duly executed said Plan and Agreement of Merger before me and acknowledged said Plan and Agreement of Merger to be the act, deed and agreement of said Sunny-Birchard Company, that the facts stated therein are true, that the signatures of the said President and the Secretary of said corporation to said foregoing Plan and Agreement of Merger are in the handwriting of the said President and Secretary of said Sunny-Birchard Company, and that the seal affixed to said Plan and Agreement of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

Marlene Meyer  
Notary Public

STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.

BE IT REMEMBERED that on this 21st day of December, 1973, personally came before me, Marlene Meyer, a Notary Public in and for the county and state aforesaid, Jeffrey S. Sengstack, President of Educational Music Bureau, a corporation of the state of Illinois and one of the corporations described in and which executed the foregoing Plan and Agreement of Merger, known to me personally to be such, and he, as such President, duly executed said Plan and Agreement of Merger to be the act, deed and agreement of said Educational Music Bureau, that the facts stated therein are true, that the signatures of the said President and the Secretary of said corporation to said

...ing Plan and Agreement of ...  
of the said President and Secretary of ...  
Bureau, and that the seal affixed to said Plan ...  
of Berger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal of office the day and year aforesaid.

Max Meyer  
Public

# **EXHIBIT 73**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is/are a true and correct copy of documents in his custody.



SIGNATURE	
<i>Lori Cox-Paul</i>	
NAME	DATE
<i>Lori Cox-Paul</i>	<i>10-24-2014</i>
TITLE	
Director of Archival Operations	
NAME AND ADDRESS OF DEPOSITORY	
National Archives at Kansas City 400 West Pershing Road Kansas City, MO 64108	

NA FORM 13040 (10-88)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....  
CLAYTON P. SUMMY CO., :  
 :  
 Plaintiff, :  
 :  
 vs. : CIVIL ACTION FILE  
 : NO. 30-285  
 LOUIS WARX & COMPANY, INC. :  
 :  
 Defendant. :  
 :  
 .....

A N S W E R

The defendant, Louis Warx & Company, Inc., for its answer to the complaint in the above-entitled case, says as follows:

I. Defendant has no knowledge as to the corporate identity of the plaintiff alleged in paragraph 1 of the complaint, and, therefore, leaves the plaintiff to its proofs thereon.

II. Defendant admits that it is a corporation organized and existing under the laws of the State of New York as alleged in paragraph 2 of the complaint.

III. Defendant admits the jurisdiction of this Court as alleged in paragraph 3 of the complaint.

IV. Defendant has no knowledge save that obtained from a reading of the complaint, as to the truth or falsity of the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the complaint, and, therefore, denies the same and leaves the plaintiff to its proofs thereon.

Ex. 73  
839

V. Defendant denies the allegation of paragraph 14 of the complaint, that the plaintiff is the sole proprietor of all the right, title and interest in and to the copyright in suit, etc.

VI. Defendant denies the infringement complained of in paragraph 16 of the complaint; defendant admits publishing and selling in the United States copies of "Play-A-Way Piano Book" attached to a toy piano and containing a sheet carrying the song "Happy Birthday To You" with the notes of the song denoted on the musical staff by numbers, so that the song might be played by striking the appropriately numbered keys of the toy piano, all as alleged in paragraph 16 of the complaint.

VII. Defendant denies the allegation in paragraph 18 of the complaint, that "defendant continued to infringe the copyright after receiving notice from plaintiff that it was infringing"; defendant admits having received said notice from the plaintiff, but denies that the plaintiff had the right to send or issue such notice.

Further answering the complaint:

VIII. Defendant avers that in the year 1939 it undertook to manufacture and market a toy piano thereafter called the "Play-A-Way" piano, and to publish and sell therewith a book of songs physically attached to the toy piano containing 12 musical compositions, one of which comprised the song "Happy Birthday to You", with the notes of the song

Ex. 73  
840

denoted on the musical staff by numbers; that prior thereto, the defendant had its copyright counsel make a search to determine whether any copyrights still subsisted on any of these songs and was advised that they were unable to locate any copyright on the "Happy Birthday" song; and thereupon the defendant included this song in said "Play-A-Way Piano Book" of songs. The said "Play-A-Way" toy piano and the attached "Play-A-Way Piano Book" were manufactured, published and sold by the defendant during the remainder of the year 1939 but manufacture thereof was discontinued in the year 1940; during the early part of said year 1940 the defendant sold the carry-over or stock of said piano toy and attached piano book which it had manufactured in 1939. On October \_\_, 1940, defendant received an alleged notice of infringement dated October 7, 1940 from the firm of Beckman, Bogue, Steffens and Black, who stated that they represented Clayton F. Summy Co., who, they said, was the owner of a copyright covering the musical composition "Happy Birthday To You", in which letter the defendant was charged with infringing said copyright; when said notice was received by the defendant, the defendant had already discontinued the publication and sale of the said "Play-A-Way Piano Book" containing the "Happy Birthday" song, and ever since that date the defendant has not published or sold any song book or other musical composition containing the said "Happy Birthday" song.

Ex. 73  
841

IX. Defendant avers upon information and belief, that the plaintiff, Clayton F. Summy Co., was not possessed of any right, title or interest in and to the copyright or renewal thereof in suit on October 7, 1940 when it purported to represent that it was the owner of said copyright and when it issued its notice of infringement to the defendant. Defendant, therefore, avers that the said alleged notice of infringement dated October 7, 1940 was unwarranted, improper and illegal.

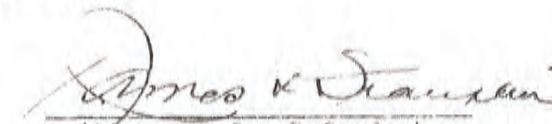
X. Upon information and belief, defendant avers that the copyright in suit, dated October 15, 1893, for a number of songs collectively entitled "Song Stories For The Kindergarten", which is alleged to have included the song entitled "Good Morning To All", expired on October 15, 1921; that the plaintiff, Clayton F. Summy Co. or its assignor, Clayton F. Summy Co., was the only party entitled to obtain and receive the renewal of said copyright, but had failed so to do, whereby the said copyright in suit had become a part of and is now in the public domain.

XI. Defendant avers that the renewal of said copyright in suit alleged in said complaint to have been obtained by Jessica W. Hill, was invalid under Section 24 of the Copyright Act, for the reason that it was not obtained by the party properly entitled thereto as designated under the Copyright Act, and that the said copyright in suit is now in the public domain.

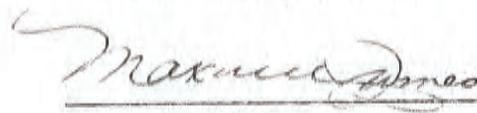
XII. Defendant further avers on information and belief, that at no time since the first publication and sale by the defendant of its aforesaid "Play-A-Way Piano Book" in the manner aforesaid, and that at no time theretofore, has the plaintiff had any right, title or interest, in part or whole, in and to the renewal of the copyright in suit; and the defendant denies that the plaintiff has any right, title or interest to such copyright renewal for the purposes of this suit.

XIII. Defendant further avers that the copyright notice, if any, appearing on the publications of the copyright songs books or songs in suit issued or published by the plaintiff, Clayton F. Summy Co. or its predecessors, since October 12, 1921, and to March 22, 1939 or to the date of filing this suit, were illegal, false or improper under the Copyright Act, and did not constitute proper notice to any member of the public including the defendant.

WHEREFORE, defendant denies that the plaintiff is entitled to the relief prayed for or to any relief whatsoever, and prays that the complaint of the plaintiff be dismissed with the costs and disbursements of this action and counsel fees to the defendant.

  
Attorneys for Defendant  
521 Fifth Avenue  
New York, N. Y.

Dated: April 18, 1945  
New York, N. Y.

  
Of Counsel  
521 Fifth Avenue  
New York, N. Y.

Ex. 73  
843

*Vol 30-285*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW YORK  
CIVIL ACTION NO.

CLAYTON F. SMITH CO.,  
Plaintiff,

vs.

LOUIS WALK & COMPANY, INC.,  
Defendant.

A N S W E R

Receipt of copy of the  
within covers acknowledged  
this 12<sup>th</sup> day of April 1942.

*Richard W. Byrne*  
Attorney for Plaintiff

FILED  
APR 18 1942  
S. D. OF N. Y.  
SOLICITORS FOR  
JAMES AND FRANKLIN  
201 FIFTH AVENUE  
NEW YORK CITY, N. Y.

**Pages 845-846 Intentionally Omitted**

# **EXHIBIT 74**

# ARTICLES OF MERGER

of

SUMMY-BIRCHARD, INC.

and

SUMMY-BIRCHARD, INC.

Pursuant to the provisions of the Wyoming Business Corporation Act, Wyo. Stat. §§ 17-16-101 *et seq.* (WBCA), the undersigned corporations adopt the following Articles of Merger.

## ARTICLE I

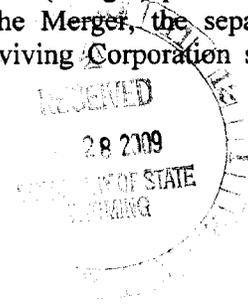
### PLAN OF MERGER

Section 1. Parties to Merger.

- A. The party proposing to merge is Summy-Birchard, Inc. (Summy-Birchard). Summy-Birchard is a corporation duly organized under the WBCA and incorporated on March 8, 1976. Summy-Birchard was administratively dissolved on or about May 31, 2006, and this merger is undertaken as an act necessary to wind up and liquidate its business and affairs pursuant to Wyo. Stat. § 17-16-1404. The principal executive offices of Summy-Birchard are located in Los Angeles, California.
- B. The Surviving corporation shall be Summy-Birchard, Inc. (Surviving Corporation), a corporation duly organized pursuant to the WBCA and incorporated on September 14, 2009. The Surviving Corporation is in good standing under the laws of the State of Wyoming, with its principal executive offices located in Los Angeles, California.

Section 2. Terms and Conditions.

- A. The Merger. At the Effective Time (as defined in Paragraph E of this Section), in accordance with the applicable provisions of Wyoming law, Summy-Birchard shall be merged with and into the Surviving Corporation (Merger) pursuant to these Articles of Merger. Upon consummation of the Merger, the separate existence of Summy-Birchard shall cease and the Surviving Corporation shall continue.



Ex. 74

- B. Articles, Bylaws. The current Articles of Incorporation and Bylaws of the Surviving Corporation shall be those of the Surviving Corporation, as they are in effect immediately prior to the Effective Time of the Merger.
- C. Effect of the Merger. Following the Effective Time, the effect of the Merger shall be that (1) the Surviving Corporation shall possess all of the rights, privileges, immunities and franchises, of both a public and a private nature, of each of the corporations so merged; (2) all property, intangible, real, personal and mixed, and all debts due on whatever account, and all and every other interest of or belonging to or due to each of the corporations so merged shall be deemed to be transferred to and vested in the Surviving Corporation without further act or deed and the title to any real estate or any interest therein, vested in each of such institutions, shall not revert or be in any way impaired by reason of the Merger; and (3) the Surviving Corporation shall be liable for all liabilities of Summy-Birchard as well as those of the Surviving Corporation whether or not reflected or reserved against in the balance sheets, other financial statements, books or account or records of Summy-Birchard or the Surviving Corporation, in the same manner as if the Surviving Corporation had itself incurred such liabilities or obligations. Provided, however, that the liabilities of Summy-Birchard and the Surviving Corporation, or of their respective shareholders, directors, or officers, shall not be affected, nor shall the rights of the creditors thereof, or of any persons dealing with such corporations, be impaired by the Merger. Any claims existing, or action or proceeding pending, by or against either Summy-Birchard or the Surviving Corporation may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be proceeded against, or substituted, in place of Summy-Birchard.
- D. The notice of the meeting of shareholders to consider the proposed merger shall include notice of the rights of shareholders to dissent from the merger, to exercise their right to an appraisal, and to perfect their rights as dissenting shareholders pursuant to the provisions of Wyo. Stat. §§ 17-16-1301, *et seq.*
- E. Consummation Of The Merger. The effective time of this merger (Effective Time) shall be upon the filing of these Articles of Merger with the Wyoming Secretary of State.

Section 3. Manner and Basis of Converting Shares.

- A. At the Effective Time, without any action on the part of Summy-Birchard, the Surviving Corporation, or the holder of any of their respective shares, the Merger shall be effected in accordance with the following terms:
  - i. Summy-Birchard shares issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares) shall be converted on a one-for-one basis to shares of the Surviving Corporation.

- ii. All such shares of Summy-Birchard shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist.
  - iii. Each certificate previously representing any such Summy-Birchard shares shall thereafter represent only the right to exchange shares of Summy-Birchard into shares of the Surviving Corporation. Certificates previously representing shares of Summy-Birchard shall be surrendered in accordance with this Merger Agreement.
- B. The total merger consideration to be paid to holders of shares Summy-Birchard shall be that of the receipt of a corresponding number of shares of the Surviving Corporation.

## **ARTICLE II**

### **SHAREHOLDER APPROVAL**

- Section 1. The designation, number of outstanding shares, and number of votes entitled to vote on the plan for Summy-Birchard are 953.
- Section 2. The designation, number of outstanding shares, and number of votes entitled to vote on the plan for the Surviving Corporation are 953.

## **ARTICLE III**

### **VOTES CAST APPROVING PLAN**

- Section 1. The total number of votes cast for the plan by the shareholders of Summy-Birchard was 953. There were no votes cast against the plan. The number of votes cast for the plan by such shareholders was sufficient for approval of the plan by shareholders of Summy-Birchard.
- Section 2. The total number of votes cast for the plan by the shareholders of the Surviving Corporation was 953. There were no votes cast against the Plan. The number of votes cast for the plan by such shareholders was sufficient for approval of the plan by shareholders of the Surviving Corporation.

Dated: December 9, 2009.

ATTEST:

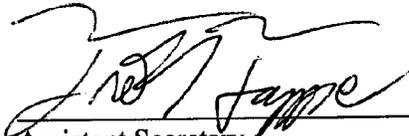
  
Assistant Secretary

SUMMY-BIRCHARD, INC.  
(Summy-Birchard)

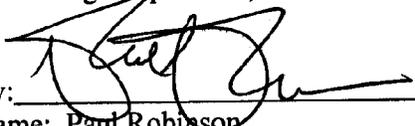
By:   
Name: Paul Robinson  
Title: Vice President and Secretary

Dated: December \_\_\_\_\_, 2009.

ATTEST:

  
Assistant Secretary

SUMMY-BIRCHARD, INC.  
(Surviving Corporation)

By:   
Name: Paul Robinson  
Title: Vice President and Secretary

**STATE OF WYOMING**  
**Office of the Secretary of State**

I, MAX MAXFIELD, Secretary of State of the State of Wyoming, do hereby certify that the filing requirements for the issuance of this certificate have been fulfilled.

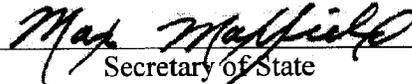
**CERTIFICATE OF MERGER**

**Summy-Birchard, Inc. (Wyoming) (Unqualified Non-survivor)**  
**Merged into Summy-Birchard, Inc. (Wyoming) (Qualified Survivor)**

I have affixed hereto the Great Seal of the State of Wyoming and duly executed this official certificate at Cheyenne, Wyoming on this **8th** day of **January, 2010**.



Filed Date: 01/08/2010

  
Secretary of State

By: Jenny Kline

# **EXHIBIT 75**

VOL. 1834 PAGE 122

STATE OF WYOMING  
Secretary of State

 I hereby certify that this is a true and complete copy of the document as filed in this office and admitted to record in File No. 184685  
Dated 2/27, 1970

Thomas Harrison  
Secretary of State

BY Linda Masley

Ex. 75

134685

STATE OF WYOMING  
FILED

at 10:30

MAR 19 1976  
134871

ETRYA THOMSON  
REGISTRAR DE STATE

VOL. 1834 PAGE 121

ARTICLES OF MERGER

OF

SUMMY-BIRCHARD COMPANY,

an Illinois Corporation

and

NEW SUMMY-BIRCHARD COMPANY,

a Wyoming Corporation

The undersigned corporations, pursuant to Section 68 of the "Wyoming Corporation Act" as amended, hereby execute the following Articles of Merger:

ARTICLE ONE

The names of the corporations proposing to merge and the names of the States under the law of which such corporations are organized, are as follows:

SUMMY-BIRCHARD COMPANY	Illinois
NEW SUMMY-BIRCHARD COMPANY	Wyoming

ARTICLE TWO

The laws of the State of Illinois, the State under which the foreign corporation is organized permit such merger.

ARTICLE THREE

The name of the surviving corporation shall be SUMMY-BIRCHARD COMPANY and it shall be governed by the laws of the State of Wyoming.

RECEIVED  
MAR 20 1976  
SECRETARY OF STATE

#19429  
10 00

## ARTICLE FOUR

The plan of merger is as follows: See attached Exhibit 1, Agreement for Merger.

## ARTICLE FIVE

As to each corporation, the number of shares outstanding, the number of shares entitled to vote, and the number and designation of shares of any class entitled to vote as a class are:

CORPORATION	TOTAL NUMBER OF SHARES	TOTAL NUMBER OF SHARES ENTITLED TO VOTE	DESIGNATION OF CLASS EN- TITLED TO VOTE AS CLASS	NUMBER OF SHARES OF SUCH CLASS
Summy-Birchard Company	953	953	None	None
New Summy- Birchard Company	10	10	None	None

## ARTICLE SIX

As to each corporation, the number of shares voted for and against the plan and the number of shares of any class entitled to vote as a class voted for and against the plan, are:

CORPORATION	SHARES VOTED FOR	SHARES VOTED AGAINST	CLASS	SHARES VOTED FOR	SHARES VOTED AGAINST
Summy-Birchard Company	953	None	Common	953	None
New Summy- Birchard Company	10	None	Common	10	None

ARTICLE SEVEN

All provisions of the law of the State of Wyoming and the State of Illinois applicable to the proposed merger have been complied with.

IN WITNESS WHEREOF each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and secretary as of this 16<sup>th</sup> day of March, 1976.

SUMMY-BIRCHARD COMPANY

By: [Signature]  
David K. Sengstack, Its President

-Corporate Seal-

Attest: [Signature]  
Roberta Lysaght, Its Secretary

NEW SUMMY-BIRCHARD COMPANY

By: [Signature]  
David K. Sengstack, Its President

-Corporate Seal-

Attest: [Signature]  
Roberta Lysaght, Its Secretary

# **EXHIBIT 76**

A G R E E M E N T

THIS AGREEMENT, dated \_\_\_\_\_, 1976,  
made by and between SUMMY-BIRCHARD COMPANY, and a majority of  
the directors thereof, and NEW SUMMY-BIRCHARD COMPANY, and a  
majority of the directors thereof, referred to together as  
the Constituent Corporations,

WITNESSETH, in consideration of the premises and of  
the mutual agreements, covenants and provisions hereinafter  
contained, the parties hereto agree that SUMMY-BIRCHARD COMPANY,  
be merged into NEW SUMMY-BIRCHARD COMPANY and that the terms  
and conditions of such merger, the mode of carrying the same into  
effect, and the manner and basis of converting the shares of  
SUMMY-BIRCHARD COMPANY into shares of NEW SUMMY-BIRCHARD COMPANY  
shall be and shall follow the following form:

PLAN OF MERGER

A. The names of the corporations proposing to merge are  
SUMMY-BIRCHARD COMPANY, an Illinois corporation (hereinafter referred  
to as the absorbed corporation), and NEW SUMMY-BIRCHARD COMPANY,  
a Wyoming corporation.

They shall merge into the Wyoming corporation (hereinafter designated as the surviving corporation), which shall thereafter bear the name "SUMMY-BIRCHARD COMPANY."

B. The merger shall take place as of the date of this Agreement, in accordance with applicable provisions of the laws of the State of Illinois and the State of Wyoming. The separate existence of the absorbed corporation shall cease and the existence of the surviving corporation shall continue unaffected and unimpaired by the merger with all the rights, privileges, immunities and powers, and subject to all the duties and liabilities of a corporation organized under the General Corporation Law of the State of Wyoming.

C. The manner and basis of converting the shares of stock of each of the Constituent Corporations into shares of stock of the surviving corporation are as follows:

1. The shares of Common Stock of the surviving corporation, whether authorized or issued on the effective date of the merger shall not be converted or exchanged as a result of the merger, but upon said date all shares of Common Stock of the surviving corporation theretofore authorized (whether issued or unissued) shall be and be deemed to be shares of Common Stock of the surviving corporation, and all such shares of stock of

the surviving corporation outstanding on the effective date of the merger shall remain outstanding, shall be and be deemed fully-paid and non-assessable and shall retain all rights to accrued and unpaid dividends, if any.

2. Each share of Common Stock of the absorbed corporation issued and outstanding on the effective date of the merger, and all rights in respect thereof, shall, on said date, be converted into and exchanged for one share of the presently authorized and unissued Common Stock of the surviving corporation.

3. As soon as practicable after the effective date of the merger, each holder of an outstanding certificate or certificates theretofore representing shares of Common Stock of the absorbed corporation shall surrender the same to the surviving corporation, and such holder shall be entitled, upon such surrender, to receive in exchange therefor a certificate or certificates representing the number of whole shares of Common Stock of the surviving corporation into which the shares of Common Stock of the absorbed corporation theretofore represented by the surrendered certificate or certificates shall have been converted as aforesaid. Until so surrendered for exchange, each outstanding certificate which, prior to the effective date of the merger, represented shares of Common Stock of the absorbed corporation shall

be deemed for all corporate purposes to evidence the ownership of the number of whole shares of Common Stock of the surviving corporation which the holder of the certificates for shares of Common Stock of the absorbed corporation would be entitled to receive upon surrender thereof for exchange as aforesaid.

4. All shares of Common Stock of the surviving corporation into which shares of Common Stock of the absorbed corporation are converted, as above provided, shall be fully paid and non-assessable.

D. The merger shall effect the following change in the Articles of Incorporation of the surviving corporation:

FIRST. The name of the corporation is "SUMMY-BIRCHARD COMPANY."

E. Other provisions of the merger are as follows:

1. The By-Laws of the surviving corporation shall be and remain the surviving By-Laws of the surviving corporation until altered, amended or repealed.

2. The directors and officers of the absorbed corporation in office on the effective date of the merger shall continue in office and shall constitute the directors and officers of the surviving corporation for the term elected until their respective successors shall be elected or appointed and qualified.

3. On the effective date of the merger:

a. The surviving corporation shall possess all rights, privileges, immunities, powers and franchises as well of a public as of a private nature, and shall be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; and all property, real, personal and mixed, including all licenses, applica-

tions for licenses, trademarks, trademark registrations and applications for registration of trademark, together with the good will of the business in connection with which said licenses and marks are used, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action and all and every other interest of or belonging to or due to each of the Constituent Corporations shall be deemed to be transferred to and vested in the surviving corporation without further act or deed, and the title to any real estate, or any interest therein, vested in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger.

b. The surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations; and any claim existing or action or proceeding pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the merger had not taken place, or the surviving corporation may be substituted in its place and neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the merger. The surviving corporation shall execute and deliver any and all documents which may be required for it to assume or otherwise comply with outstanding obligations of the absorbed corporation.

c. The aggregate amount of the net assets of the Constituent Corporations which is available for payments of dividends immediately prior to the merger, to the extent that the value thereof is not transferred to stated capital by issuance of shares of stock or otherwise, shall continue to be available for the payment of dividends by the surviving corporation.

4. The surviving corporation shall pay all expenses of accomplishing the merger.

5. If at any time the surviving corporation shall consider or be advised that any further assignment or assurances in law are necessary or desirable to vest or to perfect or confirm of record in the surviving corporation the title to any property or rights of the absorbed corporation,

or to otherwise carry out the provisions hereof, the proper officers and directors of the absorbed corporation as of the effective date of the merger shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in the surviving corporation, and otherwise to carry out the provisions hereof.

6. Each of the Constituent Corporations shall take, or cause to be taken, all action or so cause to be done all things necessary, proper or advisable under the laws of the State of Illinois and of the State of Wyoming, or either of such States, to consummate and make effective and the merger, subject to the appropriate vote or consent of the stockholders of each of the Constituent Corporations in accordance with the requirements of the applicable provisions of the laws of the State of Illinois and of the State of Wyoming.

7. Anything herein or elsewhere to the contrary notwithstanding, this Agreement and Plan of Merger may be abandoned by action of the Board of Directors of either the surviving corporation or the absorbed corporation at any time prior to the effective date of the merger, whether before or after submission to their respective stockholders, upon the happening of the following event: If the merger fails to obtain the requisite vote of stockholders of the surviving corporation or of the stockholders of the absorbed corporation not later than June 1, 1976.

IN WITNESS WHEREOF, each of the undersigned corporations has caused these Articles of Merger to be executed in its name by its president and its corporate seal to be hereunto affixed, attested by its secretary, and signed by its directors this \_\_\_ day of March 1976.

SUMMY-BIRCHARD COMPANY

By \_\_\_\_\_  
David K. Sengstack, Its President

ATTEST:

\_\_\_\_\_  
Roberta Lysaght, Its Secretary

-5- \_\_\_\_\_  
David K. Sengstack, Its Sole Director

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

VOL 1834 PAGE 132

Before me, Myron E. Hake, Jr., a Notary Public in and for the said County and State, personally appeared DAVID K. SENGSTACK, who acknowledged before me that he is the President of SUMMY-BIRCHARD COMPANY, an Illinois corporation and that he signed the foregoing document as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 16<sup>th</sup> day of March, 1976.

Myron E. Hake, Jr.  
Notary Public

My Commission Expires: 10/31/78

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

Before me, Myron E. Hake, Jr., a Notary Public in and for the said County and State, personally appeared DAVID K. SENGSTACK who acknowledged before me that he is the President of NEW SUMMY-BIRCHARD COMPANY, a Wyoming corporation and that he signed the foregoing document as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 14<sup>th</sup> day of March, 1976.

Myron E. Hake, Jr.  
Notary Public

My Commission Expires: 10/31/78

# **EXHIBIT 77**

134685

ARTICLES OF AMENDMENT  
TO ARTICLES OF INCORPORATION OF  
SUMMY-BIRCHARD COMPANY  
A WYOMING CORPORATION

STATE OF WYOMING  
FILED  
As 21050  
NOV 9, 1978  
154139  
THYRA THOMSON  
SECRETARY OF STATE

VOL 1834 PAGE 118

Pursuant to the provisions of Sections 51 and 52 of the Wyoming Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is SUMMY-BIRCHARD COMPANY.

SECOND: The following amendments of the Articles of Incorporation were adopted by the shareholders of the corporation on October 5, 1978, in the manner prescribed by the Wyoming Business Corporation Act:

ARTICLE FIRST of the Articles of Incorporation of this company is hereby amended to read as follows:

"The name of this corporation is SUMCO CORPORATION".

THIRD: The number of shares of the corporation at the time of such adoption was nine hundred sixty three (963) and the number of share entitled to vote thereon was nine hundred sixty three (963).

FOURTH: The designation and number of outstanding shares of each class entitled to vote thereon as a class were as follows:

Class: None  
Number of Shares: 963

FIFTH: The number of shares voted for such amendment was nine hundred sixty three (963), and the number of shares voted against such amendment was none.

Dated October 5, 1978.

Ex. 77