

11-04-1998

Attorney Docket No. 17288-000200

FORM PTO-1594  
1-31-92

MRD  
10-26-98



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

To the Honorable Commissioner of Patents

100867490

...hed original documents or copy thereof.

1. Name of conveying party(ies):

Horizon Organic Dairy, Inc.

- Individual(s)
- General Partnership
- Corporation-State - Colorado
- Other:
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies):

Name: Horizon Organic Dairy, Inc.

Internal Address:

Street Address: 6311 Horizon Lane

City: Longmont State: CO ZIP: 80503

- Individual(s) citizenship:
- Association
- General Partnership
- Limited Partnership
- Corporation-State: Colorado
- Other:

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other:
- Merger
- Change of Name

Execution Date: Effective May 29, 1997

4. Application number(s) or registration number(s).

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,975,824 "HORIZON ORGANIC & Design"

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Lesley S. Craig  
TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center  
8th Floor  
San Francisco, California 94111

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41):..... \$ 45.00

- Enclosed
- Charge Fees to Deposit Account
- Charge any additional fees associated with this paper or during the pendency of this application, or credit any overpayment, to deposit account

8. Deposit account number: 20-1430

(Attach duplicate copy of this page if paying by deposit account)

11/03/1998 SBURMS 00000134 201430 1975824  
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DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Lesley S. Craig  
Name of Person Signing

*Lesley S. Craig*  
Signature

10-21-98  
Date

Total number of pages including cover sheet, attachments, and document:

10. Change Correspondence Address to that of Part 5?  Yes  No

OMB No. 0651-0011 (exp. 4/94)

Mail documents to be recorded with required cover sheet information to:  
Do not detach this portion  
Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 1807 FRAME: 0729

**EXHIBIT A**

**ARTICLES OF MERGER**

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Pursuant to the provisions of the Colorado Business Corporation Act, the undersigned adopt the following Articles of Merger for the purpose of merging Horizon Newco, Inc., a Colorado corporation (the "Nonsurviving Corporation"), with and into Horizon Organic Dairy, Inc., a Colorado corporation (the "Surviving Corporation"). The corporations that are a party to the merger are sometimes collectively referred to herein as the "Constituent Corporations."

**ARTICLE I**

The name and place of incorporation of each of the Constituent Corporations is:

<u>Name of Corporation</u>	<u>State of Organization</u>
Horizon Newco, Inc. <i>DL 1997/11666400</i>	Colorado
Horizon Organic Dairy, Inc. <i>DL 1997/11685006</i>	Colorado

**ARTICLE II**

The name and address of the place of business of the Surviving Corporation is as follows:

Horizon Organic Dairy, Inc.  
7490 Clubhouse Road, Suite 103  
Boulder, Colorado 80301

**ARTICLE III**

The name and address of the statutory agent of the Surviving Corporation is as follows:

Lee F. Sachnoff  
Krendl Horowitz & Krendl  
370 17<sup>th</sup> Street, Suite 5350  
Denver, Colorado 80202

F:\Archive\1997\1997Docs\EI\Horizon\April-97\articles of merger.wpd May 28, 1997 10:57 AM COMPUTER UPDATE COMPLETE

#### ARTICLE IV

The Agreement and Plan of Merger setting forth the terms and conditions of the merger of the Constituent Corporations (the "*Merger Agreement*"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, has been adopted by the board of directors of each corporation that is a party to the merger.

#### ARTICLE V

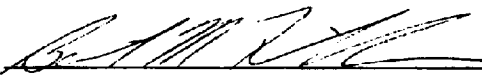
The Surviving Corporation has 3,664,000 shares of issued and outstanding common stock, which constitutes the only voting group for such corporation. The Nonsurviving Corporation has 100,000 shares of issued and outstanding common stock, which constitutes the only voting group for such corporation. As to each of the Constituent Corporations, the merger was approved by the unanimous consent of the stockholders and no votes were cast against the merger. The number of votes cast for the merger by each voting group was sufficient for approval by that voting group.

**IN WITNESS WHEREOF**, the undersigned Constituent Corporations have caused these Articles of Amendment and Merger to be duly executed as of the 29th day of May, 1997.

**HORIZON ORGANIC DAIRY, INC.,**  
a Colorado corporation

By:   
Barnet M. Feinblum, President

**HORIZON NEWCO, INC.,**  
a Colorado corporation

By:   
Barnet M. Feinblum, President

# AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "*Agreement*"), dated as of May 27, 1997, is entered into by and between Horizon Newco, Inc. a Colorado corporation ("*Newco*"), and Horizon Organic Dairy, Inc., a Colorado corporation ("*HOD*").

## Preliminary Statement

1. The Board of Directors of each of the above-referenced corporations (collectively, the "*Corporations*") desire for Newco to merge with and into HOD (the "*Merger*"), deem the Merger to be desirable and in the best interests of the shareholders of each of the Corporations, and have approved both this Agreement and the Merger. The Merger is intended to qualify as a reorganization under Sections 368(a)(1)(A) and 368(a)(2)(E) of the Internal Revenue Code of 1986, as amended.

2. The terms, conditions, and manner of consummating the Merger are set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, covenants and provisions herein contained, the parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I

### The Merger and Its Effects

1.1 **Merger Effective Time.** Subject to the provisions of this Agreement, each of the Corporations shall duly prepare and execute the proper documents to effectuate the Merger, setting forth the information required by, and otherwise in compliance with, the Colorado Business Corporation Act, as amended, and thereafter shall have such documents delivered for filing with the office of the Secretary of State of the State of Colorado as soon as practicable. The Merger shall become effective for all purposes upon the filing of the documents with the Secretary of State of the State of Colorado (the "*Merger Effective Time*").

1.2 **Effect of the Merger.** At the Merger Effective Time, by virtue of the Merger and without any action on the part of any person, the following shall occur:

(a) Newco shall be merged with and into HOD, the separate existence of Newco shall cease, and HOD shall be the surviving entity, shall continue to exist, and shall be governed by the laws of the State of Colorado.

(b) The Articles of Incorporation of HOD as in effect immediately prior to the Merger Effective Time shall remain the Articles of Incorporation of HOD as the surviving entity.

(c) The Bylaws of HOD as in effect immediately prior to the Merger Effective Time shall remain the Bylaws of HOD as the surviving entity until they shall be altered or amended in accordance with the provisions thereof.

(d) The officers and directors of HOD immediately prior to the Merger Effective Time shall remain the officers and directors of HOD.

(e) Each share of Newco which is issued and outstanding immediately before the Merger Effective Time shall automatically be converted into one (1) share of common stock of the surviving corporation and a new stock certificate shall be issued representing such stock.

(f) Each share of the common stock of HOD ("*HOD Stock*") issued and outstanding immediately prior to the Merger Effective Time shall be assigned to Horizon Organic Holding Corporation, the sole shareholder of Newco, and a new certificate issued to Horizon Organic Holding Corporation, and the shareholders of HOD shall be entitled to receive for each share of HOD Stock one (1) share of the common stock of Horizon Organic Holding Corporation, a Delaware corporation.

(g) From and after the Merger Effective Time, the Merger shall have all the other effects provided by applicable law.

## ARTICLE II

### Representations and Warranties of Each of the Corporations

Each of the Corporations hereby represents and warrants the following to the other party hereto:

**2.1 Formation; Qualification.** The Corporation was duly organized under the laws of its state of incorporation and is validly existing and in good standing under the laws of such state. The Corporation has all requisite corporate power and authority to own, operate or lease its properties and to carry on its business as now being conducted.

**2.2 Capitalization.** The Corporation's outstanding shares of capital stock are duly authorized, validly issued, fully paid and nonassessable. There are no material outstanding subscriptions, options or other arrangements or commitments obligating the Corporation to issue any additional shares of its capital stock except as have been disclosed to the other party hereto.

**2.3 Authority and Authorization.** The Corporation has all requisite power and authority to enter into and perform the provisions of this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Corporation, subject to the approval of this Agreement by the shareholders of the Corporation. Subject to such approval, this Agreement has been duly executed and delivered by the Corporation.

### **ARTICLE III**

#### **Conditions Precedent to Each Party's Obligations to Effect the Merger**

The respective obligations of each party to effect the Merger shall be subject to the fulfillment (or waiver) at or prior to the Merger Effective Time of the following conditions:

(a) The approval and adoption of this Agreement by the shareholders of each of the Corporations.

(b) The absence of any order or injunction of any court or governmental authority of competent jurisdiction preventing consummation of the transactions contemplated hereby.

(c) Each party to this Agreement shall have performed in all material respects their respective agreements contained in this Agreement required to be performed at or prior to the Merger Effective Time.

(d) In connection with the issuance of stock in Horizon Organic Holding Corporation hereunder, each of the shareholders of HOD shall agree to execute the standard form Shareholders' Agreement of Horizon Organic Holding Corporation, and execute and deliver any other documents regarding securities laws or investment restrictions as may required by Horizon Organic Holding Corporation.

(e) All of the individuals holding stock options from HOD shall have executed an acknowledgment, in the form approved by Horizon Organic Holding Corporation, under which Horizon Organic Holding Corporation assumes the obligations on such options and the holder releases any rights to receive stock in HOD.

### **ARTICLE IV**

#### **Additional Agreements**

**4.1 Other Actions.** As soon as reasonably practicable after the execution of this Agreement, each of the Corporations will take all action necessary to duly call, give notice of,

convene and hold meetings or obtain the requisite written consents of their respective shareholders to consider and vote upon approval of the Merger and the transactions contemplated hereby. Each of the Corporations will use all reasonable efforts to take all other action necessary or advisable to secure any vote or consent of their respective shareholders required by their organizational documents, this Agreement or applicable law to effect the Merger.

**4.2 Additional Agreements.** Subject to the terms and conditions provided herein, each of the parties hereto shall use all reasonable efforts to obtain in a timely manner all necessary waivers, consents and approvals and to effect all necessary registrations and filings, and to use all reasonable efforts to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement.

## **ARTICLE V**

### **Termination**

**5.1 Termination.** This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Merger Effective Time by written agreement of the parties hereto.

**5.2 Effect of Termination.** If this Agreement is terminated as provided herein, there shall be no liabilities or obligations hereunder on the part of the parties hereto.

## **ARTICLE VI**

### **Miscellaneous**

**6.1 Further Cooperation.** At, and from time to time after, the Merger Effective Date, at the request of any party hereto but without further consideration, each party will take all such actions and deliver all such documents as shall be reasonably necessary or appropriate to carry out the intent, terms and provisions of this Agreement.

**6.2 Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal,



invalid or unenforceable provision, there shall be added automatically as a part of the Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

**6.3 Entirety and Amendments.** This instrument embodies the entire agreement between the parties, and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof and may be amended only by an instrument in writing executed by the parties hereto, and supplemented only by documents delivered in accordance with the express terms hereof.

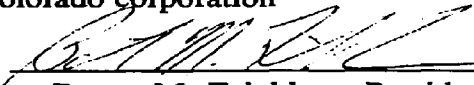
**6.4 Headings.** The headings, captions and arrangements used in this agreement are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Agreement or affect the meaning hereof.

**6.5 Governing Law.** The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.


**6.6 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument; but in making proof of this Agreement, it shall not be necessary to produce or account for all counterparts.

**IN WITNESS WHEREOF,** the undersigned corporations have caused this Agreement and Plan of Merger to be duly executed as of the date first above written.

**HORIZON ORGANIC DAIRY, INC.,**  
a Colorado corporation

By:   
Barnet M. Feinblum, President

**HORIZON NEWCO, INC.,**  
a Colorado corporation

By:   
Barnet M. Feinblum, President

MERGER \_\_\_\_\_ CONSOLIDATION \_\_\_\_\_

CANCELLATION OF LIMITED PARTNERSHIP DUE TO MERGER \_\_\_\_\_

DOMESTIC \_\_\_\_\_ FOREIGN \_\_\_\_\_ PROFIT \_\_\_\_\_ NONPROFIT \_\_\_\_\_

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MERGER #19971086073

HORIZON NEWCO, INC. DPC19971066400  
(COLORADO CORPORATION)

INTO

HORIZON ORGANIC DAIRY, INC. DPC19911085006  
(COLORADO CORPORATION)

THE SURVIVOR