

07-29-2004



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

RE

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102801530

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

40-29-04

1. Name of conveying party(ies):

Iowa Turkey Growers Cooperative

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other Amended and Restated Trademark Security Agreement

Execution Date: 6/25/04

2. Name and address of receiving party(ies)

Name: Bank One, NA, as Agent

Internal

Address:

Street Address: 120 South LaSalle Street

City: Chicago State: IL Zip: 60603

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other National Banking Association

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

(Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s) See Attachment

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name:

Attn: Penelope J.A. Agodoa Federal Research Company, LLC 1030 15th Street, NW, Suite 920 Washington, DC 20005 202.783.2700

Street Address:

City: State: Zip:

6. Total number of applications and registrations involved:

7

7. Total fee (37 CFR 3.41) \$ 190.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Michael A. Witt, Esq. Name of Person Signing

Signature

June 29, 2004

Date

Total number of pages including cover sheet, attachments, and document: 15

07/30/2004 LHMULLER 00000001 78297192

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 02 FC:8522

40.00 OP 150.00 OP

**ATTACHMENT TO
FORM PTO-1594
TRADEMARK RECORDATION FORM COVER SHEET**

Conveying Party:
Iowa Turkey Growers Cooperative

Receiving Party:
Bank One, NA, as Agent

Item 4. (Cont'd.) Trademark Application Nos:

Serial Number: 78297192

Serial Number: 78363255

Serial Number: 78399232

Serial Number: 78387433

Serial Number: 78360059

Serial Number: 78360046

Serial Number: 78321690

**AMENDED AND RESTATED
TRADEMARK SECURITY AGREEMENT**

This Amended and Restated Trademark Security Agreement, made as of June 29, 2004 (this "Agreement"), is made by Iowa Turkey Growers Cooperative, an Iowa cooperative association ("Borrower") in favor of Bank One, NA, a national banking association, as Agent (the "Agent") on behalf of the Lenders (as defined in the Loan Agreement (as defined below)). Capitalized terms used in this Agreement and not otherwise defined have the meanings assigned to such terms in the Loan Agreement .

PRELIMINARY STATEMENTS:

WHEREAS, Borrower, Protein Sales, L.L.C., Protein Processing, L.L.C., Protein Procurement, L.L.C. ("Protein Procurement") and Bank One, NA, ("Bank One") are parties to the Loan and Security Agreement dated as of April 16, 2002 (as such agreement has been amended, restated, supplemented or otherwise modified from time to time, the "Original Loan Agreement"); and

WHEREAS, West Liberty Foods, L.L.C. ("West Liberty"), Protein Procurement, the Borrower, the Agent and the Lenders desire to amend and restate the Original Loan Agreement pursuant to that certain Amended and Restated Loan and Security Agreement of even date herewith (the "Loan Agreement") by and among West Liberty, Protein Procurement, Protein Processing, the Borrower, the Agent and the Lenders;

WHEREAS, in order to secure payment of the Liabilities under the Original Loan Agreement, the Borrower executed and delivered in favor of Bank One, that certain Trademark Security Agreement dated as of April 16, 2002 (the "Original Trademark Security Agreement");

WHEREAS, the parties hereto desire to amend and restate the Original Trademark Security Agreement, pursuant to the terms of this Agreement; and

WHEREAS, the Borrower and the Agent desire and have agreed to enter into this Agreement as an amendment and restatement of the Original Trademark Security Agreement, and therefore, this Agreement shall not constitute or effectuate a novation thereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Borrower and the Agent hereby agree as follows:

1. **Security Interest in Trademarks.** To secure the complete and timely payment, performance and satisfaction of the Liabilities, Borrower hereby grants, pledges, conveys, and transfers to the Agent for the benefit of the Lenders a continuing security interest in, as and by way of a first security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Borrower's now owned or existing and hereafter acquired or arising:

(A) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on the attached Schedule I and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of Borrower's business symbolized by the foregoing and connected therewith and (v) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(v) above are referred to collectively as the "Trademarks"); and

(B) rights under or interests in any trademark license agreements or service mark license agreements with any other party, whether Borrower is licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on the attached Schedule II, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses (all of the foregoing are referred to collectively as the "Licenses").

2. **Non-Contravention.** Borrower will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to the Agent under this Agreement or the rights associated with the Trademarks or Licenses.

3. **New Trademarks and Licenses.** Borrower represents and warrants that, from and after the date of this Agreement, (i) the Trademarks listed on Schedule I include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by Borrower, (ii) the Licenses listed on Schedule II include all of the trademark license agreements and service mark license agreements under which Borrower is the licensee or licensor and (iii) no Liens, claims or encumbrances in such Trademarks and Licenses have been granted by Borrower to any Person or asserted by any Person against Borrower other than the Agent, except for Permitted Liens. If, prior to the termination of this Agreement, Borrower (a) obtains rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (b) becomes entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor or (c) enters into any new trademark license agreement or service mark license agreement, the provisions of Section 1 shall automatically apply thereto. Borrower will give to the Agent contemporaneous written notice of events described in clauses (a)-(c).

Borrower authorizes the Agent to modify this Agreement unilaterally (x) by amending Schedule I to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule II to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under Section 1 or under this Section 3 and (y) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule I or Schedule II thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

4. **Royalties.** Borrower agrees that the use by the Agent of the Trademarks and Licenses as authorized under this Agreement in connection with the Agent's exercise of its rights and remedies under Section 12 hereof or under Section 10.3 of the Loan Agreement are coextensive with Borrower's rights thereunder and with respect thereto and without any liability to Borrower for royalties or other related charges, fees, expenses and costs from the Agent.

5. **Right to Inspect; Further Assignments and Security Interests.** The Agent, or any Person designated by the Agent in writing from time to time, may at all reasonable times and upon reasonable advance notice (and at any time and without advance notice when a Default or Event of Default exists) have access to examine, audit, make copies (at Borrower's expense) and extracts from and inspect Borrower's premises and examine Borrower's books, records and operations relating to the Trademarks and Licenses. From and after the occurrence of a Default or an Event of Default, Borrower agrees that the Agent, or any Person designated by the Agent in writing, has the right to establish such reasonable additional product quality controls as the Agent or such Person, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior written consent of the Agent, (ii) to maintain the quality of such products as of the date of this Agreement, and (iii) not to change the quality of such products in any respect without the Agent's prior written consent, if such action is reasonably likely to cause a Material Adverse Effect.

6. **Nature and Continuation of the Agent's Security Interest; Termination of the Agent's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement creates a continuing security interest in the Trademarks and Licenses and terminates only when each of the Agent and the Lenders has no further obligation to make any Loans, the Liabilities have been indefeasibly paid and satisfied in full and the Loan Agreement has been terminated in accordance with its terms. When this Agreement has terminated, the Agent will promptly execute and deliver to Borrower, at Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate the Agent's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by the Agent under this Agreement or the Loan Agreement.

7. **Duties of Borrower.** Borrower has the duty, to the extent desirable in the normal conduct of Borrower's business, to: (i) prosecute diligently and in good faith any trademark application or service mark application that is part of the Trademarks pending as of the date of this Agreement or hereafter until the termination of this Agreement and (ii) make application for trademarks or service marks. Borrower will use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or will be necessary or economically desirable in the operation of Borrower's business, except for those which would have no reasonable likelihood of having a Material Adverse Effect. Any fees, costs, charges or expenses (including, attorneys' fees and expenses) incurred in connection with the foregoing will be borne by Borrower. The Agent does not have any duty with respect to the Trademarks and Licenses, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, the Agent is not under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against other parties, but may do so at its option from and after the occurrence and during the continuance of an Event of Default and all costs, charges, fees and expenses (including, without limitation, reasonable fees and expenses of attorneys for the Agent) incurred in connection therewith will be borne by Borrower.

8. **The Agent's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, the Agent has the right, but is not obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if the Agent commences any such suit, Borrower will, at the request of the Agent, do any and all lawful acts and execute any and all proper documents required by the Agent in aid of such enforcement. Borrower will, upon demand, promptly reimburse the Agent for all costs, fees and expenses incurred by the Agent in the exercise of its rights under this Section 8 (including, without limitation, reasonable fees and expenses of attorneys for the Agent).

9. **Waivers.** The Agent's failure, at any time or times hereafter, to require strict performance by Borrower of any provision of this Agreement does not waive, affect or diminish any right of the Agent thereafter to demand strict compliance and performance therewith nor does any course of dealing between Borrower and the Agent have such effect. No single or partial exercise of any right under this Agreement precludes any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Agreement are deemed to have been suspended or waived by the Agent unless such suspension or waiver is in writing signed by an officer of the Agent and directed to Borrower specifying such suspension or waiver.

10. **Severability.** Whenever possible, each provision of this Agreement is interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision is held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability will affect only such clause or provision, or part of such clause or provision, in such jurisdiction, and does not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

11. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 3 or by a writing signed by Borrower and the Agent.

12. **Cumulative Remedies; Power of Attorney; Financing Statements.** (A)

Borrower irrevocably designates, constitutes and appoints the Agent (and all Persons designated by the Agent) as Borrower's true and lawful attorney-in-fact, and authorizes the Agent and any of the Agent's designees, in Borrower's or the Agent's name, to take any action and execute any instrument to the extent necessary to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence and during the continuance of an Event of Default, to (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Agent in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone and (iv) take any other actions with respect to the Trademarks or the Licenses as the Agent deems necessary to protect its interests under this Agreement. Borrower ratifies all that such attorney-in-fact lawfully does or causes to be done by virtue of the provisions of this Section 12. This power of attorney is coupled with an interest and is irrevocable until the Agent and the Lenders have no further obligation to make any Loans, the Liabilities have been indefeasibly paid and satisfied in full in cash and the Loan Agreement has been terminated in accordance with its terms. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Agent under the Loan Agreement or any of the Financing Agreements, but rather is intended to facilitate the exercise of such rights and remedies.

(B) The Agent has, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Code. Upon the occurrence and during the continuance of an Event of Default and the election by the Agent to exercise any of its remedies under the Code with respect to the Trademarks and Licenses, Borrower agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Agent or any transferee of the Agent and to execute and deliver to the Agent or any such transferee all such agreements, documents and instruments as may be necessary, in the Agent's sole and absolute discretion, to effect such assignment, conveyance and transfer. All of the Agent's rights and remedies with respect to the Trademarks and the Licenses, whether established by this Agreement, by the Loan Agreement, by any other agreements or by law, are cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth in this Agreement to the contrary, it is expressly agreed that upon the occurrence and during the continuance of an Event of Default, the Agent may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement and any of the other Financing Agreements.

(C) The Agent may at any time and from time to time file financing statements, "in-lieu" initial financing statements, continuation statements and amendments thereto that describe the Trademarks and the Licenses, and which contain any other information required by the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower. Borrower agrees to furnish any such information to the Agent promptly upon request. Any such financing statements, continuation statements or amendments may be signed by the Agent and may be filed with or without signature at

any time and in any jurisdiction as reasonably determined by the Agent. The Agent agrees to use its reasonable efforts to notify Borrower of the Agent taking any such action provided in this Section; provided, however, Borrower agrees that the failure of the Agent to so notify Borrower for any reason shall not in any way invalidate the actions taken by the Agent pursuant to this Section.

13. **Indemnification**. The Borrower agrees to defend, protect, indemnify and hold harmless the Agent and each and all of its officers, directors, employees, attorneys and agents ("Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for the Indemnified Parties in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Parties shall be designated by a party thereto), which may be imposed on, incurred by, or asserted against any Indemnified Party (whether direct, indirect or consequential and whether based on any federal or state laws or other statutory regulations, including, without limitation, commercial laws and regulations, under common law or at equitable cause, or on contract or otherwise) in any manner as a result of any misrepresentation, breach or failure to perform any agreement or covenant contained in this Agreement, as well as any trademark infringement claim that may be brought against any Indemnified Party in connection with this Agreement; provided, that the Borrower shall not have any obligation to any Indemnified Party hereunder with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. Any liability, obligation, loss, damage, penalty, cost or expense incurred by the Indemnified Parties shall be paid to the Indemnified Parties on demand, together with interest thereon at the Default Rate from the date incurred by the Indemnified Parties until paid by the Borrower, be added to the Liabilities, and be secured by the Collateral. The provisions of and undertakings and indemnifications set out in this Section 13 shall survive the satisfaction and payment of the Liabilities of the Borrower and the termination of the Loan Agreement and this Agreement in accordance with their respective terms.

14. **Successors and Assigns**. This Agreement is binding upon Borrower and its successors and permitted assigns, and inures to the benefit of the Agent and its successors and assigns. Borrower's successors and assigns include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however, that Borrower will not voluntarily assign or transfer its rights or obligations under this Agreement without the Agent's prior written consent.

15. **GOVERNING LAW**. THIS AGREEMENT SHALL BE CONSTRUED IN ALL RESPECTS IN ACCORDANCE WITH, AND ENFORCED AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAW PRINCIPLES.

16. **Notices**. All notices or other communications under this Agreement will be given in the manner and to the addresses set forth in the Loan Agreement.

17. **Section Titles.** The section and paragraph titles of this Agreement are for convenience of reference only, and do not affect in any way the interpretation of any of the provisions of this Agreement.

18. **Execution in Counterparts; Facsimile.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together constitute one and the same agreement. The parties agree that any signature which may appear only on a facsimile copy shall be deemed an original signature to this Agreement.

19. **No Novation But Merely Restatement.** Each of the Borrower and the Agent are entering into this Agreement to satisfy their mutual desire to amend and restate the Original Trademark Security Agreement. It is the intention of the parties hereto that this Agreement shall not effectuate a novation of the indebtedness, obligations and liabilities of the Borrower to Bank One under the Original Trademark Security Agreement, but merely constitute a restatement and, where applicable, a substitution of the terms governing such indebtedness, obligations and liabilities. The Borrower hereby confirms the security interest granted by the Borrower in favor of Bank One to secure all such indebtedness, obligations and liabilities owing by the Borrower to Bank One pursuant to the Original Trademark Security Agreement (except as modified herein).

[Signature page follows.]

IN WITNESS WHEREOF, this Amended and Restated Trademark Security Agreement has been executed as of the date first above written.

**IOWA TURKEY GROWERS
COOPERATIVE**

By: Ed Ganett
Name: Ed Ganett
Title: President

Accepted and agreed to as of the day and year first above written.

BANK ONE, NA, as Agent

By: James L. Hyman
Name:
Title: FIRST VICE PRESIDENT

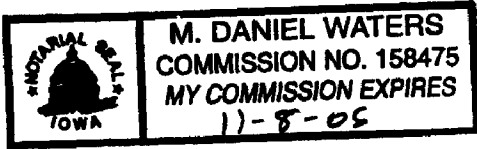
STATE OF IOWA)
)
COUNTY OF POLK)

I, M. Daniel Waters, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Ed Garrett, personally known to me to be the President and Chief Operating Officer of Iowa Turkey Growers Cooperative, an Iowa cooperative association, and the same person whose name is subscribed to the foregoing Trademark Security Agreement, appeared before me this day in person and acknowledged that he has signed and delivered the foregoing Trademark Security Agreement as his free and voluntary act as aforesaid, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of June, 2004.

M. Daniel Waters

Notary Public



My commission expires: November 8, 2005

SCHEDULE I

Trademarks

Word Mark: "WHEN YOU HAVE SOMETHING BETTER TO DO
THAN COOK!"
Goods and Services: IC 029. US 046. G & S: Turkey
Mark Drawing Code: (1) TYPED DRAWING
Serial Number: 78297192
Filing Date: September 8, 2003

Word Mark: "FOOD SAFETY, IT'S WHAT WE PACKAGE"
Goods and Services: IC 040. US 100 103 106. G & S: Processing and Packaging
of Turkey, Beef, Pork and Chicken.
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 78363255
Filing Date: February 5, 2004

Word Mark: "YOU SURE IT'S NOT HAMBURGER"
Goods and Services: IC 029. US 046. G & S: Meat
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 78399232
Filing Date: April 9, 2004

Word Mark: "DELI FRESH"
Goods and Services: IC 029. US 046. G & S: Meat
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 78387433
Filing Date: March 19, 2004

Word Mark: "FOOD SAFETY, IT'S OUR FOCUS"
Goods and Services: IC 040. US 100 103 106. G & S: Processing and Packaging
of Turkey, Beef, Pork and Chicken Products
Mark Drawing Code: (4) STANDARD CHARACTER MARK
Serial Number: 783600059
Filing Date: January 30, 2004

Word Mark: "ITGC"
Goods and Services: IC 040. US 100 103 106. G & S: Processing and Packaging
of Turkey, Beef, Pork and Chicken Products
Mark Drawing Code: (5) WORD, LETTERS AND/OR NUMBERS IN
STYLIZED FORM
Serial Number: 78360046
Filing Date: January 30, 2004

Word Mark: "TURKEY CANOES"
Goods and Services: IC 029. US 046. G & S: Turkey
Mark Drawing Code: (1) TYPED DRAWING
Serial Number: 78321690
Filing Date: October 31, 2003

SCHEDULE II

Licenses

None.