

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM332940

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Fayrefield Foods Limited		06/30/2014	limited corporation: ENGLAND
RECEIVING PARTY DATA			
Name:	Promovita Ingredients Limited		
Street Address:	Englesea House Barthomley Road		
City:	Crewe, Cheshire		
State/Country:	UNITED KINGDOM		
Postal Code:	CW1 5UF		
Entity Type:	Limited company: UNITED KINGDOM		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	77755957	PROMOVITA	
CORRESPONDENCE DATA			
Fax Number:	9735776301		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	9735776300		
Email:	michael@mjbrownlaw.com		
Correspondent Name:	Michael Brown/Michael J Brown Law Offic		
Address Line 1:	354 Eisenhower Parkway		
Address Line 2:	Plaza I, 2nd Floor, Suite 2025		
Address Line 4:	Livingston, NEW JERSEY 07039-1048		
ATTORNEY DOCKET NUMBER:	HILL-0125		
NAME OF SUBMITTER:	Michael J. Brown		
SIGNATURE:	/MichaelJBrown/		
DATE SIGNED:	02/23/2015		
Total Attachments: 11			
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DATED *30 June* 2014

(1) FAYREFIELD FOODS LIMITED

and

(2) PROMOVITA INGREDIENTS LIMITED

and

(3) DAIRY CREST LIMITED

ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

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THIS AGREEMENT is dated

30 June

2014

Parties

- (1) **FAYREFIELD FOODS LIMITED** incorporated and registered in England and Wales with company number 01639747 whose registered office is at Englesea House, Barthomley Road, Crewe, Cheshire CW1 5UF (**Assignor**).
- (2) **PROMOVITA INGREDIENTS LIMITED** incorporated and registered in England and Wales with company number 08443393 whose registered office is at Englesea House, Barthomley Road, Crewe, Cheshire CW1 5UF (**Assignee**).
- (3) **DAIRY CREST LIMITED** incorporated and registered in England and Wales with company number 02085882 whose registered office is at Claygate House, Littleworth Road, Esher, Surrey KT10 9PN (**Dairy Crest**).

BACKGROUND

By the Shareholders' Agreement (as defined below) the Assignor has agreed to enter into this agreement to assign to the Assignee certain intellectual property rights relating to the Business (as defined in the Shareholders' Agreement) including those set out in the Schedule, on the terms set out in this agreement.

AGREED TERMS

1. **INTERPRETATION**

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

Assigned Rights: all the Intellectual Property Rights owned or used by the Assignor as at the date of this Agreement in relation to the business of the development, marketing and sale of products containing galacto-oligosaccharides, in dried or liquid formats for use in infant formula milk, nutraceuticals and in feed compounds and semi pharmaceutical products (including the patents, patent application and trade mark referred to in the Schedule) which subsist worldwide excluding Canada.

Associated Person: means in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on that company's behalf.

Business Day: any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the United Kingdom are generally open for business.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and services marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist anywhere in the world (excluding Canada) as at the date of this agreement.

Shareholders' Agreement: a shareholders' agreement dated the same date as this agreement between the Assignor and Dairy Crest in relation to the joint venture to be carried on through the Assignee.

- 1.2. Clause and schedule headings shall not affect the interpretation of this agreement.
- 1.3. References to clauses and the schedule are to the clauses and the schedule of this agreement.
- 1.4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.6. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.7. **Writing or written** includes faxes but not e-mail. Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.8. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. **ASSIGNMENT**

In consideration of the sum of £1 (receipt of which the Assignor expressly acknowledges) and subject to the provisions of clause 3 the Assignor hereby assigns to the Assignee absolutely all its right, title and interest in and to, the Assigned Rights, including so far as it is able:

- (a) the absolute entitlement to any registrations granted to the Assignor pursuant to any of the applications comprised in the Assigned Rights;
- (b) all goodwill attaching to any of the Assigned Rights and in respect of the business relating to the goods or services in respect of which such Assigned Rights are registered or used;
- (c) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights whether occurring before, on, or after the date of this agreement; and
- (d) any other Intellectual Property Rights (to the extent owned or used by the Assignor as at the date of this agreement but excluding any such rights which subsist in Canada) that may reasonably be needed by the Assignee for the Business, if not included in the Assigned Rights.

3. **ASSIGNOR RIGHTS**

For the avoidance of doubt, each of the Assignee and Dairy Crest agrees that it will not use any of the Assigned Rights in Canada (without first getting the prior written consent of the Assignor, such consent not to be unreasonably withheld or delayed) and both the Assignee and Dairy Crest hereby agrees that the Assignor may exploit and develop the Assigned Rights, and all its Intellectual Property Rights which subsist or will subsist now or in the future, solely in Canada (for the marketing and sale of products in the Canadian market only) and the Assignee hereby grants to the Assignor an exclusive, royalty-free perpetual licence to use all or any of the Assigned Rights solely in Canada provided that the Assignor does not supply any Products (as defined in the Shareholders' Agreement)

manufactured in Canada outside of Canada without the prior written consent of Dairy Crest.

4. **WARRANTIES**

The Assignor warrants that:

- (a) it is the sole legal and beneficial owner of, and owns all the rights and interests in, the Assigned Rights owned by the Assignor;
- (b) for each of the applications and registrations listed in the Schedule it is properly registered as the applicant or registered proprietor, and all application, registration and renewal fees have been paid;
- (c) it has not licensed or assigned any of the Assigned Rights;
- (d) the Assigned Rights owned by the Assignor are free from any security interest, option, mortgage, charge or lien;
- (e) it is unaware of any infringement or likely infringement of any of the Assigned Rights;
- (f) so far as it is aware, all the Assigned Rights are valid and subsisting and there are and have been no claims, challenges, disputes or proceedings, pending or threatened, in relation to the ownership, validity or use of any of the Assigned Rights, and so far as it is aware there is nothing that might prevent any application listed in the Schedule proceeding to grant;
- (g) so far as it is aware (having made no enquiry of third parties), exploitation (for the purpose of the Business) of the Assigned Rights will not infringe the rights of any third party; and
- (h) there has been and is no misuse by the Assignor of any know-how forming part of the Assigned Rights or any disclosure by the Assignor of any such know-how which is of a confidential nature to any person (other than the Assignee or members of the Assignor Group, and their respective directors and employees and professional advisers, Wright Agri Industries Limited, Les Priest and Rovita Limited except properly and in the ordinary and usual course of business and on the basis that such disclosure was of a confidential character.

5. INDEMNITY

5.1 The Assignor shall indemnify and hold the Assignee harmless against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Assignee arising out of or in connection with any breach by the Assignor of the warranties in clause 4 above.

5.2 The Assignor shall, at its own cost, perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution or delivery of) all further documents, required by law or which the Assignee reasonably requests, to vest in the Assignee the full benefit of the right, title and interest assigned to the Assignee under this agreement, including:

- (a) registration of the Assignee as applicant or (as applicable) proprietor of those Assigned Rights owned by the Assignor to the extent registerable; and
- (b) providing reasonable assistance to the Assignee in obtaining, defending and enforcing the Assigned Rights.

6. FURTHER ASSURANCE

Each party shall and shall use reasonable endeavours to procure its Associated Persons (as defined in the Shareholders Agreement) shall execute such documents and perform such acts as the other party may from time to time reasonably require for the purpose of giving full effect to this agreement.

7. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

8. ENTIRE AGREEMENT

8.1. This agreement (together with the Shareholders' Agreement, Manufacturing and Product Supply Agreement and Plant Purchase Agreement) constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

8.2. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

8.3. Nothing in this clause shall limit or exclude any liability for fraud.

9. **VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10. **SEVERANCE**

10.1. If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

10.2. If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

12. **THIRD PARTY RIGHTS**

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

13. **NOTICES**

13.1. Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:

- (a) Assignor: Company Secretary, Fayrefield Foods Limited, Englesea House, Barthomley Road, Crewe, Cheshire CW1 5UF;
- (b) Assignee: The Directors, Promovita Ingredients Limited, Englesea House, Barthomley Road, Crewe, Cheshire CW1 5UF;
- (c) Dairy Crest: Company Secretary, Claygate House, Littleworth Road, Esher, Surrey, KT10 9PN.

or as otherwise specified by the relevant party by notice in writing to each other party.

13.2. Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.3. A notice or other communication required to be given under this agreement shall be validly given if sent by e-mail.

13.4. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14. GOVERNING LAW AND JURISDICTION

14.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

14.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE Intellectual Property Rights

PATENTS			
Country or territory	Application number	Date of filing	Description
International including United Kingdom and Europe	PCT/GB2008/003459	13 October 2008	Preparation for treating intestinal infection comprising oligosaccharides and insoluble cellular material
China	200880111844.6	April 2010	Cranbiotic

TRADE MARKS				
Country/territory	Mark	Application registration number	Date of registration	Classes
United Kingdom	NUTRABIOTIC	2514763	23 October 2009	05, 29, 32
United Kingdom	PROMOVITA	UK00002416448	01 September 2006	Class 5
European Union	PROMOVITA	EU005311857	22 August 2007	Class 5
US	PROMOVITA	77755957	10 June 2009	Classes 1 and 5

SIGNED AS A DEED by)
FAYREFIELD FOODS LIMITED)
acting by:

[Handwritten Signature]

Signature of director

SYDNEY JOHN BRECH

Name of director

[Handwritten Signature]

Signature of director/secretary

LESLIE JOHN WOODR

Name of director/secretary

SIGNED AS A DEED by)
PROMOVITA INGREDIENTS)
LIMITED acting by:

[Handwritten Signature]

Signature of director

LESLIE JOHN WOODR

Name of director

[Handwritten Signature]

Signature of director/secretary

LESLIE JOHN WOODR

Name of director/secretary

SIGNED AS A DEED by DAIRY)
CREST LIMITED acting by:)

[Handwritten Signature]

Signature of director

MARK ALLEN

Name of director

[Handwritten Signature]

Signature of director/secretary

ROBIN MILLER

Name of director/secretary