

# Merchant & Gould

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A Professional Corporation

Cargill Meat Solutions Corporation, )  
Opposer, )  
)  
v. ) Opposition No. \_\_\_\_\_  
Max-Pro Feeds., Ltd., )  
Applicant ) Mark: PRAIRIE ORCHARD FARMS  
)  
)

Mark: PRAIRIE ORCHARD FARMS

Serial No.: 78/268,783

Docket Number: 15125.1USTA

Official Gazette: March 1, 2005

Due Date: August 26, 2005

Filing Date: June 30, 2003

CERTIFICATE UNDER 37 CFR 1.10  
"Express Mail" mailing label number: EV 142560057 US  
Date of Deposit: August 26, 2005  
I hereby certify that this paper or fee is being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 on the date indicated above and is addressed to the

By: John Junkers  
Name: John Junkers

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet in duplicate containing Certificate Under 37 C.F.R. 1.10
- Notice of Opposition (1 Original and 1 Copy)
- Check in the amount of \$300.00 to cover Filing Fee.

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate copy of this sheet is enclosed.

By: William D. Schultz  
Name: William D. Schultz  
WDS:can



(CONTESTED MATTER)

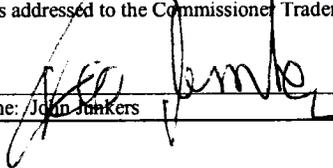
08-26-2005

M&G 15125.0001USTB

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cargill Meat Solutions Corporation	)	
	)	Opposition No. _____
Opposer,	)	
	)	Mark: PRAIRIE ORCHARD FARMS
v.	)	
	)	Application Ser. No. 78-268,783
Max-Pro Feeds, Ltd.	)	
	)	Filed: June 30, 2003
Applicant.	)	
	)	Published: March 1, 2005
	)	

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By:   
 Name: John Junkers

**NOTICE OF OPPOSITION**

Cargill Meat Solutions Corporation ("Cargill"), a Delaware Corporation, having a principal place of business at 151 N. Main Street, Wichita, KS 67202, believes it will be damaged by registration of PRAIRIE ORCHARD FARMS (and design) as a trademark for "fresh meat; frozen meat; processed meat; and cured meat," Application Ser. No. 78-268,783, by Max-Pro Feeds Ltd. (hereinafter referred to as "Applicant"), and hereby opposes the same upon the following grounds.

1. Since at least as early as April 15, 1999, Cargill, through its predecessors in interest Prairie Grove Farms, LLC, and Excel Corporation, adopted and began using the mark PRAIRIE GROVE FARMS (and design) for use on "meats, namely natural pork," which has

been marketed in commerce throughout the United States. On August 12, 2003, the United States Patent & Trademark Office registered on the Principal Register and issued to Cargill Registration No. 2,749,578 for the mark PRAIRIE GROVE FARMS (and design). Registration No. 2,749,578 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the PRAIRIE GROVE FARMS (and design) mark in commerce to market "meats, namely natural pork." Pursuant to 37 C.F.R. § 2.122(d), Cargill hereby attaches two certified status and title copies of its U.S. Trademark Registration No. 2,749,578.

2. Since at least as early as April 15, 1999, Cargill, through its predecessors in interest Prairie Grove Farms, LLC, and Excel Corporation, adopted and began using the mark PRAIRIE GROVE FARMS for use on "meats," which has been marketed in commerce throughout the United States. On August 12, 2005, Cargill filed with the United States Patent & Trademark Office an application to register the mark PRAIRIE GROVE FARMS for "meats." The application has been assigned Application Ser. No. 78-691,196. Cargill hereby attaches two copies of the TARR report for Application Ser. No. 78-691,196.

3. Cargill has expended substantial amounts of money in marketing, advertising and promoting the PRAIRIE GROVE FARMS and PRAIRIE GROVE FARMS (and design) marks on or in connection with meats in the United States.

4. Cargill has enjoyed substantial sales of goods in the United States in connection with the use of the PRAIRIE GROVE FARMS and PRAIRIE GROVE FARMS (and design) marks.

5. By reason of the extensive marketing, advertising and promotion of goods in connection with the PRAIRIE GROVE FARMS and PRAIRIE GROVE FARMS (and design)

marks and the high quality of those goods, the marks have extremely valuable goodwill that inures to the benefit of Cargill.

6. Applicant is a Canadian corporation with a mailing address at 7-851 Lagimodiere Boulevard, Winnipeg, Manitoba R2J 3K4, Canada.

7. Applicant is seeking to obtain registration on the Principal Register of the mark PRAIRIE ORCHARD FARMS (and design), Application Serial No. 78-268,783, for use on or in connection with "fresh meat; frozen meat; processed meat; and cured meat."

8. There is no issue of priority concerning Application Ser. No. 78-268,783 because Cargill has use of its PRAIRIE GROVE FARMS and PRAIRIE GROVE FARMS (and design) marks and registration of its PRAIRIE GROVE FARMS (and design) mark prior to June 30, 2003, Applicant's filing date of its intent-to-use application.

9. Cargill enjoys substantial and exclusive goodwill and good reputation in connection with its PRAIRIE GROVE FARMS and PRAIRIE GROVE FARMS (and design) trademarks. This goodwill and reputation will be harmed by the use and registration of the mark PRAIRIE ORCHARD FARMS (and design) sought to be registered by Applicant.

10. On information and belief, Applicant's intended adoption and use of its PRAIRIE ORCHARD FARMS (and design) mark has been with knowledge of Cargill's prior use of its PRAIRIE GROVE FARMS trademark on its goods.

11. Applicant's intended adoption and use of the PRAIRIE ORCHARD FARMS (and design) trademark has been without Cargill's consent or permission.

12. The PRAIRIE ORCHARD FARMS (and design) trademark for which Applicant seeks registration is similar in appearance, sound and connotation to the PRAIRIE GROVE

FARMS marks. Applicant's PRAIRIE ORCHARD FARMS (and design) mark has the same commercial impression as Cargill's PRAIRIE GROVE FARMS marks.

13. Applicant's PRAIRIE ORCHARD FARMS (and design) mark so resembles Cargill's PRAIRIE GROVE FARMS trademarks as to be likely, when applied to Applicant's goods, to cause confusion, mistake, or deception as to the source of origin of Applicant's services by creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Cargill.

14. The goods for which Applicant seeks registration of the PRAIRIE ORCHARD FARMS (and design) trademark, namely, "fresh meat; frozen meat; processed meat; and cured meat" are the same as the goods marketed under Cargill's PRAIRIE GROVE FARMS marks, which are also "meats."

15. The goods for which the Applicant seeks registration of the PRAIRIE ORCHARD FARMS (and design) trademark are likely to be sold to or used by the same customers to whom Cargill sells its goods and services under the PRAIRIE GROVE FARMS marks. The goods of Cargill and Applicant will travel in the same channels of trade.

16. Applicant's PRAIRIE ORCHARD FARMS (and design) mark is confusingly similar to Cargill's PRAIRIE GROVE FARMS marks and use thereof by the Applicant on the goods and services specified in Application No. 78-268,783 is likely to cause confusion, mistake, or deception that Applicant's goods and services are those of Cargill or are otherwise endorsed, sponsored, or approved by Cargill, whereby Cargill will be damaged by registration of Applicant's PRAIRIE ORCHARD FARMS (and design) mark on the Principal Register of the United States Patent and Trademark Office.

17. Granting a federal trademark registration to Applicant for its claimed PRAIRIE ORCHARD FARMS (and design) mark as shown in Application Serial No. 78-268,783 would be contrary to 15 U.S.C. § 1052 (d) and would violate or diminish the prior and superior rights of Cargill in its PRAIRIE GROVE FARMS trademarks, causing irreparable damage and injury to Cargill.

WHEREFORE, Cargill asks that its opposition to Application No. 78-268,783 be sustained and that the registration of the term PRAIRIE ORCHARD FARMS (and design) set forth therein be refused. Please direct all correspondence to the attention of Allen W.

Hinderaker:

Merchant & Gould P.C.  
PO Box 2910  
Minneapolis, MN 55402  
612-332-5300

Cargill hereby appoints Allen W. Hinderaker; Anna W. Manville; William D. Schultz; Heather J. Kliebenstein; Paul A. Welter, Reg. No. 20,890; D. Randall King; John A. Clifford, Reg. No. 30,247; John L. Beard, Reg. No. 27,612; Brent E. Routman; Sandra Epp Ryan, Reg. No. 39,667; Scott W. Johnston, Reg. No. 39,721; and Gregory C. Golla of the firm of Merchant & Gould P.C. as attorneys with the full power to represent Cargill, to receive all correspondence related thereto and to represent it in all proceedings affecting the potential opposition of the mark.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Cargill's counsel noted above.

Respectfully submitted,

Dated: August 26, 2005

CARGILL MEAT SOLUTIONS CORPORATION

By its attorneys,



---

Allen W. Hinderaker  
William D. Schultz  
Merchant & Gould P.C.  
PO Box 2910  
Minneapolis, MN 55402  
(612) 332-5300

778495



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:  
UNITED STATES DEPARTMENT OF COMMERCE**

United States Patent and Trademark Office

August 22, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,749,578 IS  
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND  
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN  
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF *10* YEARS FROM *August 12, 2003*

SAID RECORDS SHOW TITLE TO BE IN:

*CARGILL MEAT SOLUTIONS CORPORATION  
A DELAWARE CORPORATION*

By Authority of the  
Under Secretary of Commerce for Intellectual Property  
and Director of the United States Patent and Trademark Office

*L. Edelen*

L. EDELEN  
Certifying Officer



Int. Cl.: 29

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

Reg. No. 2,749,578

Registered Aug. 12, 2003

**TRADEMARK  
PRINCIPAL REGISTER**



**Prairie Grove Farms**  
100% Natural Pork

PRAIRIE GROVE FARMS (ILLINOIS LIMITED  
LIABILITY COMPANY)  
125 NORTH FIRST ST.  
DEKALB, IL 60115

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "FARMS" AND "100% NATURAL  
PORK", APART FROM THE MARK AS SHOWN.

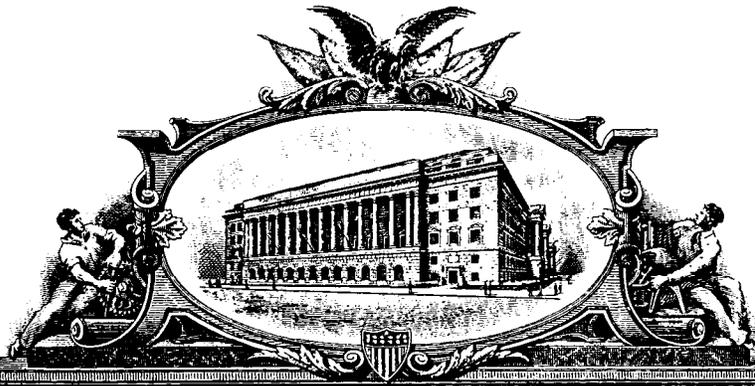
FOR: MEATS, NAMELY, NATURAL PORK, IN  
CLASS 29 (U.S. CL. 46).

SER. NO. 76-382,083, FILED 3-13-2002.

FIRST USE 4-15-1999; IN COMMERCE 4-15-1999.

ROBERT LORENZO, EXAMINING ATTORNEY

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L. EDELEN  
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ROBERT LORENZO, EXAMINING ATTORNEY

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Trademark