

ESTTA Tracking number: **ESTTA473817**

Filing date: **05/22/2012**

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

Proceeding	91199752
Party	Defendant Afgritech Ltd.
Correspondence Address	THOMAS H VAN HOOZER HOVEY WILLIAMS LLP 10801 MASTIN BLVD , SUITE 1000 KANSAS CITY, MO 66210 UNITED STATES tvh@hoveywilliams.com, clb@hoveywilliams.com, litigation@hoveywilliams.com
Submission	Opposition/Response to Motion
Filer's Name	Cheryl L. Burbach
Filer's e-mail	tvh@hoveywilliams.com, clb@hoveywilliams.com, litigation@hoveywilliams.com
Signature	/Cheryl L. Burbach/
Date	05/22/2012
Attachments	Opposition to Motion for Summary Judgment.pdf (27 pages)(145538 bytes) Exhibit A-G.pdf (76 pages)(3799323 bytes)

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

EVONIK DEGUSSA GMBH,
Opposer,

v. Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

Respectfully submitted,

HOVEY WILLIAMS LLP

By Thomas H. Van Hoozer No. 32761
Cheryl L. Burbach
10801 Mastin Blvd., Suite 1000
Overland Park, KS 66210
Telephone: 913.647.9050
Facsimile: 913.647.9057

ATTORNEYS FOR AFGRITECH, LTD.

TABLE OF CONTENTS

I.	Applicant’s Statement of Material Facts in Dispute and the Conflicting Record..	1
III.	Argument.	9
	A. Introduction..	9
	B. The Standard for Summary Judgment Must be Examined First..	10
	C. The Burden of Proving that No Genuine Issue Exists about Afgritech’s Lack of Bona Fide Intent Is Difficult..	11
	D. Objective Evidence Establishes that Afgritech Had a Bona Fide Intent to Use AMINOGREEN Trademark in Commerce..	13
	E. Conclusion.	20

TABLE OF AUTHORITIES

Statutes & Rules

Rule 56(c), Federal Rules of Civil Procedure.	10
Senate Judiciary Comm. Rep. on S. 1883, S. Rep. No. 515, 100th Cong., 2d Sess. 23 (1988).	12-13
Trademark Law Revision Act of 1988.	12
Trademark Rule 2.1.28(a)	10
Trademark Rule 2.1.28(b).	10

Cases

<i>Albert v. Kevex Corp.</i> , 729 F.2d 757, 763, 221 USPQ 202 (Fed. Cir. 1984).	11
<i>Anderson, Clayton & Co. v. Christie Food Products, Inc.</i> , 1987 WL 154085, 4 USPQ2d 1555, (TTAB 1987)	19
<i>Boston Red Sox Baseball Club LP v. Sherman</i> , 88 USPQ2d 1581, (TTAB 2008).	11
<i>Commodore Elec. Ltd. v. CBM Kabushiki Kaisha</i> , 26 USPQ2d 1505 (TTAB 1993).	11, 18
<i>Copelands' Enter., Inc. v. CNV, Inc.</i> , 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991).. . . .	11
<i>Eastman Kodak Co. v. Bell & Howell Doc. Mgmt. Pdt. Co.</i> , 994 F.2d 1569, 26 USPQ2d 1912 (Fed. Cir. 1993).	13
<i>Ed. Testing Serv. v. Training & Dev. Corp.</i> , 2001 WL 199816 (TTAB 2001).	19-20
<i>Gasser Chair Co. Inc. v. Infanti Chair Mfg. Corp.</i> , 60 F.3d 770 (Fed. Cir. 1995).	10
<i>KangaROOS U.S.A., Inc. v. Caldor, Inc.</i> , 778 F.2d 1571, 228 USPQ 32, (Fed. Cir.1985)	11

Lane v. Jackson Trading Co., 33 USPQ2d 1351 (TTAB 1994). 11

Olde Tyme Foods Inc. v. Roundy's Inc., 961 F.2d 200 (Fed. Cir. 1992). 10

Opryland USA Inc. v. Great Am. Music Show, Inc., 970 F.2d 847 (Fed. Cir. 1992). 10

Padres v. Munoz, 2010 WL 1720596 (TTAB 2010). 12

Pfizer, Inc. v. Int'l Rectifier Corp., 538 F.2d 180, 190 USPQ 273, (8th Cir.1976), *cert. denied*,
429 U.S. 1040, 97 S.Ct. 738 (1977) 11

Research in Motion Ltd. v. NBOR Corp., 92 USPQ2d 1926 (TTAB 2009). 19

SmithKline Beecham Corp. v. Omnisource DDS, LLC, 97 USPQ2d 1300 (TTAB 2010). 18

Treatises

Section 19:14, *McCarthy on Trademarks and Unfair Competition*. 14,17

I. Afgritech’s Statement of Material Facts and the Record that Contradicts Evonik’s Factual Allegations

1. Afgritech Ltd. was formed in 2006 as a company jointly and equally owned by Carrs Milling Industries PLC (“CMI”) and Afgri Ltd. (“Afgri”), and is engaged in the business of manufacturing feed supplements/animal feed. See Exhibit A, *Declaration of Christopher Holmes in Support of Applicant’s Opposition to Opposer’s Motion for Summary Judgment* (“Holmes”) ¶4.

2. CMI is a corporation organized under the laws of the United Kingdom, which has a long history and substantial experience in the agriculture field, and specifically in the field of animal feeds and feed supplements. Holmes ¶2.

3. Afgri Ltd. is a South African company also with a long history of manufacture in the animal feeds business. Holmes ¶4. In 2006, Afgri Ltd. acquired ownership of European Community Trademark Application No. 5084116 for the mark AMINOMAX. Holmes ¶4. The owners of Afgritech decided to use that as a trademark for a particular feed and feed supplement in the United States. Holmes ¶4.

4. On or about June 14, 2006, Afgritech Ltd. decided to apply for registration of the marks AMINOMAX and AMINOGREEN in the United States for feed supplement/animal feed. Holmes ¶5. AMINOGREEN is intended to reflect Afgritech’s commitment to developing and producing “green” and environmentally friendly products. *Id.* As such, Afgritech’s Chairman instructed legal counsel on June 14, 2006 to prepare the U.S. trademark applications, which he personally signed on June 18, 2006. Holmes ¶5. The U.S. application for AMINOGREEN was filed as application serial number 78/917,849 on June 27, 2006. See Exhibit A to Opposer’s Motion for Summary Judgment.

5. At the time the US trademark application was filed, Afgritech Ltd. intended to make both the AMINOMAX and AMINOGREEN products in the United States. Holmes ¶6. Afgritech Ltd. already had formulations for the AMINOMAX product and, thus, AMINOMAX was anticipated to be the first of these to products to be produced in the United States. *Id.*; Exhibit B, *Declaration of Richard Wark in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment* ("Wark"), ¶3. The AMINOMAX product is currently being manufactured in the United States, England, South Africa and Argentina.

6. Afgritech planned that the AMINOGREEN product was going to be a product developed for manufacture only in the United States and not Europe (at least under the AMINOGREEN name). Holmes ¶7. The AMINOGREEN animal feed/feed supplement product was going to be a new bypass protein product that was going to be developed for the US market by Agricultural Modeling and Training Systems, LLC (AMTS) under the direction of Dr. Tom Tylutki. *Id.* The concept for the AMINOGREEN product was a new one, embodying a novel concept which Dr. Tylutki conveyed to us in June of 2006. *Id.* It was determined to pursue this novel concept for a feed supplement/animal feed product under the AMINOGREEN name at the time the name was adopted. *Id.*

7. In 2006, Dr. Tylutki provided Afgritech with a plan for proceeding with the US commercialization of the AMINOMAX, and was tasked with also devising conceptual development of the AMINOGREEN product. Holmes ¶8; Exhibit C, *Declaration of Thomas P. Tylutki in Support of Applicant's Opposition to Opposer's Motion for Summary Judgment* ("Tylutki"), ¶3. The AMINOGREEN product was intended to be produced in a new facility located in the United States that Afgritech was having built. Holmes ¶8; Tylutki ¶9; Wark ¶4. The new U.S. facility would

initially manufacture the AMINOMAX product, for which formulations were already in hand, and then proceed with producing prototype by-pass products to which the AMINOGREEN name would apply. Holmes ¶8; Tylutki ¶7; Wark ¶4.

8. Dr. Tylutki has been steadfast through the years in developing the secret AMINOGREEN formulation and has provided documentation evidencing his work over the years. Tylutki ¶¶3-7; Wark ¶4. He helped devise Afgritech's Business and Marketing Plan dated September 30, 2008. [Holmes, Exhibit 1].

9. To accomplish the goal of manufacturing the AMINOMAX product in the U.S. and to develop the AMINOGREEN product in the US, Afgritech set upon converting a preexisting feed plant in Watertown, New York for its proprietary use. Holmes ¶9; Wark ¶3.

10. It was expected that the plant construction would be completed by August 1, 2009, but Afgritech experienced an unexpected delays in acquiring the property arising in part from a title issue. Holmes ¶10; Tylutki ¶8. The property was ultimate acquired on August 8, 2010. Holmes ¶10; Tylutki ¶8; Wark ¶5.

11. During the period of October 2007 to October 2009, Holmes signed five requests for extension of time to file the Statement of Use in application serial number 78/917,849, each reciting product/service research and development as the reason for the requests. Exhibit A to Opposer's Motion for Summary Judgment.

12. While Afgritech was able to introduce the AMINOMAX feed and feed supplements into the United States in 2010 by importing the product it from the U.K., it did not have the capacity to produce the AMINOGREEN product before the facility in Watertown had been fully converted. Holmes ¶11; Tylutki ¶7; Wark ¶5. The AMINOMAX product imported from the U.K. bears a label

as shown in the AMINOMAX registration file, appended hereto as Exhibit D; whereas the current AMINOMAX label for product produced in the U.S. is attached as Exhibit E. Between 2010 and 2011, Afgritech faced a number of setbacks in construction and bringing the plan on line. Wark ¶5. Thus, Afgritech was unable to meet the final deadline of May 8, 2010 in which to file its Statement of Use for AMINOGREEN.

13. While Dr. Tylutki was to continue conceptual development of the product Afgritech intended to label under the AMINOGREEN name, the delay in acquisition and completion of the plant in Watertown postponed the time when prototype production and testing could commence. Holmes ¶11. As a result, though Afgritech continued to have a real and bona fide intent to use the mark AMINOGREEN on the feed supplement/animal feed, delays in the acquisition of the Watertown plant prevented Afgritech from producing a product on which the AMINOGREEN name could be used. *Id.*

14. In late July 2010, Mr. Wark, President and CEO of Animal Feed Supplement, Inc. (a wholly-owned subsidiary of CMI)¹ was acting in a consulting capacity for Afgritech Ltd., and expressed his desire to re-file the U.S. application for AMINOGREEN. Holmes ¶12; Wark ¶8. Mr. Holmes concurred and signed the second application on July 29, 2010. Holmes ¶12.

15. In 2010 after filing the second application ser. no. 85/096,047 for the mark AMINOGREEN, Afgritech LLC was formed as a wholly-owned subsidiary of Afgritech Ltd. to oversee construction and operation of the Watertown plant. Holmes ¶13. Mr. Wark was designated as President and CEO of Afgritech LLC and was directly responsible for construction and bringing the plant into operation. *Id.* During this time, Dr. Tylutki was to continue development of the

¹Holmes ¶3.

AMINOGREEN formulation, but Afgritech wanted to wait to produce any prototype products until the Watertown plant was fully operational. *Id.*

16. During the remainder of 2010 and most of 2011, Afgritech continued to experience delays in construction. Holmes ¶14. For example, shortly after acquisition of the Watertown property, the decision was made to change from a cook-pot-type of production to an expander. *Id.* Afgritech anticipated having the equipment produced for installation so that construction could begin on January 1, 2011 and completed by July 15, 2011. *Id.* This proved impossible. *Id.* Further delays included delay in deliveries of equipment to be installed, such that the anticipated commissioning date was delayed to October 16, 12 weeks behind even our revised schedule. *Id.* Finally, Afgritech officially announced the opening of the plant held its “Grand Opening” on November 17, 2011. Holmes ¶14; Tylutki ¶8. Nonetheless, Afgritech was not satisfied with the levels of by-pass it was producing. *Id.* Meanwhile, the trademark application for AMINOGREEN was published for opposition on January 1, 2011. Exhibit F, U.S. PTO TARR page for Serial No. 85096047.

17. While Afgritech was able to make some limited production of the AMINOMAX product in the latter part of 2011 at the Watertown plant, it experienced control issues, programming issues, expander issues, and problems with leaking pipes and faulty valves in our process system. Wark ¶6. This resulted in changes to the production process with longer retention times in early 2012. *Id.*

18. The decision was made to pull out the old retention vessel and make and install a new vessel. Tylutki ¶8. This was delivered in late March 2012 and commissioning trials commenced on April 19. *Id.*; Wark ¶6. Final testing was positive, and Afgritech received the approval for full production on Thursday, May 3, 2012 of the AMINOMAX feed supplement/animal feed product. Wark ¶6.

19. Notably, up to that time, Afgritech had spent about \$5 million dollars on renovating the Watertown plant. Holmes ¶15. The plant was finally re-commissioned the plant in the first week of May, 2012. *Id.*; Tylutki ¶8.

20. During 2011, Afgritech began selling AMINOMAX product produced in the Watertown plant. Holmes ¶15. Sales of the AMINOMAX product in the first fiscal quarter of 2011 exceeded \$100,000 and sales are expected to increase now that the plant is fully operational. *Id.* As currently formulated, AMINOMAX is primarily intended for consumption by dairy cattle. *Id.* AMINOMAX has been promoted in the United States through the website www.aminomax.com, through trade shows or other trade venues such as the Northeast Agriculture and Feed Alliance Summer Meeting in June of 2011, the Vermont Feed Dealer Meeting in September of 2011, the Cornell Nutrition Conference in October of 2011, the Dairy Challenge in October of 2011, the Cornell Feed Dealer Meeting in November of 2011, and the Northeast Agriculture Feed Alliance Annual Meeting in February 2012, and through trade publications in the dairy cattle industry such as *Country Folks*, *Dairy Herd Management*, *Feedstuffs*, *Hoards Dairymen*, and *Progressive Dairymen*. *Id.* Afgritech Ltd. expects to sell and promote AMINOGREEN in a similar manner as both AMINOMAX and AMINOGREEN are intended to be by-pass protein feed supplement/animal feed products. *Id.*

21. Internal development of the AMINOGREEN name at Afgritech have regularly been through oral discussions, other than the trademark application file history for AMINOGREEN. Holmes ¶17; Wark ¶9. For instance, Mr. Holmes has discussed the AMINOGREEN trademark with Denis Daly, who was the president of Animal Feed Supplement, Inc. in 2006, Hinner Koster of Afgri Limited, and Ron C. Wood when Afgritech decided to file the initial application. *Id.* He has also discussed the name with Tom Tylutki and Dick Wark among others after that initial decision to file.

Id.; Wark ¶¶4 and 9. The AMINOGREEN has been consistently used to identify the new bypass product under development by Dr. Tylutki. Holmes ¶17; Wark ¶4.

22. Dr. Tylutki recalls viewing slides with the AMINOGREEN trademark sometime since 2006, but does not recall other documents. Nevertheless, he has been aware that the new product formulation was identified internally by the AMINOGREEN designation in oral discussions.

23. Throughout the period from June of 2006 to the present, Afgritech has continuously maintained its intention to use the AMINOGREEN trademark. Holmes ¶18. That is, since June 14, 2006 continuously to the present, Afgritech Ltd. has intended to produce, market and sell feed supplement/animal feed products in the United States under the AMINOGREEN mark. *Id.* And, specifically, Afgritech had a bona fide intent to use the AMINOGREEN mark on the date it filed the second application. Wark ¶9.

24. Now that the plant is fully operational, Afgritech is ready to proceed with producing test quantities of the new by-pass product which Afgritech intended to market under the AMINOGREEN name. Holmes ¶16; Wark ¶7. With the advent of the opposition to the AMINOGREEN mark by Evonik Degussa, however, Afgritech has decided to continue product development, but will likely delay introduction due to uncertainty of the availability of the AMINOGREEN name and the exposure to potential liability in litigation for trademark infringement. Holmes ¶16; Wark ¶7.

25. In Europe, the parties have had prior trademark disputes. Exhibit G, Response to Interrogatory No. 39; Exhibit H, *Evonik Degussa GmbH v. Afgr Operations Ltd.*, No. R 548/2009-2, Decision of the Second Board of Appeal for the Office of Harmonization in the Internal Market dated March 22, 2010.

26. Afgritech Limited has filed a European Community Trademark (CTM) Application, Serial No. 010251288 for the mark AMINOMAX GREEN for similarly-described goods in International Classes 5 and 31 on September 8, 2011. Evonik instituted Opposition No. 001963803 to this CTM application. Exhibit I, OHIM Status Page re Evonik Degussa GmbH v. Afgritech Limited, dated 5/22/12 at http://oami.europa.eu/CTMOnline/RequestManager/en_Detail_NoReg.

II. Argument

A. Introduction

For decades, Afgritech's owners have both manufactured and sold livestock feed and feed supplements in Europe, South America, and Africa. In an attempt to enter the U.S. market, Afgritech was formed and has invested millions of dollars over the last six years to construct a state-of-the-art facility for product development and manufacturing of its revolutionary AMINOGREEN feed supplements. Opposer has theorized that Afgritech lacks a *bona fide* intent to use the mark. In light of significant evidence of Afgritech's commitment to manufacture and sell its AMINOGREEN product in the U.S. combined with its long-time experience in the relevant field, is Opposer entitled to summary judgment on the basis that it lacks a *bona fide* intent to use AMINOGREEN?

Genuine issues of material fact remain in dispute and, therefore, summary judgment in favor of Opposer, Evonik Degussa GmbH is improper. The evidence establishes that, as a matter of law, Afgritech possessed the requisite *bona fide* intention to use the AMINOGREEN trademark in connection with the goods in the opposed application when it was filed. Moreover, it continues to have a *bona fide* intent to use the mark with all of the goods identified therein.

Evonik's recitation of the facts are both overstated and misleading; it shines a spotlight on certain milestones not yet accomplished. The parties have only engaged in written discovery and, thus, it is not surprising that essential facts demonstrating Afgritech's commitment to the AMINOGREEN mark have not heretofore been discovered.

Afgritech proceeded along parallel and cooperative paths—securing the mark through the trademark application process and developing the product to bear the mark. The unfortunate delays in the product development process as outlined herein delayed the corresponding use of the AMINOGREEN mark. Such delays do not equate to a lack of *bona fide* intent. A thorough and objective review of the facts reveals that Afgritech, indeed, possessed the requisite *bona fide* intent

to use its proposed trademark, AMINOGREEN. Thus, Opposer's Motion for Summary Judgment must be denied.

B. The Standard for Summary Judgment Must be Examined First.

As the movant of summary judgment, Evonik has the burden of establishing the absence of any genuine issues of material fact and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). All doubts as to whether any factual issues are genuinely in dispute must be resolved against the moving party and all inferences must be viewed in the light most favorable to Afgritech as the non-moving party. *See Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200 (Fed. Cir. 1992).

Briefs filed in accordance with Trademark Rule 2.1.28(a) and (b) are appropriate when genuine issues of material facts are in dispute because the Board may properly resolve those factual disputes. In considering the propriety of summary judgment, however, "the Board may not resolve disputed issues of material fact; it may only ascertain whether such issues are present." *See Opryland USA Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847 (Fed. Cir. 1992). In fact, Evonik's burden in establishing grounds for summary judgment is greater than the evidentiary burden at trial. *Gasser Chair Co. Inc. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770 (Fed. Cir. 1995).

Evonik has not met its burden in establishing that it is entitled to judgment as a matter of law. Evonik has failed to establish that there is no genuine issue of material fact that Afgritech had the requisite *bona fide* intent at the time in which she filed its trademark application. Given the paucity of evidence submitted by Evonik on this issue, and in view of Afgritech's documentation and business activities, it is fundamentally evident that objective evidence of Afgritech's intent to use AMINOGREEN is sufficient to defeat the present motion for summary judgment. Accordingly, Evonik's motion for summary judgment should be denied.

C. The Burden of Proving that No Genuine Issue Exists about Afgritech’s Lack of Bona Fide Intent Is Difficult.

As a general rule, the factual question of intent is particularly unsuited to disposition on summary judgment. *See Copelands’ Enter., Inc. v. CNV, Inc.*, 945 F.2d 1563, 20 USPQ2d 1295 (Fed. Cir. 1991), (citing *KangaROOS U.S.A., Inc. v. Caldor, Inc.*, 778 F.2d 1571, 1575, 228 USPQ 32, 34-35 (Fed. Cir.1985) (citing *Pfizer, Inc. v. Int’l Rectifier Corp.*, 538 F.2d 180, 185, 190 USPQ 273, 277 (8th Cir.1976), *cert. denied*, 429 U.S. 1040, 97 S.Ct. 738 (1977) (“summary judgment is inappropriate where issues of fact, intent [and] good faith ... predominate”)); *Albert v. Kevex Corp.*, 729 F.2d 757, 763, 221 USPQ 202, 207 (Fed. Cir. 1984). (“Intent is a factual matter which is rarely free from dispute.... [C]utting off Albert's right to trial on the issue was improper.”)). Because genuine issues of material facts persist here, summary judgment in Evonik’s favor would be inappropriate.

Evonik has the initial burden of demonstrating by a preponderance of the evidence that Afgritech lacked a bona fide intent to use the mark with the identified goods. *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1587 (TTAB 2008). If Evonik meets that initial burden of proof, the burden of production shifts to Afgritech to rebut Evonik’s prima facie case by offering additional evidence concerning the factual circumstances bearing up its intent to use its mark in commerce. *See Commodore Elec. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1505, 1507 n. 11 (TTAB 1993).

When considering whether an applicant has a *bona fide* intention to use the mark in commerce, any such determination is to be a fair, objective determination based on all the circumstances. *Lane*, 33 USPQ2d at 1355.

In determining the sufficiency of documentary evidence needed to demonstrate a *bona fide* intent, the Board has held that the Trademark Act does not expressly impose ‘any specific requirement as to the contemporaneousness of an applicant’s documentary evidence corroborating its claim of *bona fide* intention. Rather, the focus is on the entirety of the circumstances, as revealed by the evidence of record. ‘

Padres v. Munoz, 2010 WL 1720596 at *2 (TTAB 2010). *See also* Trademark Law Revision Act of 1988 (“TLRA”); Senate Judiciary Comm. Rep. on S. 1883, S. Rep. No. 515, 100th Cong., 2d Sess. 23 (1988) (the statute and legislative history of the TLRA is silent about the particular type or quantum of objective evidence that an applicant must produce to corroborate or defend its claimed *bona fide* intention to use the mark in commerce). Rather, the legislative history of the TLRA provides several specific examples of objective circumstances which, if proven, “may cast doubt on the *bona fide* nature of the intent or even disprove it entirely.” S. Rep. 515 at 23.

For example, the applicant may have filed numerous intent-to-use applications to register the same mark for many more new products than are contemplated, numerous intent-to-use applications for a variety of desirable trademarks intended to be used on [a] single new product, numerous intent-to-use applications to register marks consisting of or incorporating descriptive terms relating to a contemplated new product, numerous intent-to-use applications to replace applications which have lapsed because no timely declaration of use has been filed, an excessive number of intent-to-use applications to register marks which ultimately were not actually used, an excessive number of intent-to-use applications in relation to the number of products the applicant is likely to introduce under the applied-for marks during the pendency of the applications, or applications unreasonably lacking in specificity in describing the proposed goods. S. Rep. 515 at 23-24. None of those circumstances exist here.

D. Objective Evidence Establishes that Afgritech Had a *Bona Fide* Intent to Use AMINOGREEN Trademark in Commerce

At the outset, Evonik has attempted to portray Afgritech as a company that has done nothing to develop its AMINOGREEN product. Evonik's position rests solely on the fact that Afgritech has not produced traditional marketing development documents bearing the AMINOGREEN trademark. Indeed, Evonik only recently asserted that Afgritech lacked a bona fide intent to use the AMINOGREEN mark when it sought to amend its Notice of Opposition. Afgritech now addresses this new ground of opposition as an opportunity to provide information not material or not requested during the discovery period, and which substantiates the efforts to put the AMINOGREEN mark into use as recited in the extension requests and its bona fide intent to use the mark upon filing the second application. Afgritech is also simultaneously supplementing its Initial Disclosures, identifying potential witnesses and documentation in light of the addition of this new basis for opposition.²

Regardless, Evonik has not made a prima facie case that Afgritech lacked or lacks the *bona fide* intent to use AMINOGREEN in commerce. Initially, Afgritech is not required to prove it has begun use of the mark in commerce. Rather, the legislative history of the TLRA makes clear that the opposition procedure is *intentionally* placed prior to when an applicant is required to use a mark in an intent-to-use application: "Subjecting an intent-to-use application to the opposition process before the applicant makes use of its mark is essential if the system is to achieve its goal of reducing uncertainty before the applicant invests in commercial use of the mark." S. Rep. No. 515 at 32.

See also Eastman Kodak Co. v. Bell & Howell Doc. Mgmt. Pdt. Co., 994 F.2d 1569, 26 USPQ2d

²Should Evonik's Reply Brief contain arguments about the evidentiary value or merit of those documents, Afgritech reserves the right to request leave to file a sur-reply, should it be deemed necessary.

1912, 1916 (Fed. Cir. 1993). “The Senate was careful to caution that an applicant can ‘safely’ state its bona fide intention to use a mark ‘without having taken concrete steps to create and introduce a new product, provided that in fact it intends to use the mark.” 3 *McCarthy on Trademarks and Unfair Competition* § 19:14 (2010).

Evonik distorts the record by claiming that Afgritech has failed to use the mark for six years. But the application at issue here was filed in 2010. Contrary to Evonik’s interpretation of the law, evidence of an intent to use must relate to the time of filing the application at issue. 3 *McCarthy on Trademarks and Unfair Competition* § 19:14 (2010). Moreover, Evonik disregards that Afgritech’s launch of AMINOMAX in the United States will significantly expedite the launch of its AMINOGREEN product into the market, now that the feed plant is operational. Here, the record here shows that Afgritech was actively engaged in developing its business, including the acquisition and development of real property, which is affirmed in sworn declarations and in documentation. This was a necessary precursor before it could begin promoting the AMINOGREEN product.

This is not a case where the applicant lacks documentation or failed to engage in business development activities. For instance, Afgritech has produced many documents pertaining to the acquisitions and construction of its new feed plant in Watertown, New York, and development of its proprietary product formulation, which constitutes credible, objective corroboration of its statement in the application that it had a *bona fide* intention to use the mark in commerce. Statement of Facts [“SOF” ¶¶12-23]. In fact, its activities throughout the development phase of its U.S. business substantiate its good faith intent in seeking to register its proposed trademark. Notably, Afgritech has not merely memorialized highly conceptual ideas for development of AMINOGREEN; rather, it has been mired in the acquisition and development of the manufacturing facility and focused on

research and development of the product formulation to the tune of millions of dollars. [SOF ¶¶15-19].

It is particularly telling that Afgritech filed its new application in July 2010, only a month after the first application lapsed **and** a month prior to securing title to the Watertown plant. Afgritech did not abandon its intention of using AMINOGREEN. There is no significant period of time between the expiration of the first application and the second. Moreover, Afgritech filed its second application for the mark even before gaining title to the facility at issue. [SOF ¶14]. These facts highlight Afgritech's commitment to the AMINOGREEN trademark.

Afgritech's application has only been pending since July 2010, and was not published until January 2011. [SOF ¶16]. Afgritech's U.S. plant is up and running now. [SOF ¶20]. Thus, there is only 22 months between the application filing date and the date in which Afgritech could have fully commercialized the AMINOGREEN product. Furthermore, had this application not been opposed, the Notice of Allowance would have likely issued in March or April 2011. Of course, applicants are provided with up to five six-month extensions, if necessary. And Afgritech may have only needed to file one such extension request, if that. This is not unusual in the field of trademark prosecution.

This is not a case where the applicant is attempting to break into a market or business where it has no prior experience. Unlike Evonik, Afgritech has a business history firmly grounded in the field of livestock feed and feed supplements. Evonik would be hard pressed to prove otherwise:

- Afgritech was founded by two successful feed supplement manufacturers operating on three continents. [SOF¶2]. Afgritech has filed applications with state departments of agriculture for its commercial feeds. [Exhibit J].

- And Afgritech has successfully sold its AMINOMAX products in the United States. As evidenced by Afgritech's sampling of documents produced in this opposition, it has
 - created labeling [Exhibits D and E].
 - trade show artwork [Exhibit K].
 - advertising [Exhibit L], and
 - specification sheets [Exhibit M].
- Afgritech has attended trade shows [Exhibit N].
- Afgritech has sold livestock feed and feed supplements in the U.S. [Exhibit O]. Indeed, this is a field in which the company is familiar and has already sold similar products under the AMINOMAX mark via importation and domestic manufacture. [SOF ¶16].

This is not a case where the applicant lacks knowledge about the targeted class of consumers for its goods. Rather, in responding to discovery, Afgritech identified that it intends to promote and sell its AMINOGREEN products to dairy farmers, sellers of animal foodstuffs, including livestock feed and animal feed supplements, and ruminant animal feed manufacturers. Exhibit G, Response to Interrogatory No. 35.

Afgritech is not only a result of collaboration between two well-established feed manufacturers, but it has already begun selling similar products under the AMINOMAX mark in the U.S. This is corroborated by sworn testimony and invoices. [SOF ¶20].

This is not a case where the applicant has failed to identify or research trade channels and advertising channels. Afgritech's sworn declarations, documents and discovery responses all show that it is a subsidiary of companies that already sell and promote feed supplements. And Afgritech's

AMINOGREEN product will be sold through similar trade channels and promoted through similar methods. [SOF ¶20].

Additionally, Afgritech identified in discovery responses that it Afgritech states that its intended channels of distribution in the United States for AMINOGREEN are sellers of animal foodstuffs, including livestock feed and animal feed supplements throughout the United States. Afgritech's current geographical areas of trade are New York, Maine, Pennsylvania, Connecticut, Massachusetts, New Hampshire and Vermont. [Exhibit G, Response to Interrogatory No. 33].

All of Afgritech's business development activities, as evidenced by supporting documentation, controvert Evonik's blanket allegations that Afgritech took no steps to develop its business under the trademark AMINOGREEN. And all of these activities and documents were sufficiently contemporaneous to the application filing date.

Notably, Evonik has not and cannot point to any persuasive evidence that Afgritech was attempting to merely reserve the term or that there was any other defensive motivation. There is also no evidence that Afgritech has, in any way, abused the intent-to-use process by filing multiple applications for the same mark for many goods, filing many marks for the same goods, reserving many descriptive terms, filing an excessive number of applications, or filing applications lacking in specificity. *3 McCarthy on Trademarks and Unfair Competition* § 19:14 (2010).

Rather, in support of its position, Evonik argues that the absence of various documents proves that Afgritech did not have a bona fide intent to use the mark. It is not surprising that there would be little development of the brand due to the manufacturing delays. Creating labels, packaging, promotional materials, etc. would be premature when the product was not ready to be produced or

sold. Afgritech, in line with its planning, needed to be able to produce a feed supplement product before promoting it.

Similarly, the fact that Afgritech did not have any evidence of a trademark search has no bearing on whether it had a bona fide intent to use the mark when it filed its second application for AMINOGREEN. At that time, Afgritech had owned a prior application for AMINOGREEN, and it would be necessarily expected that Afgritech would have commissioned a trademark search upon filing the second application at issue.

Finally, Evonik relies heavily on case law that does not address any fact patterns that are similar to the circumstances here. For instance, Evonik frequently points to a non-precedential decision by the Board, *SmithKline Beecham Corp. v. Omnisource DDS, LLC*, 97 USPQ2d 1300 (TTAB 2010). Procedurally, that case was decided at the trial brief stage—not analyzing the standard for granting a motion for summary judgment. And while the Board found that the applicant lacked the requisite bona fide intent to use the mark, the absence of evidence in that case actually highlights the value of Afgritech’s evidence submitted here. Unlike the *SmithKline* applicant, Afgritech has provided a significant record consisting of business plans, which though not mentioning the AMINOGREEN mark, identifies the products to be produced at the just-completed Watertown plant. Afgritech provides herewith three declarations that detail information about acquisition and construction of the feed plant, and plans to manufacture, test market, develop and promote the bypass protein product that will be known as AMINOGREEN. Unlike the *SmithKline* applicant, Afgritech has not had a chance to provide trial testimony on the issue.

Evonik also relies on other inapposite cases. In *Commodore Elec. Ltd. v. CBM Kabushiki Kaisha*, the applicant “could produce not one piece of paper from its files to establish any real

intention to use [the trademark] on any of the many goods covered in the opposed classes.” 26 USPQ2d 1505, 1507 (TTAB 1993). Conversely, Afgritech has provided such documentation, combined with the sworn declarations of three individuals, to corroborate its intention.

Similarly, *Research in Motion Ltd. v. NBOR Corp.* is equally unavailing. That decision issued after trial briefing, and the Board found that the applicant lacked a bona fide intention to use the mark at issue. In that case, however, the applicant had (1) filed multiple different marks for the same or similar goods, (2) filed three identical applications for the opposed mark, and (3) the only documents identified to evidence the applicant’s intent were not produced due to attorney-client privilege. 92 USPQ2d 1926, 1930 (TTAB 2009). **None** of these circumstances exist here

Furthermore, it is important to note that Afgritech’s concern about potential litigation with Evonik justifies restraint in launching the AMINOGREEN product under that name. Evonik and Afgritech have previously been engaged in at least two trademark disputes. [SOF ¶25]. And, of course, Evonik instituted this opposition proceeding against Afgritech’s trademark application. As such, its decision to pause until the present dispute is resolved is both warranted and reasonable. *See Anderson, Clayton & Co. v. Christie Food Products, Inc.*, 1987 WL 154085 at *4, 4 USPQ2d 1555, 1559 (TTAB 1987) (“once applicant was appraised of a possible challenge to its rights in the mark, it was justified in putting any marketing plans ‘on hold.’”).

Although not precedential, the Board’s decision in *Educational Testing Services v. Training & Development Corp.* is persuasive here. 2001 WL 199816 (TTAB 2001). In that case, the opposer made the same argument being lodged here, arguing that the applicant’s failure to start its program for its mark pending the resolution of the trademark dispute was an untenable position. The Board stated:

Opposer's argument that applicant did not act to finance and develop the mark is unpersuasive. In the situation present in this case, applicant was justified in putting its development and financing plans for this mark on hold.

Id., 2001 WL 199816 at *11.

E. Conclusion

Afgriotech has been proceeding along two parallel paths – product development and product name acquisition. As reflected by the Declarations of Richard Wark, Thomas Tylutki and Christopher Holmes, the general nature of the product to be associated with the AMINOGREEN mark was identified in 2006. The Declarations also explain that product development to include producing a prototype product which could be tested required that Afgriotech have its own facility operational. Unlike the AMINOMAX product which was already formulated in Europe, the AMINOGREEN product needed to be developed. However, while Dr. Tylutki continued to work on formulations, delays in acquisition and construction at the Watertown, N.Y. plant thwarted even prototype product production. The facts detailing these delays expressed in the Declarations of Richard Wark, Thomas Tylutki and Christopher Holmes are consistent with the extensions of time filed in the first AMINOGREEN application. Because the AMINOMAX product was already formulated and in production in Europe, Afgriotech was able to import the AMINOMAX product into the U.S. and thus use the mark notwithstanding these delays. Such was not the case for AMINOGREEN.

The second path, that of a product name, was a function of the filing of the first application for AMINOGREEN, and by necessity the second application. It is only logical that when the product to be identified was only a conceptual formulation that there would be no labels, marketing material or the like. Only in fiction (e.g., the movie “*Lover Come Back*” with Rock Hudson and Doris Day)

does one advertise a product which doesn't exist. Once the product was finally produced and tested, it could be married with the AMINOGREEN name which was identified and the intention to use it expressed by Christopher Holmes, the Chairman of Afgritech, when he signed each of the applications and extensions. The present facts are logical and consistent with a bona fide intent to use the AMINOGREEN mark, and distinguishable from those previously considered on the subject of whether, at the time of filing of the second application, an applicant possessed the requisite intent to use the mark.

This is not a case where an applicant is registering defensive marks, multiple marks for the same goods, or otherwise negligently filing trademark applications. Afgritech's narrative here is compelling based on the significant work it has taken to enable Afgritech to move forward with the AMINOGREEN product. Thus, Evonik's perception of the facts are contradicted by business records and discovery responses, as well as the sworn statements of three individuals. In short, due to the highly fact-intensive nature of this dispute, which facts favor Afgritech, Evonik's motion should be denied.

Respectfully submitted,

Dated: May 22, 2012

HOVEY WILLIAMS LLP

By s/Cheryl L. Burbach
Thomas H. Van Hoozer
Cheryl L. Burbach
10801 Mastin Blvd., Suite 1000
Overland Park, KS 66210
Telephone: 913.647.9050
Facsimile: 913.647.9057

ATTORNEYS FOR APPLICANT
AFGRITECH, LTD.

CERTIFICATE OF FILING

I hereby certify that the foregoing Applicant's Brief in Opposition to Evonik's Motion for Summary Judgment is being electronically filed with the United States Patent and Trademark Office Trademark Trial and Appeal Board.

May 22, 2012

s/Cheryl L. Burbach

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was deposited with the United States Postal Service as first class mail, postage prepaid, on this 22nd day of May, 2012 to:

Scott D. Woldow, Esq.
Smith, Gambrell & Russell, LLP
1130 Connecticut Avenue, N.W., Suite 1130
Washington, District of Columbia 20036

Attorneys for Opposer
Evonik Degussa GmbH

/s/Cheryl L. Burbach

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT A

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

Evonik Degussa GmbH)	
Opposer,)	
v.)	Opposition No. 91/199,752
Afgritech Ltd.)	Re: Application Ser. No. 85/096,047
Applicant.)	

**DECLARATION OF CHRISTOPHER N.C. HOLMES IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

1. My name is Christopher N. C. Holmes and I am over the age of eighteen, under no disqualification, and in all respects capable of making the following Declaration in opposition to the Motion for Summary Judgment of Evonik Degussa GmbH. I am a subject of the United Kingdom.

2. I am the Chairman of Afgritech Ltd., a corporation organized under the laws of the United Kingdom. Afgritech Ltd. has a place of business at Old Croft, Stanwix, Carlisle, CA39BA, United Kingdom. Afgritech LLC, is a New York limited liability company and is a wholly owned subsidiary of Afgritech Ltd. I am also the Chief Executive Officer of Carrs Milling Industries PLC, which holds a 50% ownership interest in Afgritech Ltd. Carrs Milling Industries PLC has a long history and substantial experience in the agriculture field, and specifically in the field of animal feeds and feed supplements. Attached as Exhibit 1 is a page from our website setting forth a summary of our company history and attention is invited to the year dates 1997, 1999, 2000, 2005 and 2006 showing our experience in regard to animal feed/ feed supplement production. Attached as Exhibit 2 is a copy of the company's annual report of interim results from 2007/2008, and attention is invited to pages 3 and 4 which describes our

revenue and operations during that period including our animal feed/feed supplement products and business..

3. I am also the Chairman of Animal Feed Supplement, Inc. (operating under the trade name New Generation Feeds) is a wholly owned subsidiary of Carrs Milling Industries PLC with an office and plant in Belle Fourche, South Dakota, USA and another plant in Poteau, Oklahoma, USA. Animal Feed Supplement, Inc. was acquired by Carrs Milling Industries PLC in 1997 and Afgritech Ltd. utilized its expertise in feed supplements/animal feed with regard to the U.S. market in implementing the plan to operate a plant and sell product in the United States. Exhibit 3 hereto is a page from the Animal Feed Supplement, Inc. website showing its background in the animal feed/ feed supplement business.

4. Afgritech Ltd. was formed in 2006 as a company jointly and equally owned by Carrs Milling Industries PLC and Afgri Ltd., and is engaged in the business of manufacturing feed supplements/animal feed. Afgri Ltd. is a South African company with a long history of manufacture in the animal feeds business. This made a good fit for Afgritech Ltd. and Exhibit 4, an extract from its current web page is attached showing its involvement in the animal feeds business. Afgri Ltd. was, in 2006, acquiring ownership of European Community Trademark Application No. 5084116 for the mark AMINOMAX. We thus decided that this would be a good name for our feed supplement/animal feed product in the United States.

5. On or about 14 June 2006, Afgritech Ltd. decided to apply for registration of both the mark AMINOMAX and AMINOGREEN in the United States for feed supplement/animal feed. This was a decision we reached because it would reflect our commitment to developing and producing "green" and environmentally friendly products. I communicated our instructions to our attorney on June 14, 2006 and I personally signed the application for filing on 18 June 2006

to reflect the bona fide intent to use the mark AMINOGREEN for animal feed supplements and livestock feed.

6. At the time the US trademark application was filed, Afgritech Ltd. intended to make both the AMINOMAX and AMINOGREEN products in the United States. The AMINOMAX product is now made in the United States, England, South Africa and Argentina, but of course this was not the case in 2006 when the applications were filed in the United States. However, Afgritech Ltd. already had formulations for the AMINOMAX product and thus AMINOMAX was anticipated to be the first of these products to be produced in the United States.

7. The AMINOGREEN product was going to be a product developed for manufacture only in the United States and not Europe (at least under the AMINOGREEN name). The AMINOGREEN animal feed/feed supplement product was going to be a new bypass protein product that was going to be developed for the US market by Agricultural Modeling and Training Systems, LLC (AMTS) under the direction of Dr. Tom Tylutki. The concept for the AMINOGREEN product was a new one, embodying a novel concept which Dr. Tylutki conveyed to us in June of 2006. It was determined to pursue this novel concept for a feed supplement/animal feed product under the AMINOGREEN name at the time the name was adopted.

8. Dr. Tylutki provided us with a plan for proceeding with the US commercialization of the AMINOMAX product in 2006, and a copy of that plan is attached hereto as Exhibit 5. In the plan, at page 8, second paragraph above the heading "Conclusion" was a reference to the product to which we intended to use the AMINOGREEN name. Dr. Tylutki was to proceed with conceptual development of the AMINOGREEN product but wait to produce prototype products until we had our own facility located in the United States where the development could be closely controlled, and then ultimately manufactured at this new facility. Thus, the new facility

in the United States would initially manufacture AMINOMAX product for which formulations were in hand, and then proceed with producing prototype by-pass products to which the AMINOGREEN name would apply.

9. To accomplish the goal of manufacturing the AMINOMAX product in the U.S. and to develop the AMINOGREEN product in the US, we considered three sites and ultimately identified a feed plant in Watertown, New York which could be converted to our use. This Watertown, N.Y. facility was first identified in 2007 and attached as Exhibit 6 is a document entitled "Afgriotech Limited Capital Proposals and Budget Costs for the Conversion of Watertown U.S.A. Feed Mill to Aminomax Production Plant" dated October 2008 and prepared by N.J. Hillyer. Mr. Nigel Hillyer was the individual we selected to design the plant.

10. With reference to Exhibit 6, it was expected that the plant construction would be completed by 1 August 2009 at the time Exhibit 6 was prepared. Unfortunately, we experienced an unexpected delay in acquiring the property arising in part from a title issue. Blue Seal Feeds had been the owner of the property and was acquired by Kent Feeds but the property had not been properly transferred. Consequently, the property was not acquired by our wholly-owned subsidiary, Afgriotech Properties LLC until August 8, 2010.

11. While we could begin the introduction of the AMINOMAX product by importing it from the U.K. into the United States in 2010, we had no such capability to produce the AMINOGREEN product. Thus, initial sales of the AMINOMAX product in the United States came from our production in the U.K. While Dr. Tyłutki was to continue conceptual development of the product we intended to label under the AMINOGREEN name, the delay in acquisition and completion of the plant in Watertown, New York continued to postpone the time when prototype production and testing could commence. As a result, though we continued to have a real and *bona fide* intent to use the mark AMINOGREEN on the feed supplement/animal

feed from at least as early as June 14, 2006 when I expressed my direction to file an application to register this mark in the United States and though the time our initial trademark application was abandoned, delays in the acquisition of the Watertown, N.Y. plant prevented us from producing a product on which the AMINOGREEN name could be used.

12. Nonetheless, we still had an intent to develop the AMINOGREEN product and put the name into use and we continued to discuss the name and the product for which it was intended. In late July 2010, Dick Wark, who I had interviewed and then hired as President and CEO of Animal Feed Supplement, Inc. was acting in a consulting capacity for Afgritech Ltd. He expressed his desire to refile the application to register AMINOGREEN. That was my desire as well and as it appeared that closing on the Watertown, New York feed plant was imminent and that we would be able to have Dr. Tylutki develop and Afgritech produce the new bypass protein product under the AMINOGREEN name, I decided to refile for registration of that trademark and signed the second application on July 29, 2010.

13. In 2010 after filing the second application ser. no. 85/096,047 for the mark AMINOGREEN, we decided to form Afgritech LLC as a wholly owned subsidiary of Afgritech Ltd. to oversee construction and operation of the Watertown N.Y. plant. Dick Wark was designated as President and CEO of Afgritech LLC and was directly responsible for construction and bringing the plant into operation. During this time, Dr. Tylutki was to continue development of the AMINOGREEN formulation, but we wanted to wait to produce any prototype products until the Watertown N.Y. plant was fully operational.

14. During the remainder of 2010 and most of 2011, we continued to experience delays in construction. For example, shortly after acquisition of the Watertown N.Y. property, the decision was made to change from a cook pot type of production to an expander. We anticipated having the equipment produced for installation so that construction could begin on January 1,

2011 and completed by July 15, 2011. This proved impossible. Further delays included delay in deliveries of equipment to be installed, such that the anticipated commissioning date was delayed to October 16, 12 weeks behind even our revised schedule. Finally, we were able to officially announce the opening of the plant and attached as Exhibit 7 is an article first printed in the Syracuse Post-Standard reflecting this accomplishment. Although we held our "Grand Opening" on November 17, 2011, we were not satisfied with the levels of by-pass we were producing. Up to that time, Afgritech had spent about 5 million dollars on renovating the Watertown, New York plant. After a meeting during the week of January 3, 2012, we decided to change the process and then pull the existing retention vessel, order and install a new vessel. Thus, we finally re-commissioned the plant in the first week of May, 2012. Attached as Exhibit 8 is a printout from our aminomax.com website which describes in greater detail the foundation of the AMINOMAX products in an effort to explain that Dr. Tylutki's formulation of the new products to be identified by the AMINOGREEN mark, which is also intended to have by-pass protein, is much more complex and involved than simply adding together raw materials, but rather requires product development under controlled circumstances and testing.

15. During 2011, we began selling AMINOMAX product produced in the Watertown, New York plant. Sales of the AMINOMAX product in the first fiscal quarter of 2011 exceeded \$100,000 and sales are expected to increase now that the plant is fully operational. As currently formulated, AMINOMAX is primarily intended for consumption by dairy cattle. AMINOMAX has been promoted in the United States through the website aminomax.com, through trade shows or other trade venues such as the Northeast Agriculture and Feed Alliance Summer Meeting in June of 2011, the Vermont Feed Dealer Meeting in September of 2011, the Cornell Nutrition Conference in October of 2011, the Dairy Challenge in October of 2011, the Cornell Feed Dealer

Meeting in November of 2011, and the Northeast Agriculture Feed Alliance Annual Meeting in February 2012, and through trade publications in the dairy cattle industry such as *Country Folks*, *Dairy Herd Management*, *Feedstuffs*, *Hoards Dairymen*, and *Progressive Dairymen*. Afgritech Ltd. expects to sell and promote AMINOGREEN in a similar manner as both AMINOMAX and AMINOGREEN are intended to be by-pass protein feed supplement/animal feed products.

16. Now that the plant is fully operational, we want to proceed with producing test quantities of the new by-pass product which we intended to market under the AMINOGREEN name. We can now do so with the plant being fully operational so that we will not only be able to carefully control access to the product and formulations, but also to be able to know that product variations or defects are not attributable to defects in the processing system. With the advent of the opposition to the AMINOGREEN mark by Evonik Degussa, we will continue product development but will likely delay introduction due to uncertainty of the availability of the AMINOGREEN name and the exposure to potential liability in litigation for trademark infringement.

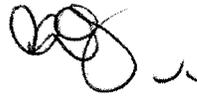
17. My discussions of the AMINOGREEN name have always been oral, and other than the applications I personally signed, the extensions which I signed, this declaration, and my communications with our attorneys, I am not aware of any documents which bore the AMINOGREEN name. That said, I had discussed the name with Denis Daly, who was the president of Animal Feed Supplement, Inc. in 2006, with Hinner Koster of Afgri Limited, and with Ron C. Wood when we decided to file the initial application, and had discussed the name with Tom Tylutki and Dick Wark among others after that initial decision to file. In our conferences, the name AMINOGREEN was used orally to identify the new by-pass product under development by Dr. Tylutki.

18. Throughout the period from June of 2006 to the present, it is my personal knowledge that Afgritech Ltd. has continuously maintained its intention to use the AMINOGREEN trademark. That is, since June 14, 2006 continuously to the present, Afgritech Ltd. has intended to produce, market and sell feed supplement/animal feed products in the United States under the AMINOGREEN mark.

19. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registrations issuing thereon.

Date:

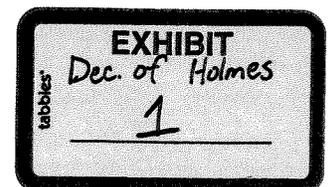
17th May 2012

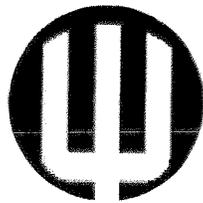


Christopher N. C. Holmes

Company History

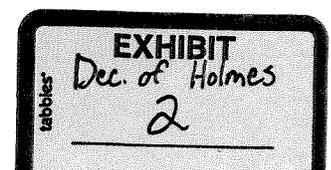
- 2011** Acquisition of Safe at Work (specialist protective clothing supplier to the forestry and agricultural markets)
Disposal of Carrs Fertilisers
- 2010** Acquisition of the trade of AgChem fertiliser. Acquisition of AC Burn (animal feed and farming supplier).
Acquisition of Scotmin Nutrition (animal feed supplements).
Acquisition of Forsyths of Wooler Limited (animal food and farming supplier).
- 2009** Acquisition of the trade and assets of Hans Wälischmiller (a remote-handling technology, robotics and radiation protection equipment business in Southern Germany).
- 2008** Acquisition of J M Raine (ground care equipment distributor)
- 2007** Acquisition of Johnstone Fuels and Lubricants
- 2006** Formation of Crystalyx Products GmbH, a joint venture company with Agravis (low moisture feed blocks) in Germany
Formation by Carrs Billington Agriculture (Sales) of Bibby Agriculture joint venture animal feed and farming supplies) in Wales
Formation of AfgriTech, a joint venture company in Langwathby with Afgri Operations based in South Africa
- 2005** Acquisition of Wallace Oils
Acquisition by Carrs Billington Agriculture (Operations) of W&J Pye animal feed producing assets
- 2004** Sale of Bendalls site in Carlisle and new site commissioned
Acquisition of Meneba UK flour milling business (2 mills)
- 2002** Reorganisation of Carrs Billington Agriculture, Sales and Operations
Acquisition of assets of engineering business Master Slave Manipulators
- 2001** Foot and Mouth Disease affects UK and in particular Cumbria and SW England
- 2000** Acquisition of AF PLC (2 animal feed mills and 4 retail outlets)
- 1999** Formation of Joint Venture, Carrs Billington Agriculture, to supply animal feed from two mills.
Sale of remaining 50% holding in Robertsons (plant baker).
Commission of Animal Feed Supplement's second plant, in South Dakota, USA
- 1998** Closure of animal feed mill at Silloth, Cumbria
- 1997** Acquisition of Animal Feed Supplement, Oklahoma, USA
- 1996** Acquisition of Bendalls, Carlisle
BSE (Bovine Spongiform Encephalopathy)
- 1982** Re-registration as a PLC
- 1972** Listing on the London Stock Exchange
- 1950** Changed name from Carrs Flour Mills Limited to Carrs Milling Industries Limited
- 1908** Carrs Flour Mills Limited incorporated
De-merge from Carr & Co. Limited when Carrs Flour Mills Limited acquired the flour milling assets
- 1831** Company Founded by Jonathan Dodgson Carr





**CARR'S MILLING
INDUSTRIES PLC**

**INTERIM RESULTS
2007/2008**



CARR'S MILLING INDUSTRIES PLC

CHAIRMAN'S INTERIM STATEMENT

I am pleased to report the unaudited results for the Group for the 26 weeks to 1 March 2008 which are both substantially ahead of the comparable period of the 26 weeks to 3 March 2007 and appreciably ahead of budget.

Our positioning in speciality products, particularly in the Agricultural market, is driving increases in both margins and sales whilst food price inflation is enabling us to recapture much of the lost margin in our Food business experienced in the period ended 1 September 2007.

These factors combine to give us a high degree of confidence in the outlook for the full 52 weeks ending 30 August 2008.

FINANCE HIGHLIGHTS

- Revenue up 45.9% to £161.87m (2007: £110.97m)
- Pre-tax profit up 45.0% to £5.17m (2007: £3.57m)*
- Adjusted operating profit up 41.3% to £6.43m (2007: £4.55m)**
- Earnings per share up 45.8% at 44.6p (2007: 30.6p)
- Adjusted earnings per share up 35.7% to 44.1p (2007: 32.5p)**

* including a £0.98m (2007: £0.67m) share of post-tax profit in associate and joint ventures

** adjusted figures exclude non-recurring items and the amortisation of intangible assets of £0.07m credit (2007: charge £0.20m).

Shareholders' equity at the period end totalled £28.6m as against £26.8m at 1 September 2007 and £21.8m at 3 March 2007. Net debt was £26.7m as against £15.4m and £18.1m, respectively, with gearing of 93% as against 57% and 83%, respectively. The increase in indebtedness is a consequence of the Group's increased revenue and higher associated working capital requirements arising from substantial rises in the cost of raw materials which have in turn led to higher levels of inventory, receivables and payables. Net finance costs of £0.76m (2007: £0.44m) were covered a substantial 6.5 times (2007: 7.6 times) by Group operating profit.

INTERIM DIVIDEND

The Board has declared an interim dividend per share of 6.0p (2007: 5.5p), up 9.1%, to be paid on 9 May 2008 to shareholders on the register at close of business on 18 April 2008, with an ex-dividend date of 16 April 2008.

OPERATIONS

Agriculture

- Revenue up 45.1% at £118.82m (2007: £81.89m)
- Operating profit up 56.9% at £4.02m (2007: £2.57m)*
- Post-tax profit in associate and joint ventures up 46.5% at £0.98m (2007: £0.67m)

* before retirement benefit charge

The Group's Agriculture business comprises, in the UK (primarily in the North West of England and South West of Scotland), four related activities – animal feed manufacture, fertiliser blending, agricultural retailing, and oil distribution – and, in the USA and Germany, animal feed manufacture.

Market backdrop

The higher animal feed and energy costs incurred by UK farmers were reflected in the 50% increase in the milk price evident in contracts towards the latter months of 2007. Our US and German low moisture feed block businesses were faced with a higher cost of molasses, a main ingredient, but we were able to pass on most of this cost.

Animal feed

In our compound and blended feed business, we gained market share in what remains a competitive market place, due to consistently high quality of product as well as the successful take up of our niche product, *AminoMax*, a by-pass protein feed ingredient launched in the previous financial period by Afgritech, the Group's joint venture.

Although raw material prices continue to rise, we benefited from our decision to buy early and have recently put through a price rise to compensate for further raw material cost increases, which will take effect in May 2008.

Sales of our low moisture feed blocks continue to rise (+18%), driven by both product substitution trends and our unique niche products, now including *Organyx Plus*, a new product in the *Crystalx* range for organic farming systems.

In the US, volumes continue to rise due to both the quality of our *Smartlic* and *Feed in a Drum* low-moisture animal feed blocks and our excellent levels of service. Revenue was up 14% but margins were slightly lower due to higher raw material costs – the full impact of these cost pressures were not passed on.

In Germany, *Crystalyx Products*, the joint venture with the substantial German agriculture group Agravis, increased revenue by the introduction of new markets, including Russia.

Fertiliser

Revenue was up 114% on volumes up 60% on the comparable period. We benefited from farmers buying early to secure supply and to offset further price increases. In addition, our leading market position in Scotland and North West England and the success of our niche, slow release environmentally-friendly *New Choice* fertiliser further boosted profitability. Volumes of this high margin product increased by around 50% year on year and *New Choice* now represents one-sixth of our total fertiliser volumes.

Retail

With farmers' income improving, sales at our 14 retail branches experienced spend up by more than 10% overall, with an acceleration in the second quarter.

Fuels

Our fuels business continued to gain market share and there is cross-selling across the Agricultural group. Revenue from fuel sales increased by 70%, which also reflects the acquisition of Johnstone Fuels & Lubricants in January 2007.

Food

- Revenue up 57.9% at £39.68m (2007: £25.14m)
- Operating profit up 21.0% at £1.11m (2007: £0.92m)*

* before retirement benefit charge

The dramatic rise in revenue reflected the two price increases put through in September 2007 and November 2007, which are also helping to offset the margin erosion we saw in the previous financial period. The benefits of our cost reduction programme are now increasingly visible and with the prospect of further price increases, the recovery in profit should be sustained. We have tried to protect our position by buying forward raw materials where possible, and are hopeful of a more stable environment in the second half of the period. The underlying trends in profitability are encouraging.

Engineering

- Revenue down 14.7% at £3.30m (2007: £3.87m)
- Operating profit down 16.0% at £0.49m (2007: £0.59m)*

* before retirement benefit charge

Underlying trends across both nuclear and non-nuclear remain healthy and we are confident of a satisfactory outcome for the full period. The decline in sales and profitability reflected the part completion of one particularly difficult contract for the supply of vessels. This contract will be completed in the next quarter.

OUTLOOK

Improved farm incomes are benefiting our business. We are selling more product at better margins in the UK and seeing encouraging trends in our overseas Agricultural markets. The Agriculture division will continue to drive the performance of the Group. A more stable market backdrop in Food should enhance profitability further. The trends are positive for the second half of this period and beyond.

Richard Inglewood
Chairman
7 April 2008

UNAUDITED CONSOLIDATED INCOME STATEMENT
for the 26 weeks ended 1 March 2008

		26 weeks ended 1 March 2008 £'000 (unaudited)	26 weeks ended 3 March 2007 £'000 (unaudited)	52 weeks ended 1 September 2007 £'000 (audited)
	Notes			
Continuing operations				
Revenue	3	161,866	110,970	252,753
Cost of sales		(141,540)	(99,616)	(218,603)
Gross profit		20,326	11,354	34,150
Net operating expenses		(15,382)	(8,016)	(28,365)
Group operating profit		4,944	3,338	5,785
Analysed as:				
Operating profit before non-recurring items and amortisation		4,872	3,540	6,192
Non-recurring items and amortisation	6	72	(202)	(407)
Group operating profit		4,944	3,338	5,785
Interest income		291	215	392
Other finance income		-	59	95
Interest expense		(971)	(716)	(1,484)
Other finance costs		(75)	-	-
Share of post-tax profit in associate and joint ventures		980	669	738
Profit before taxation	3	5,169	3,565	5,526
Taxation	3,5	(1,278)	(902)	(1,225)
Profit for the period	3	3,891	2,663	4,301
Profit attributable to minority interest		204	140	120
Profit attributable to equity shareholders		3,687	2,523	4,181
		3,891	2,663	4,301
Dividend per share (pence)				
Paid	8	13.5	12.5	18.0
Proposed	8	6.0	5.5	13.5
Earnings per share (pence)				
Basic	7	44.6	30.6	50.7
Diluted	7	44.0	30.1	49.9

**UNAUDITED CONSOLIDATED STATEMENT OF RECOGNISED
INCOME AND EXPENSE**

for the 26 weeks ended 1 March 2008

		<u>26 weeks ended</u> <u>1 March 2008</u> <u>£'000</u> <u>(unaudited)</u>	<u>26 weeks ended</u> <u>3 March 2007</u> <u>£'000</u> <u>(unaudited)</u>	<u>52 weeks ended</u> <u>1 September 2007</u> <u>£'000</u> <u>(audited)</u>
Foreign exchange translation differences arising on translation of overseas subsidiaries		107	(38)	(253)
Actuarial (losses)/gains on retirement benefit obligation:				
- Group	4	(1,338)	-	4,570
- Share of associate		-	-	1,437
Taxation credit/(charge) on actuarial movement on retirement benefit obligation:				
- Group		375	-	(1,595)
- Share of associate		-	-	(459)
Net (expense)/income recognised directly in equity		<u>(856)</u>	<u>(38)</u>	<u>3,700</u>
Profit for the period		3,891	2,663	4,301
Total recognised income and expense for the period	9	<u>3,035</u>	<u>2,625</u>	<u>8,001</u>
Attributable to minority interest	9	199	140	120
Attributable to equity shareholders	9	2,836	2,485	7,881
		<u>3,035</u>	<u>2,625</u>	<u>8,001</u>

UNAUDITED CONSOLIDATED BALANCE SHEET

as at 1 March 2008

	As at 1 March 2008 £'000 (unaudited)	As at 3 March 2007 £'000 (unaudited)	As at 1 September 2007 £'000 (audited)
Notes			
Assets			
Non-current assets			
Goodwill	1,016	845	1,016
Other intangible assets	369	835	444
Property, plant and equipment	28,075	29,145	28,481
Investment property	746	766	756
Investment in associate	3,276	1,487	2,456
Interest in joint ventures	1,427	869	935
Other investments	251	254	251
Financial assets			
- Derivative financial instruments	-	96	132
- Non-current receivables	50	101	100
Deferred tax assets	3,222	5,061	3,228
	38,432	39,459	37,799
Current assets			
Inventories	24,758	18,551	14,853
Trade and other receivables	56,723	38,729	35,481
Current tax assets	-	4	82
Financial assets			
- Derivative financial instruments	1	-	-
Cash at bank and in hand	467	716	1,315
	81,949	58,000	51,731
Total assets	120,381	97,459	89,530
Liabilities			
Current liabilities			
Financial liabilities			
- Borrowings	(20,509)	(12,408)	(10,717)
- Derivative financial instruments	(65)	(1)	(10)
Trade and other payables	(46,571)	(32,677)	(28,478)
Current tax liabilities	(882)	(1,564)	(570)
	(68,027)	(46,650)	(39,775)
Non-current liabilities			
Financial liabilities			
- Borrowings	(6,687)	(6,361)	(5,971)
- Derivative financial instruments	(55)	-	-
Retirement benefit obligation	(9,306)	(15,137)	(9,807)
Deferred tax liabilities	(3,401)	(3,647)	(3,418)
Other non-current liabilities	(2,049)	(1,787)	(1,705)
	(21,498)	(26,932)	(20,901)
Total liabilities	(89,525)	(73,582)	(60,676)
Net assets	30,856	23,877	28,854
Shareholders' equity			
Ordinary shares	2,065	2,064	2,064
Share premium	5,099	5,073	5,073
Treasury share reserve	(101)	(101)	(101)
Equity compensation reserve	144	46	95
Foreign exchange reserve	(371)	(268)	(483)
Other reserve	1,555	1,586	1,570
Retained earnings	20,198	13,401	18,574
Total shareholders' equity	28,589	21,801	26,792
Minority interests in equity	2,267	2,076	2,062
Total equity	30,856	23,877	28,854

UNAUDITED CONSOLIDATED CASH FLOW STATEMENT
for the 26 weeks ended 1 March 2008

	26 weeks ended 1 March 2008 £'000 (unaudited)	26 weeks ended 3 March 2007 £'000 (unaudited)	52 weeks ended 1 September 2007 £'000 (audited)
Cash flows from operating activities			
Cash (used by)/generated from operations	10 (7,886)	585	6,906
Interest received	282	204	389
Interest paid	(930)	(574)	(1,407)
Tax paid	(509)	(724)	(2,053)
Net cash (used by)/generated from operating activities	<u>(9,043)</u>	<u>(509)</u>	<u>3,835</u>
Cash flows from investing activities			
Acquisition of subsidiaries (net of cash acquired)	-	(1,049)	(1,141)
Investment in joint ventures	(294)	-	-
Net payment of loans to joint ventures	-	(90)	(90)
Purchase of intangible assets	(3)	(5)	(11)
Proceeds from sale of property, plant and equipment	63	139	121
Purchase of property, plant and equipment	(877)	(1,275)	(1,896)
Proceeds from sale of investment property	-	-	96
Proceeds from sale of investments	-	-	1
Receipt of non-current receivables	50	100	100
Purchase of own shares held in trust	-	(101)	(101)
Net cash used by investing activities	<u>(1,061)</u>	<u>(2,281)</u>	<u>(2,921)</u>
Cash flows from financing activities			
Net proceeds from issue of ordinary share capital	27	75	75
Net proceeds from issue of new bank loans and other borrowings	3,295	1,500	-
Finance lease principal repayments	(454)	(486)	(1,005)
Repayment of borrowings	(144)	(2,069)	(83)
Disposal of interest rate swap	111	-	-
Dividends paid to shareholders	(1,115)	(1,032)	(1,486)
Net cash generated from/(used by) financing activities	<u>1,720</u>	<u>(2,012)</u>	<u>(2,499)</u>
Effects of exchange rate changes	78	3	(97)
Net decrease in cash and cash equivalents	<u>(8,306)</u>	<u>(4,799)</u>	<u>(1,682)</u>
Cash and cash equivalents at beginning of the period	(598)	1,084	1,084
Cash and cash equivalents at end of the period	<u>(8,904)</u>	<u>(3,715)</u>	<u>(598)</u>
Cash and cash equivalents consists of:			
Cash and cash equivalents per the balance sheet	11 467	716	1,315
Bank overdrafts included in borrowings	11 (9,371)	(4,431)	(1,913)
	<u>(8,904)</u>	<u>(3,715)</u>	<u>(598)</u>

STATEMENT OF DIRECTORS' RESPONSIBILITIES

The Directors confirm that to the best of their knowledge this condensed set of financial statements has been prepared in accordance with IAS 34 as adopted by the European Union, and that the interim management report herein includes a fair review of the information required by DTR 4.2.7 and DTR 4.2.8.

The Directors of Carr's Milling Industries PLC are listed in the Carr's Milling Industries PLC Annual Report and Accounts 2007. There have been no changes to the Board of Directors in the financial period.

On behalf of the Board

Chris Holmes
Chief Executive
7 April 2008

Ron Wood
Finance Director
7 April 2008

NOTES TO THE UNAUDITED INTERIM FINANCIAL RESULTS

1. Basis of preparation

The financial information for the 26 weeks to 1 March 2008 does not constitute statutory accounts for the purposes of section 240 of the Companies Act 1985 and has been neither audited nor reviewed. No statutory accounts for the period have been delivered to the Registrar of Companies.

The financial information in respect of the 52 weeks ended 1 September 2007 has been produced using extracts from the statutory accounts for this period. Consequently, this does not constitute the statutory information for the 52 weeks ended 1 September 2007, which was audited. The statutory accounts for this period have been filed with the Registrar of Companies. The auditors' report on these accounts was unqualified and did not contain a statement under sections 237(2) or (3) of the Companies Act 1985.

The next annual financial statements of the Group, for the 52 weeks to 30 August 2008, will be prepared in accordance with International Financial Reporting Standards as adopted for use in the EU ("IFRS"). This Interim Report has been prepared in accordance with the Disclosure and Transparency Rules of the Financial Services Authority and with IAS 34 'Interim Financial Reporting' as adopted by the European Union.

The directors approved the Interim Report on 7 April 2008.

The interim financial information has been prepared on the historical cost basis, except for certain assets, which are held at deemed cost, and derivative financial instruments and share-based payments, which are included at fair value.

2. Accounting policies

The accounting policies used in the preparation of the financial information for the 26 weeks to 1 March 2008 have been consistently applied to all the periods presented and are set out in full in the Group's financial statements for the 52 weeks ended 1 September 2007. A copy of these financial statements is available from the Company's registered office at Old Croft, Stanwix, Carlisle, CA3 9BA.

The following new standards, interpretations and amendments to published standards are effective for the Group for the financial period ending 30 August 2008:

- IFRS 7 'Financial Instruments: Disclosure'
- IFRIC 10 'Interim Financial Reporting and Impairment'
- IFRIC 11 'IFRS 2 – Group and Treasury Share Transactions'

The above new standards, interpretations and amendments to published standards have had no material impact on the results or the financial position of the Group for the 26 weeks to 1 March 2008.

The following new standards, interpretations and amendments to published standards have been issued, but are not effective for the financial period ending 30 August 2008 and have not been early adopted:

- IAS 1 (Revised) 'Presentation of Financial Statements'
- IFRS 8 'Operating Segments'
- IFRIC 12 'Service Concession Arrangements'
- IFRIC 13 'Customer Loyalty Programmes'
- IFRIC 14 'The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction'
- IAS 23 'Revised – Borrowing Costs'
- Amendment to IAS 32 'Financial Instruments: Presentation' and IAS 1 'Presentation of Financial Statements'
- Amendment to IFRS 2 'Share Based Payments'
- IFRS 3 (Revised) 'Business Combinations'
- IAS 27 (Revised) 'Consolidated and Separate Financial Statements'

3. Segmental information

The segment results for the 26 weeks to 1 March 2008 are as follows:

	Agriculture £'000	Food £'000	Engineering £'000	Other £'000	Group £'000
Total gross segment revenue	118,949	39,680	3,326	70	162,025
Inter-segment revenue	(133)	(2)	(24)	-	(159)
Revenue	118,816	39,678	3,302	70	161,866
Operating profit/(loss) before retirement benefit charge	4,024	1,112	492	(182)	5,446
Analysed as:					
Before non-recurring items and amortisation	4,045	1,150	492	(313)	5,374
Non-recurring items and amortisation	(21)	(38)	-	131	72
	4,024	1,112	492	(182)	5,446
Retirement benefit charge					(502)
Interest income					291
Other finance costs					(75)
Interest expense					(971)
Share of post-tax profit of associate (Agriculture)					820
Share of post-tax profit of joint ventures (Agriculture)					160
Profit before taxation					5,169
Taxation					(1,278)
Profit for the period					3,891

The segment results for the 26 weeks to 3 March 2007 are as follows:

	Agriculture £'000	Food £'000	Engineering £'000	Other £'000	Group £'000
Total gross segment revenue	82,044	25,142	3,924	79	111,189
Inter-segment revenue	(157)	(7)	(55)	-	(219)
Revenue	81,887	25,135	3,869	79	110,970
Operating profit/(loss) before retirement benefit charge	2,565	919	586	(112)	3,958
Analysed as:					
Before non-recurring items and amortisation	2,608	1,078	586	(112)	4,160
Non-recurring items and amortisation	(43)	(159)	-	-	(202)
	2,565	919	586	(112)	3,958
Retirement benefit charge					(620)
Interest income					215
Other finance income					59
Interest expense					(716)
Share of post-tax profit of associate (Agriculture)					506
Share of post-tax profit of joint ventures (Agriculture)					163
Profit before taxation					3,565
Taxation					(902)
Profit for the period					2,663

The segment results for the 52 weeks to 1 September 2007 are as follows:

	Agriculture £'000	Food £'000	Engineering £'000	Other £'000	Group £'000
Total gross segment revenue	186,249	57,038	9,790	214	253,291
Inter-segment revenue	(319)	(3)	(216)	-	(538)
Revenue	185,930	57,035	9,574	214	252,753
Operating profit/(loss) before retirement benefit charge	5,145	1,102	1,018	(313)	6,952
Analysed as:					
Before non-recurring items and amortisation	5,235	1,419	1,018	(313)	7,359
Non-recurring items and amortisation	(90)	(317)	-	-	(407)
	5,145	1,102	1,018	(313)	6,952
Retirement benefit charge					(1,167)
Interest income					392
Other finance income					95
Interest expense					(1,484)
Share of post-tax profit of associate (Agriculture)					496
Share of post-tax profit of joint ventures (Agriculture)					242
Profit before taxation					5,526
Taxation					(1,225)
Profit for the period					4,301

Sales of agricultural products are subject to seasonal fluctuation with higher demand for animal feed in the first six months of the period whereas fertilisers sales demand is high in the second six months of the period, particularly in the months of March and April.

4. Retirement benefit obligation

	£'000
Deficit in scheme at 2 September 2007	9,807
Actuarial loss	1,338
Contributions by employer	(1,267)
Retirement benefit charge	502
Reduction in liability due to transfer values paid	(1,074)
Deficit in scheme at 1 March 2008	9,306

In the period, the Company and the Trustees of the Carr's Milling Industries Pension Scheme 1993 ("Scheme") offered to deferred members, with more than five years to normal retirement age, enhanced transfer values. The cost to the Company was £943,000 and the actuarial provisions held by the Company were reduced by £1,074,000. The net gain of £131,000 (2007: £nil) has been credited to the income statement.

Actuarial losses of £1,338,000 (2007: £nil) have been reported in the Statement of Recognised Income and Expense. The reduction in liabilities due to the rise in bond yields was more than offset by negative returns on investments, and the adoption of a revised mortality table.

During the period the Group's associate closed its defined benefit pension scheme to future service accrual. The valuation for this Scheme has not been updated as any actuarial movements are not considered to be material.

5. Taxation

The tax charges for the 26 weeks ended 1 March 2008 and 3 March 2007 are based on the estimated tax charge for the applicable year.

In the 2007 budget, the Government announced its intention to propose that Parliament abolish Industrial Buildings Allowances ("IBAs"). As of 1 March 2008, this change was not substantively enacted. Had the change been substantively enacted as of the balance sheet date, the estimated impact on the income statement and balance sheet would be an increase in the deferred tax charge and liability of £1,267,000.

6. Adjusted operating and pre-tax profit

	26 weeks ended	
	1 March 2008	3 March 2007
	£'000	£'000
Reported group operating profit	4,944	3,338
Non-recurring items and amortisation	(72)	202
Operating profit before non-recurring items and amortisation	4,872	3,540
Share of operating profit in associate and joint ventures	1,557	1,009
Adjusted operating profit	6,429	4,549
Net finance costs – group	(755)	(442)
Net finance costs – associate and joint ventures	(116)	(101)
Adjusted pre-tax profit	5,558	4,006

7. Earnings per share

The calculation of earnings per ordinary share is based on earnings attributable to shareholders and the weighted average number of ordinary shares in issue during the period.

The adjusted earnings per share figures have been calculated in addition to the earnings per share required by IAS 33 – 'Earnings per Share' and is based on earnings excluding the effect of non-recurring items and amortisation of intangible assets. It has been calculated to allow the shareholders to gain an understanding of the underlying performance of the Group. Details of the adjusted earnings per share are set out below:

	26 weeks ended		52 weeks ended
	1 March 2008 £'000	3 March 2007 £'000	1 September 2007 £'000
Earnings	3,687	2,523	4,181
Non-recurring items and intangible asset amortisation:			
Amortisation of intangible assets	59	202	407
Net gain on transfer of deferred pensioners from Group scheme	(131)	-	-
Impairment of goodwill and property, plant and equipment recognised in associate, net of tax	-	-	119
Amortisation of intangible asset and impairment of goodwill recognised in joint ventures, net of tax	4	13	19
Taxation charge/(credit) on non-recurring items and amortisation	20	(61)	(114)
Adjusted earnings	3,639	2,677	4,612
Weighted average number of ordinary shares in issue	8,258,994	8,244,122	8,240,848
Potentially dilutive share options	128,677	150,206	144,127
	8,387,671	8,394,328	8,384,975
Basic earnings per share	44.6p	30.6p	50.7p
Diluted earnings per share	44.0p	30.1p	49.9p
Adjusted earnings per share	44.1p	32.5p	56.0p

8. Dividends

	26 weeks ended		52 weeks ended
	1 March 2008 £'000	3 March 2007 £'000	1 September 2007 £'000
Ordinary: Final dividend for the period ended 1 September 2007 of 13.5p per share (2006: 12.5p)	1,115	1,032	1,032
Ordinary: Interim dividend of 5.5p per share	-	-	454
	1,115	1,032	1,486

The directors have approved an interim dividend of 6.0p per share (2007: 5.5p per share), which, in line with the requirements of IAS 10 – 'Events after the Balance Sheet Date', has not been recognised within these results. This results in an interim dividend of £495,697 (2007: £454,113), which will be paid on 9 May 2008 to shareholders whose names are on the Register of Members at the close of business on 18 April 2008. The ordinary shares will be quoted ex-dividend on 16 April 2008.

9. Changes in shareholders' equity and minority interest

	Attributable to Equity Holders of the Company								Minority Interest £'000	Total £'000
	Share Capital £'000	Share Premium Account £'000	Treasury Share Reserve £'000	Equity Compensation Reserve £'000	Foreign Exchange Reserve £'000	Other Reserves £'000	Retained Earnings £'000	Total Shareholders' Equity £'000		
At 2 September 2007	2,064	5,073	(101)	95	(483)	1,570	18,574	26,792	2,062	28,854
Total recognised income and expense for the period	-	-	-	-	112	-	2,724	2,836	199	3,035
Dividends	-	-	-	-	-	-	(1,115)	(1,115)	-	(1,115)
Equity-settled share-based payment transactions, net of tax	-	-	-	49	-	-	-	49	6	55
Allotment of shares	1	26	-	-	-	-	-	27	-	27
Transfer	-	-	-	-	-	(15)	15	-	-	-
At 1 March 2008	2,065	5,099	(101)	144	(371)	1,555	20,198	28,589	2,267	30,856

10. Cash flow (used by)/generated from operating activities

	26 weeks ended		52 weeks ended
	1 March 2008 £'000	3 March 2007 £'000	1 September 2007 £'000
Net profit	3,891	2,663	4,301
Adjustments for:			
Tax	1,278	902	1,225
Depreciation on property, plant and equipment	1,662	1,798	3,507
(Profit)/loss on disposal of property, plant and equipment	(9)	10	18
Depreciation on investment property	10	9	19
Profit on disposal of investment property	-	(77)	(77)
Loss on disposal of investments	-	-	3
Intangible asset amortisation	78	221	446
Net fair value losses/(gains) on derivative financial instruments in operating profit	56	(26)	(17)
Net fair value loss on share-based payments	55	29	84
Net foreign exchange differences	(49)	(16)	3
Interest income	(291)	(215)	(392)
Interest expense and borrowing costs	974	719	1,491
Net fair value losses/(gains) on derivative financial instruments in interest	75	(59)	(95)
Share of post-tax profits from associate and joint ventures	(980)	(669)	(738)
IAS 19 income statement credit in respect of employer contributions	(1,267)	(1,279)	(2,586)
IAS 19 income statement charge	502	620	1,167
Transfer values paid to deferred pension scheme members	(1,074)	-	-
Changes in working capital (excluding the effects of acquisitions):			
Increase in inventories	(9,905)	(6,436)	(2,738)
Increase in receivables	(21,230)	(3,564)	(321)
Increase in payables	18,338	5,955	1,606
Cash (used by)/ generated from continuing operations	(7,886)	585	6,906

11. Analysis of net debt

	At		At
	1 March 2008 £'000	3 March 2007 £'000	1 September 2007 £'000
Cash and cash equivalents	467	716	1,315
Bank overdrafts	(9,371)	(4,431)	(1,913)
Loans and other borrowings: current	(10,455)	(7,315)	(8,051)
Loans and other borrowings: non-current	(5,901)	(5,394)	(5,147)
Finance leases: current	(683)	(662)	(753)
Finance leases: non-current	(786)	(967)	(824)
	(26,729)	(18,053)	(15,373)

12. Capital expenditure and capital commitments

During the period the Group incurred capital expenditure on property, plant and equipment of £1,276,000 (2007: £1,843,000) and on intangible assets of £3,000 (2007: £255,000).

During the period the Group disposed of property, plant and equipment with a net book value of £53,000 (2007: £53,000) and investment property with a net book value of £nil (2007: £19,000).

Capital commitments contracted, but not provided for, by the Group amounted to £380,000 (2007: £51,000).

13. Related party transactions

The Group's significant related parties are its associate and joint ventures as disclosed in the Annual Report and Accounts 2007. There were no material changes to the level of related party transactions during the financial period.

14. Principal risks and uncertainties

The principal risks and uncertainties which could impact the Group were described on pages 10 and 11 of the Annual Report and Accounts 2007, a copy of which is available from the Company's registered office: Old Croft, Stanwix, Carlisle, CA3 9BA, or on the Group's website www.carrs-milling.com

The primary risks and uncertainties affecting the Group for the remainder of the financial period comprise:

Competition

It is fundamental that the Group remains competitive within its sectors and to mitigate risk in this area the Group ensures it invests in innovative new processes and products to retain its competitive advantage and to provide customers with quality products and service.

Capital investment in production facilities is essential to maintaining the Group's competitive edge.

Market forces

Increasing raw material costs will continue to place pressure on margins and profitability. To secure the best possible price the Group has bought forward those materials required and will continue to negotiate with suppliers to secure the best possible terms in an increasingly difficult market place. In addition, through food price inflation the Group has been able to pass on cost increases thereby reducing the impact on margins. The prospect of further price increases throughout the Group will help sustain recovery of profit.

Foreign currency

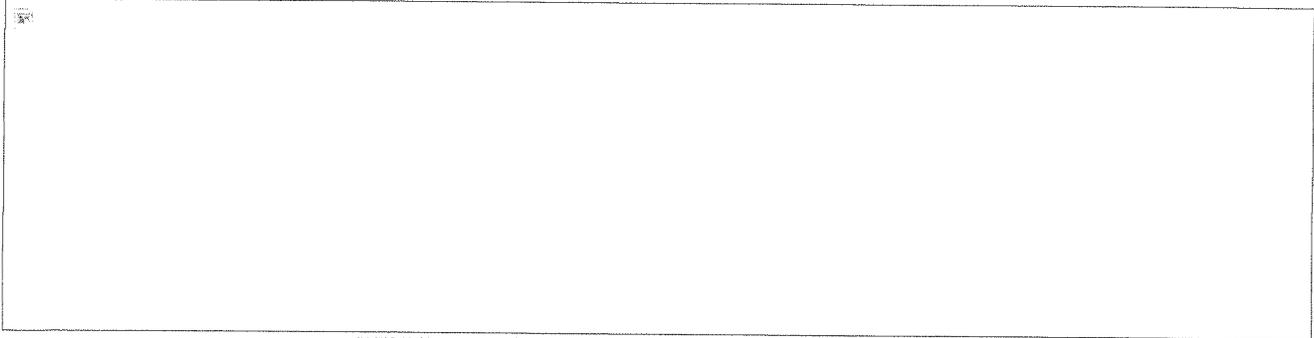
The major foreign currency risk facing the Group is in the purchasing of raw materials in the fertiliser and flour milling operations. The major currency involved is the US dollar. The policy of the Group is, and will continue to be, to hedge using forward foreign exchange contracts with UK banks as soon as commitment has been given to the underlying transaction.

Translation of the foreign subsidiary from US dollar to sterling is subject to exchange rate movements during the period and on translation of the balance sheet at the period end. The Group does not hedge against the translation of the foreign subsidiary as the translation has no impact on cash flow. Gains or losses on translation of the balance sheet are recorded in reserves.

Employee retention

To ensure the retention of its staff the Group invests in its employees through attractive remuneration packages including membership in its contributory occupational pension scheme and share option plans. Employees are offered support and training opportunities to ensure skills are kept to a level required to undertake their responsibilities.

15. This Interim Report will be sent by post to all registered shareholders. Copies are also available to the public from the Company's registered office: Old Croft, Stanwix, Carlisle, CA3 9BA, or at www.carrs-milling.com



Search

BEEF

DAIRY

HORSES

SHEEP

GOATS

- PRODUCTS
- SMARTLIC QUALITY
- ABOUT US
- Q & A
- SMARTLIC RESOURCES
- DEALER SERVICES
- GALLERY
- FEED COST CALCULATOR
- CONTACT US

About New Generation Feeds

New Generation Feeds is a fast track company that came together in late June of 1997. A group of top feed industry veterans purchased **Animal Feed Supplement, Inc.** in Poteau, Oklahoma with the financial backing of Carr's Milling Industries PLC, a large, diversified agri-business in the United Kingdom. Carr's first became involved in the low-moisture block business in 1993 with the purchase of Pfizer's British plant and its international rights to the CRYSTALYX trademark. Carr's has exported blocks manufactured under the Caltech, CRYSTALYX label and the McKenzie batch process patent, which expired in 1993.

Animal Feed Supplement, Inc. also manufactured their products under the CRYSTALYX label until 1993, when they began developing their new patented process and began marketing under their own **The Feed In A Drum label**. The Poteau facility will continue to service it's valued customers with The Feed in A Drum product line and also manufacture the new **SmartLic®** line of supplements.

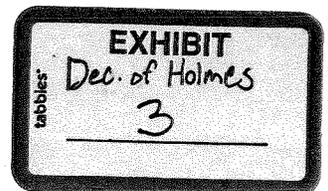
Distribution of the **SmartLic®** supplements will be through a rapidly growing authorized dealer network. New Generation Feeds has highly experienced people and has developed extensive turnkey marketing and training programs. These programs have successfully launched this new nutrient dense product line into today's competitive market.

New Generation Feeds is a new low-moisture "**big block**" company with two state-of-the-art, high capacity, manufacturing plants. One plant is located in Poteau, Oklahoma to serve the Southern market and the other plant is located in Belle Fourche, South Dakota to serve the Midwest and Western markets. These two facilities are manufacturing SmartLic® supplements with a new continuous flow patented process that is highly efficient and makes a harder, more consistent, nutrient dense product that will help today's cattlemen in minimizing their feed costs. These highly fortified blocks are noticeably different when compared to other "big blocks". SmartLic® is "Nutritionally Engineered®" to efficiently provide essential nutrients to support reproductive performance and enhance forage utilization.



© Copyright 2003- 2012 New Generation Feeds
Site Map

11094 Business 212 • P.O. Box 188 • Belle Fourche, South Dakota 57717
Toll Free: (888) 571-3421 • Local: (605) 892-3421 • Fax: (605) 892-3473



Operations / AGRI Services / Foods / Animal Feeds

AFGRI Foods

AFGRI Animal Feeds

AFGRI Animal Feeds plays a vital role in converting raw grain, together with other key elements of protein and energy, into balanced feed for livestock and dairy industries. AFGRI Animal Feeds is committed to the provision of superior manufacturing technologies, excellence and ongoing innovation. Having a production capacity of over 1 million tons per annum, this operation is one of South Africa's leading animal feed manufacturers.

Safe feed for safe food

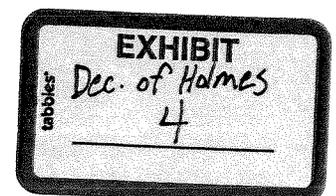
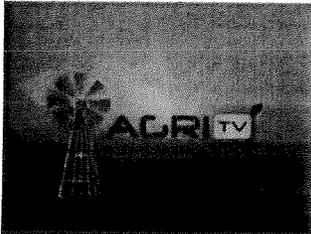
AFGRI Animal Feeds is a world class supplier of advanced products and services. AFGRI is committed to provide technical expertise, advice and services to our customers in an effort to address their ever-increasing and changing needs.

AFGRI Animal Feeds operates seven feed mills in strategic areas nationally manufacturing a comprehensive range of products aimed mainly at the poultry, dairy, beef, sheep, game and pet food markets.

An international technology agreement with Nutreco ensures cutting edge feeding practices to the benefit of our customers.

All feed mills are ISO 9001 and Hazard Analysis and Critical Control Point (HACCP) compliant. We are committed to the Animal Feed Manufacturing Association's code of conduct ensuring "safe feed for safe food" and received a platinum award for compliance.

[View Safe Animal Feeds video here](#)



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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF CHRISTOPHER N.C. HOLMES IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 5

(FILED UNDER SEAL IN ACCORDANCE
WITH THE PROTECTIVE ORDER)

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

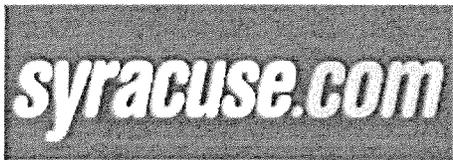
Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF CHRISTOPHER N.C. HOLMES IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 6

(FILED UNDER SEAL IN ACCORDANCE
WITH THE PROTECTIVE ORDER)



Sign in | Register for free

Site Search Search Local Business Listings

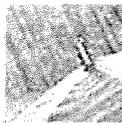
Sign in with Facebook

Search for keywords, people, locations, obituaries, Web ID and more..

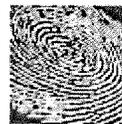
Home News Weather Sports Entertainment CNY Life Interact Jobs Autos Real



Top Stories



Expect thunderstorms today



\$10,000 in damage caused at construction site

Home > CNY Farms Blog > Green Agriculture

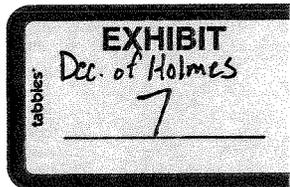
New dairy cattle feed company opens for business in Watertown

Published: Friday, November 18, 2011, 10:50 AM Updated: Friday, November 18, 2011, 11:03 AM



By Debra J. Groom / The Post-Standard

Follow



Recommend

Sign Up to see what your friends recommend.

0

Share

Tweet 5

Email

0

Print

Watertown, NY -- The grand opening of the new AminoMax Manufacturing plant in Watertown was conducted Thursday, Nov. 17.

AminoMax, a dairy cattle feed component, is in the old Blue Seal Facility on Willow Street. Its parent company, Afgritech LLC, recently completed a \$5 million renovation.

The company takes soybeans and and canola seed and produces a feed that is aimed at providing consistent levels of digestible amino acids to the cow, according the company literature. The company's brochure states "AminoMax is designed to consistently meet your cows' amino acid requirements and allow your nutritionist to reduce the amount of crude protein in the diet, maximizing use of forages and fermentable carbohydrates. University research has shown that when dairy rations are properly formulated with AminoMax, herd economics can be improved and farm odors can be reduced due to lower levels of nitrogen in the urine, making your dairy farm more environmentally friendly."

The manufacturing process was patented by Kansas State University. Its goal is to improve milk production, improve milk components and reduce manure nitrogen levels, according to the company brochure. Reducing nitrogen levels helps prevent excessive nitrogen runoff in lakes and streams, which leads to algae buildup and poor water quality.

Afgritech plans to built two more manufacturing facilities in the Midwest and west during the next 10 years. AminoMax also is made in England, South Africa and Argentina.

For more information, go to [this company website](#) or call (855) 785-3625 or 785-3625.

Related topics: cows, dairy farming, dairy feed, nitrogen, Watertown

Sponsored Links

Become Your Own Publisher

Publish, Market, and Sell Your Book with BookSurge, an Amazon Group.
www.BookSurge.com

Why Self Publish A Book?

Learn Benefits In Self Publishing Your Book. Free Publishing Guide!
www.Xlibris.com/SelfPublishing

Fast Easy Self Publishing

Get exactly what you need. Watch a Free video and get your free guide.
www.outskirtspress.com

Costa Rica Vacations

100% Local Experts in Worry-Free, All-inclusive Costa Rica Vacations.
www.VacationsCostaRica.com

Share this story

Story tools

Email

Print

More stories in CNY Farms Blog

Previous story

Neighbor helping neighbor is what farming is all about

Next story

McDonald's and Target drop egg supplier

0 Comments

Feed

Post a comment

Sign in to syracuse.com

Username

Don't have an account?

Register now for free, or sign in with any of these services:



A Quest for Excellence in Amino Acid Nutrition...

The Development of AminoMax was initiated at Kansas State University in 1995 with the aspiration of producing cost-competitive, plant-based protein sources with high ruminal bypass and superior amino acid bioavailability. The utility of high quality protein sources resistant to microbial digestion was at that time clearly evident, but the 1997 regulatory ban on use of ruminant-derived proteins in dairy, beef, and sheep operations of the United States and Canada underscored the critical need for plant-based proteins with high ruminal bypass that could replace animal-based bypass proteins, both safely and cost-effectively.

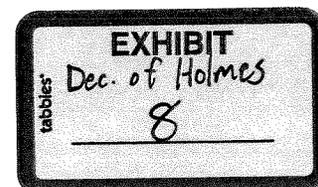
Early attempts by Kansas State University researchers to produce a higher-quality bypass protein focused on combining soybean meal with peroxidized soybean lipids. The peroxidized lipids served as reducing agents that could promote a controlled Maillard reaction, thus improving rumen bypass characteristics of plant-based proteins. When properly controlled, the Maillard reaction results in reversible binding of lysine and other amino acids by reducing compounds, making proteins that are resistant to digestion by microbes within the rumen, but that also are available for absorption in the small intestine. The peroxidized lipid process was very effective as a means of decreasing ruminal degradation of the protein, but the reaction proceeded too slowly to be commercially viable. These early experiments proved to be important developmental steps, however, as they became the impetus for conducting a series of investigations aimed at characterizing the non-protein components of a variety of plant protein meals. Through this exercise the research team discovered that plant protein meals contain a variety of carbohydrate compounds that could be modified by enzymatic hydrolysis, yielding highly reactive sugar moieties that readily induced the desired browning reaction. Armed with this information, the researchers embarked on yet another series of experiments to explore the potential for using a wide range of natural enzyme preparations to identify products that yielded optimal reactivity. Combinations of several key enzymes proved most effective, but cost of these mixtures was cost-prohibitive.

At this point the team arrived at a critical juncture in their research, turning their attention to select strains of yeast as sources of enzymes. These yeasts, when combined with plant proteins under stringently controlled processing conditions, could be induced to synthesize an abundance of natural enzymes. Enzymes produced by select strains of live yeast effectively cleaved carbohydrates within the plant proteins sources, yielding large quantities of the desired reactive sugars that could readily participate in controlled Maillard reactions to create bypass proteins of unsurpassed quality and consistency. Subsequent experiments revealed that plant-based proteins produced with this new process offered the advantage of high ruminal bypass, but with far superior amino acid bioavailability.

This simple concept of combining select strains of live yeast with plant proteins under meticulously controlled conditions has served as the foundation for development of AminoMax products, and was awarded a patent early in 2003. The AminoMax products of today represent the culmination of more than 15 years of exhaustive university research and field testing, supported by an ongoing commitment to progressive improvements in state-of-the-art manufacturing technology to produce cost-effective, safe, plant-based bypass protein products of unsurpassed quality and value.



Afgritech Plant in Watertown, NY



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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT B

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

Evonik Degussa GmbH)	
Opposer,)	
v.)	Opposition No. 91/199,752
Afgritech Ltd.)	Re: Application Ser. No. 85/096,047
Applicant.)	

**DECLARATION OF RICHARD WARK IN SUPPORT OF APPLICANT'S OPPOSITION
TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

1. My name is Richard Wark and I am over the age of eighteen, under no disqualification, and in all respects capable of making the following Declaration in opposition to the Motion for Summary Judgment of Evonik Degussa GmbH.
2. I am the General Manager of Afgritech LLC, which is a wholly owned subsidiary of Afgritech Ltd. In July of 2010 I was President and CEO of Animal Feed Supplement, Inc. and in that capacity was advising Afgritech Ltd. when it re-filed application ser. No. 85/096,047 for the mark AMINOGREEN.
3. I began working at Animal Feed Supplement, Inc. on February 15, 2010. Afgritech LLC was formed in the latter part of 2010 shortly after the acquisition of a feed plant in Watertown, N.Y. I learned about the plans of Afgritech Ltd. to acquire the feed plant in Watertown, N.Y. during the course of my interview in July of 2009 with Christopher Holmes for the position of President and CEO of Animal Feed Supplement. Afgritech Ltd. had been engaged in negotiations to try and acquire the Feed Mill located in Watertown, New York for producing its AMINOMAX product. At that time, the AMINOMAX products were being produced and sold by Afgritech Ltd. in the United Kingdom and I was told of Afgritech Ltd.'s plans to have AMINOMAX products produced at the Watertown, New York plant and sold in the United States.

4. Prior to the formation of Afgritech LLC, I was told by Christopher Holmes of the intent to use the name AMINOGREEN by Afgritech Ltd. The acquisition and completion of the Watertown, New York facility was considered essential to the development and production of the AMINOGREEN product. The nature of the product itself was and is highly confidential and Afgritech wanted to complete the formulations for the AMINOGREEN product at its own facility in the United States and not risk exposure of the product by using third party facilities. AMINOGREEN was a name that Afgritech Ltd had selected and the product was under development by a consultant, Thomas P. Tylutki for an animal feed supplement/livestock feed featuring bypass proteins. Thus, while the concept for the product and the name had been identified, the project was deemed so confidential that to proceed with product formulation to the extent of trial production and preparation of test batches required having manufacturing facilities under the direct ownership and control of Afgritech Ltd via its wholly owned subsidiary, Afgritech LLC.

5. Unfortunately, even acquisition of the Watertown, New York site was the subject of unexpected delays. It was not until August 8, 2010 that Afgritech Properties LLC, another wholly owned subsidiary of Afgritech Ltd., was able to close the purchase on the Watertown, New York plant. I had received building plans for the new construction for the Watertown, N.Y. plant from Nigel Hilyer on April 23, 2010. We had hoped to first produce the AMINOMAX feed supplement/livestock feed as it was already formulated and in production with Afgritech Ltd. in the United Kingdom, with a completion and plant start-up date then projected at December 1, 2010. However, the delays in acquisition of the property and construction necessitated that the initial shipments of AMINOMAX were imported from England and delivered to customers in the U.S. because we were unable to produce any feed

supplement/animal feed product locally at the Watertown, New York plant for a considerable amount of time. Throughout 2010, 2011 and so far in 2012 we have experienced a series of setbacks in construction and bringing the plant on line.

6. While we have been able to make some limited production of the AMINOMAX product in the latter part of 2011 at our Watertown, N.Y. plant, we experienced control issues, programming issues, expander issues, and problems with leaking pipes and faulty vales in our process system. This resulted in changes to the production process with longer retention times in early 2012. Subsequent delays in construction and processing of the AMINOMAX product meant that we had to replace the retention vessel, and only now have reached full production. It was not until April 19, 2012 that the new retention vessel was commissioned, so that new production samples could be generated and tested. Final testing was positive, and we received the approval for full production on Thursday, May 3, 2012 of the AMINOMAX feed supplement/animal feed product.

7. We have given priority to getting the Watertown plant completed and to finally reaching full commercial production of the AMINOMAX product. Now that we reached the completion of construction and testing and received full production authorization on May 3, 2012 after receiving the necessary test results, we will have a facility which will enable Dr. Tom Tylutki and us to complete development of the feed supplement/livestock feed product which has been associated with the AMINOGREEN name. However, given the present opposition which creates uncertainty as to the availability of the AMINOGREEN name and exposure to possible litigation for trademark infringement, I would prefer to obtain clearance for the name before undertaking commercial production of the new product, at least under that name.

8. I have personal knowledge of the intent to produce feed supplement/livestock feed products under the mark AMINOGREEN at the Watertown, New York plant and on July 27, 2010 I expressed my desire to have Afgritech Ltd. re-file the application to register the AMINOGREEN mark at that time.

9. Other than communications with our attorney and the filings for the trademark, I do not recall any other documents which used the trademark AMINOGREEN. However, this was the name that had been discussed orally by me with Christopher Holmes and others for the new bypass protein feed supplement/animal feed product which Afgritech Ltd. is going to have Afgritech LLC produce in the U.S. For these reasons, I believe that although there may be no non-privileged documents specifically mentioning the AMINOGREEN mark other than any application submissions, Afgritech Ltd., which was in the business of manufacturing feed supplements/livestock feed and was actively working to acquire and convert a facility in the U.S. to produce its products and to develop and produce a new formulation of a feed supplement/livestock feed, had and still has a bona fide intent to use the AMINOGREEN mark at least from July 27, 2010 when I indicated my preference to file the second application for AMINOGREEN mark up to and including the present.

10. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registrations issuing thereon.

Date: 5-16-2012

Richard Wark

Richard Wark

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT C

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

Evonik Degussa GmbH)	
Opposer,)	
v.)	Opposition No. 91/199,752
Afgriotech Ltd.)	Re: Application Ser. No. 85/096,047
Applicant.)	

**DECLARATION OF THOMAS P. TYLUTKI IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

1. My name is Thomas P. Tylutki and I am over the age of eighteen, under no disqualification, and in all respects capable of making the following Declaration in opposition to the Motion for Summary Judgment of Evonik Degussa GmbH.
2. I am the President and CEO of Agricultural Modeling and Training Systems, LLC (AMTS) located in Ithaca, New York. AMTS is a privately owned company which was spun out of the Cornell University Ruminant Nutritional Modeling Group. I hold a Ph.D. from Cornell University and my emphasis is in animal science and animal nutrition.
3. Through AMTS, I began working with Afgriotech. Ltd. in 2006 to produce livestock feed supplements/animal feed products. Attached as Exhibit 1 is a document which I prepared in July of 2006 which discusses our proposal for the exploitation of Afgriotech's AMINOMAX product line in the dairy industry in the United States and Canada. While the bulk of the discussion in this document is devoted to the AMINOMAX product line, on the eighth page in the second paragraph above the heading "Conclusion" I discussed a bypass soy product. Later, I learned that Afgriotech had identified the name AMINOGREEN for this feed supplement/animal feed product.

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF THOMAS P. TYLUTKI IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

**THIS PAGE HAS BEEN FILED UNDER
SEAL IN ACCORDANCE WITH THE
PROTECTIVE ORDER**

7. During the time period 2006 onward I have been working on developing a formulation for the product which had been identified to me orally as being AMINOGREEN in the United States. I was aware of discussions of the names for the products to be produced and sold by Afgritech LLC. It was my understanding that AMINOGREEN was going to be for a product produced in the United States, inasmuch as that name would not or perhaps could not be used in Europe. The AMINOMAX product was, in 2006, already being produced outside the U.S. by Afgri Ltd. and would also be produced by Afgritech in the United States.

8. Working with Afgritech, we decided that a feed plant located in Watertown, N.Y. was identified as a suitable location for producing the AMINOMAX and AMINOGREEN products at least as early as October of 2008. The goal was to have the plant ready for production in about August of 2009. However, problems developed with acquiring the facility and Afgritech experienced a delay until August of 2010 on being able to acquire the property. Thus, construction necessary to modify the plant could not begin until after the property was acquired. I consulted with Afgritech on this facility in order to produce the desired feed supplement/animal feed product. After experiencing a number of setbacks in acquisition of equipment and changes in design, the Watertown, N.Y. facility began producing AMINOMAX product in late 2011. However, the product which was produced did not yield the desired level of protein by-pass. Thus, additional modifications and trials were run after a conference on January 3, 2012 which I attended along with Christopher Holmes, Dick Wark and others. The decision was made to pull out the old retention vessel and make and install a new vessel. This was delivered in late March 2012 and commissioning trials commenced on April 19. Test results were positive and the Watertown, N.Y. plant became operational in the first week of May, 2012.

9. While I have been working on the formulation for the new by-pass protein product associated with the AMINOGREEN name since 2006 on a conceptual basis, I have not, until now, felt able to begin making prototype products for testing. I have been acquiring ingredients over the past year in anticipation of being able to produce prototype products at the Watertown, N.Y. plant, but until the plant was fully operational with satisfactory production for the known AMINOMAX product, we did not want to begin trial production of the new AMINOGREEN product. Both Afgritech and I felt that the completion of the Watertown, New York facility was essential to the development and production of the AMINOGREEN product. This is felt to be a new product which is highly sensitive and would be a trade secret of Afgritech, and, thus, we wanted to complete the formulations for the AMINOGREEN product at Afgritech's own facility in the United States and not risk having the product, formulation and process for making it something that might be known to others which is a risk when using third-party facilities. Now that the Watertown, N.Y. plant is fully operational, I can move forward with Afgritech to begin trials for the product for which the AMINOGREEN name has been identified.

10. Since 2006, I have been aware of the identification of this new product by Afgritech as AMINOGREEN, but for the reasons set forth above, we have not been able to produce even test product up till now. This has been through internal, oral discussions, and while I recall seeing a couple of slides with the AMINOGREEN name on them which were used in this period, I cannot recall where or when nor have I been able to locate such slides.

11. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registrations issuing thereon.

Date: 18 May 2012

Thomas P. Tylutki PhD
Thomas P. Tylutki

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF THOMAS P. TYLUTKI IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

(FILED UNDER SEAL IN ACCORDANCE
WITH THE PROTECTIVE ORDER)

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF THOMAS P. TYLUTKI IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 2

(FILED UNDER SEAL IN ACCORDANCE
WITH THE PROTECTIVE ORDER)

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**DECLARATION OF THOMAS P. TYLUTKI IN SUPPORT OF APPLICANT'S
OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 3

(FILED UNDER SEAL IN ACCORDANCE
WITH THE PROTECTIVE ORDER)

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT D

1007341

AminoMax-S

PROTEIN 45.0 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked soya bean meal, cane molasses.
Produced from genetically modified material.

FEMAS certificate 44161, expiry 24 June 2013
(GM*2) produced from genetically modified material.

Afgritech, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 249E 0002

1007441

AminoMax-R

PROTEIN 32.5 %

Date of manufacture: 18-OCT-10

Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked rapeseed meal, cane molasses.

FEMAS certificate 44161, expiry 24 June 2013

Afgritech, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.

NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11

Establishment Registration No: GB 249E 0002

1007341

AminoMax-S

PROTEIN 45.0 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked soya bean meal, cane molasses.
Produced from genetically modified material.

FEMAS certificate 44161, expiry 24 June 2013
(GM*2) produced from genetically modified material.

Afgritech, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 249E 0002

1007441

AminoMax-R

PROTEIN 32.5 %

Date of manufacture: 18-OCT-10

Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked rapeseed meal, cane molasses.

FEMAS certificate 44161, expiry 24 June 2013

Afgritech, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.

NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11

Establishment Registration No: GB 249E 0002

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT E

1007341

AminoMax-S

PROTEIN 45.0 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01769 889800.

Ingredients: Cooked soya bean meal, cane molasses.
Produced from genetically modified material.

FEMAS certificate 44161, expiry 24 June 2013
(GM*2) produced from genetically modified material.

Afgritoch, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10021 Serial: \$\$\$\$\$\$\$\$\$\$

VFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GE 249E 0002

AFGR000010

1007441

AminoMax-R

PROTEIN 32.5 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a
Balanced diet. Consult your feed advisor for rationing advice or call
Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked rapeseed meal, cane molasses.

FEMAS certificate 44161, expiry 24 June 2013

Afgritec, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 249E 0002

AFGR000011

1007341

AminoMax-S

PROTEIN 45.0 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 888800.

Ingredients: Cooked soya bean meal, cane molasses.
Produced from genetically modified material.

FEMAS certificate 44161, expiry 24 June 2013
(GM*2) produced from genetically modified material.

Afgritech, High Mill, Langwathby, CA10 1NE

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 249E 0002

AFGR000012

1007441

AminoMax-R

PROTEIN 32.5 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed adviser for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked rapeseed meal, cane molasses.

FEMAS certificate 44161, expiry 24 June 2013

Agritech, High Mill, Langwathby, CA10 1NB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 219E 0002

AFGR000013

1007441

AminoMax-R

PROTEIN 32.5 %

Date of manufacture: 18-OCT-10
Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked rapeseed meal, cane molasses.

FEMAS certificate 44161, expiry 24 June 2013

Afgritech, High Mill, Langwathby, CA10 INB

Store in a cool, dry place.
NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11
Establishment Registration No: GB 249E 0002

AFGR000023

1007341

AminoMax-S

PROTEIN 45.0 %

Date of manufacture: 18-OCT-10

Best before: 18-OCT-2011

This is a feed material for feeding to ruminant animals as part of a balanced diet. Consult your feed advisor for rationing advice or call Carrs Billington Customer Services on 01768 889800.

Ingredients: Cooked soya bean meal, cane molasses.
Produced from genetically modified material.

FEMAS certificate 44161, expiry 24 June 2013
(GM*2) produced from genetically modified material.

Afgriotech, High Mill, Langwathby, CA10 INB

Store in a cool, dry place.

NET WEIGHT : 25kg

Version: 10091 Serial: \$\$\$\$\$\$\$\$\$\$

UFAS Compound Feeds Certificate 66, end date 30/09/11

Establishment Registration No: GB 249E 0002

AFGR000024

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT F

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-05-21 16:05:18 ET

Serial Number: 85096047 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark

AMINOGREEN

(words only): AMINOGREEN

Standard Character claim: Yes

Current Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVUE on the Trademark Trial and Appeal Board web page.

Date of Status: 2011-05-11

Filing Date: 2010-07-29

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 117

Attorney Assigned:
GUSTASON ANNE C

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-12-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Afgritech Ltd.

Address:

Afgritech Ltd.
Old Croft, Stanwix
Carlisle CA39BA
United Kingdom

Legal Entity Type: Corporation

State or Country of Incorporation: United Kingdom

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

animal feed supplement

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 031

Class Status: Active

livestock feed

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-05-11 - Opposition instituted for Proceeding

2011-02-08 - Extension Of Time To Oppose Received

2011-01-11 - Published for opposition

2010-12-22 - Notice of publication

2010-12-08 - Law Office Publication Review Completed

2010-12-08 - Assigned To LIE

2010-11-16 - Approved For Pub - Principal Register

2010-11-13 - Assigned To Examiner

2010-08-04 - Notice Of Pseudo Mark Mailed

2010-08-03 - New Application Office Supplied Data Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Thomas H. Van Hoozer

Correspondent

THOMAS H VAN HOOZER
HOVEY WILLIAMS LLP
10801 MASTIN BLVD SUITE 1000
KANSAS CITY, MO 66210
Phone Number: 913-647-9050
Fax Number: 913-647-9057

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

EVONIK DEGUSSA GMBH,
Opposer,

v.

Opposition No. 91199752

AFGRITECH, LTD.,
Applicant.

**APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT G

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

Evonik Degussa GmbH,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91199752 (parent)
)	91200034
)	
Afgritech Ltd.,)	
)	
Applicant.)	

**AFGRITECH'S OBJECTIONS AND RESPONSES TO OPPOSER'S
FIRST SET OF INTERROGATORIES TO APPLICANT**

Applicant Afgritech, Ltd. ("Afgritech"), pursuant to Federal Rule of Civil Procedure 34, as incorporated into the Rules of Practice in Trademark Cases under the provisions of 37 C.F.R. 2.116 and Rule 2.120 of the Trademark Rules of Practice, objects and responds to Opposer Evonik Degussa GmbH ("Opposer") First Set of Interrogatories addressed to Afgritech. Afgritech reserves the right to supplement these responses upon the discovery of additional documents through discovery or otherwise. Some of Afgritech's answers to the discovery requests contain **Confidential Business Information/Trade Secrets** and those answers are being submitted on separate pages.

GENERAL OBJECTIONS

1. Afgritech objects to each interrogatory to the extent it contains multiple discrete subparts. Afgritech further objects to the entirety of Opposer's First Set of Interrogatories on the basis that the number of interrogatories, including subparts, exceed 75 in number. *See* 37 C.F.R. 2.120(d)(1); TBMP § 405.03(e).
2. Afgritech generally objects to each and every request to the extent it calls for the disclosure of attorney-client privileged communications and/or attorney work product. Afgritech will not undertake to locate and log communications between Afgritech and counsel regarding the subject matter of this opposition dated after the institution of the opposition pursuant to the prior agreement with Opposer's counsel.
3. Afgritech objects to each discovery request and it has not responded to the extent that the requests seek "each," "any," "all," "related," or "relating" information as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, if by these terms, Opposer purports to require Afgritech to investigate for and produce all

communication, identify the person(s) involved, and identify all persons with knowledge of the facts relating to each such instance of mistake or confusion.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, and inasmuch as no use of AMINORED has commenced in the United States, Afgritech states none.

INTERROGATORY NO. 32:

Describe the circumstances of your receipt of any document, correspondence, payment, or telephone call relating to the AMINORED Mark, including but not limited to identifying when it was received, the entity from which it was received, and the specific person who received it.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states there are no such responsive documents, correspondence, payments, or telephone calls.

INTERROGATORY NO. 33:

Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that its intended channels of distribution in the United States are sellers of animal foodstuffs, including livestock feed and animal feed supplements throughout the United States. Afgritech's current geographical areas of trade are New York, Maine, Pennsylvania, Connecticut, Massachusetts, New Hampshire and Vermont.

INTERROGATORY NO. 34:

Identify the channels of distribution and the geographical areas of trade within which Afgritech's goods and services are promoted and/or sold or are intended to be promoted and/or sold under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states that its current channels of distribution in the

United States are sellers of animal foodstuffs, including livestock feed and animal feed supplements in New York, Maine, Pennsylvania, Connecticut, Massachusetts, New Hampshire and Vermont, and it intends to make the product available for purchase nationwide.

INTERROGATORY NO. 35:

Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOGREEN Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOGREEN Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is vague and ambiguous in assuming that Afgritech will be doing business under the AMINOGREEN Mark. Rather, Afgritech intends to sell product bearing the AMINOGREEN Mark. Subject to that and the General Objections, Afgritech states that it intends to sell product bearing the AMINOGREEN Mark to dairy farmers, sellers of animal foodstuffs, including livestock feed and animal feed supplements, and ruminant animal feed manufacturers.

INTERROGATORY NO. 36:

Identify the types of customers with whom Afgritech does business or intends to do business under the AMINOMAX Mark, and the types of ultimate consumers to whom Afgritech offers or intends to offer for sale Afgritech's goods or services under the AMINOMAX Mark.

ANSWER: Afgritech objects on the basis that the interrogatory is vague and ambiguous in assuming that Afgritech is or will be doing business under the AMINOMAX Mark. Rather, Afgritech manufactures and sells product bearing the AMINOMAX Mark. Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to those objections and the General Objections, Afgritech states that it sells and intends to sell product bearing the AMINOMAX Mark to dairy farmers, sellers of animal foodstuffs, including livestock feed and animal feed supplements, and ruminant animal feed manufacturers.

INTERROGATORY NO. 37:

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOGREEN Mark, and the period of time during which each such person or agency has participated.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech states none.

INTERROGATORY NO. 38:

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Afgritech's goods or services under the AMINOMAX Mark, and the period of time during which each such person or agency has participated.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Subject to that and the General Objections, Afgritech identifies Larry Smith, Vice President of Sales & Marketing and a Director of Animal Feed Supplement, Inc. dba New Generation Feeds, Belle Fourche, South Dakota, Les Berghorn, Regional Sales Manager of Afgritech, LLC, and Lime Valley Advertising, Inc., 1620 S. Riverfront Dr., Mankato, MN 56001.

INTERROGATORY NO. 39:

Identify (by parties, jurisdiction, and case number) every other case or administrative proceeding, including proceedings before the PTO, relating to a trademark or service mark to which you have been a party, and for each such proceeding, identify the trademark or service mark involved in the proceeding, and describe the disposition or present status of the proceeding.

ANSWER: Afgritech objects on the basis that the interrogatory is unduly burdensome, overly broad, not relevant or material, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Interrogatory seeks information that is not specific to the United States. Afgritech objects to the interrogatory as it seeks irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence, is unduly burdensome, and overly broad. It seeks the permissible scope of discovery in this proceeding. Subject to those and the General Objections, Afgritech identifies *Afgritech Ltd. v. Purina Mills, LLC*, Cancellation No. 92047278, involving the trademark AMINO MIX. The TTAB granted Afgritech's Petition for Cancellation and the proceeding has been terminated.

INTERROGATORY NO. 40:

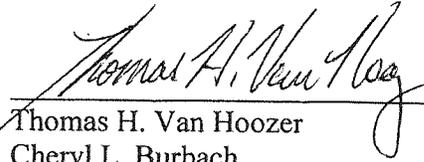
Identify each person who has supplied documents or information for, or who has participated in responding to, these Interrogatories or Evonik's First Requests for Production of Documents, served concurrently herewith, including each person's name, title, and business address.

ANSWER: Subject to the General Objections, Afgritech identifies Chris Holmes, Richard Wark, Larry Smith, Jeff Westberg, and Katie Sinclair, all of whom may be contacted through Afgritech's counsel of record.

Dated: December 21, 2011

Respectfully Submitted,

HOVEY WILLIAMS LLP



Thomas H. Van Hoozer

Cheryl L. Burbach

Suite 1000, 10801 Mastin Boulevard

Overland Park, Kansas 66210

Phone: (913) 647-9050

Fax: (913) 647-9057

Email: tvh@hoveywilliams.com

clb@hoveywilliams.com

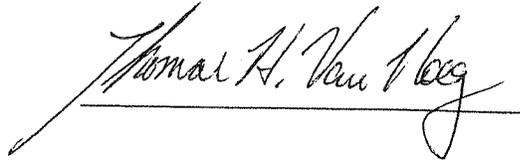
ATTORNEYS FOR AFGRITECH AFGRITECH LTD.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of December, 2011, the foregoing **AFGRITECH'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES TO AFGRITECH** has been served on counsel for Afgritech via First Class U.S. Mail to the following address:

Scott D. Woldow, Esq.
Smith, Gambrell & Russell, LLP
1130 Connecticut Avenue, N.W., Suite 1130
Washington, District of Columbia 20036

ATTORNEY FOR OPPOSER EVONIK DEGUSSA GMBH

A handwritten signature in cursive script, reading "Thomas H. Van Heng", is written over a horizontal line. The signature is positioned to the right of the text "ATTORNEY FOR OPPOSER EVONIK DEGUSSA GMBH".

VERIFICATION

COUNTY OF Cumbria, ENGLAND

I, Ron Wood being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declare that all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: 21 December 2011

 _____

Signature of Ron Wood