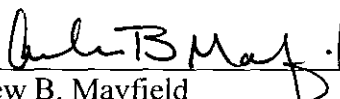


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this 5<sup>th</sup> day of July, 2001.



Andrew B. Mayfield  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070

MANNA PRO CORPORATION,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation
	:	No. 24,636
	:	
O.H. KRUSE GRAIN & MILLING COMPANY, et al.,	:	
and PM AG PRODUCTS INCORPORATED,	:	
	:	
Respondents.	:	

STIPULATED MOTION FOR LEAVE TO FILE  
PETITIONER'S REPLY BRIEF EFFECTIVE  
NOVEMBER 13, 2000

Petitioner Manna Pro Corporation, with the consent of Beth A. Fulkerson, attorney for Respondents O.H. Kruse Grain & Milling Company and PM AG Products, Inc., hereby requests leave to file its Petitioner's Reply Brief, effective November 13, 2000. In support of this motion, Petitioner states:

1. Petitioner's Reply Brief was due November 8, 2000.

2. Petitioner believes it obtained the consent of Ms. Fulkerson, Respondent's counsel, to extend the time to file the Reply Brief to November 13, 2000. Respondent prepared a consent motion but apparently failed to file the motion with the Board.

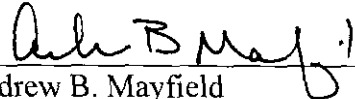
3. On November 13, 2001, Petitioner filed and served the Reply Brief by mail. A copy of the Reply Brief is attached.

4. Upon recently discovering that the Reply Brief had not been timely filed, the undersigned contacted Ms. Fulkerson, who acknowledged receipt of the Reply Brief and who consented to the filing of the Reply Brief.

Wherefore, Petitioner respectfully requests leave to file the Reply Brief effective November 13, 2000.

Respectfully submitted,

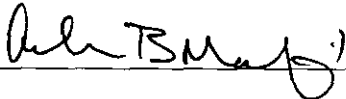
ARMSTRONG TEASDALE LLP

  
\_\_\_\_\_  
Andrew B. Mayfield  
One Metropolitan Square  
Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I certify that on July 5, 2001, service of a true and complete copy of the above foregoing pleading or paper was made upon Beth A. Fulkerson, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606, Attorney for Respondents, by depositing the same in the United States mail in an envelope properly addressed with sufficient first class postage affixed.

By:   
\_\_\_\_\_

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

MANNA PRO CORPORATION,

Petitioner,

v.

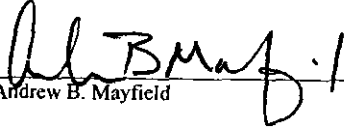
Cancellation  
No. 24,636

O.H. KRUSE GRAIN & MILLING COMPANY  
and PM AG PRODUCTS INCORPORATED,

Respondents.

CERTIFICATE OF MAILING

I certify that this document is being deposited with the United States Postal Service, first class postage prepaid, this 13<sup>th</sup> day of November, 2000, in an envelope addressed to Box TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

  
Andrew B. Mayfield

**PETITIONER'S REPLY BRIEF**

ARMSTRONG TEASDALE LLP

Andrew B. Mayfield  
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St. Louis, Missouri 63102-2740  
(314) 621-5070  
Attorney for Applicant

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**DESCRIPTION OF THE RECORD**

Petitioner Manna Pro Corporation’s (“Manna Pro’s”) MILK MATE registration is part of the record. Manna Pro identified and introduced the registration during the testimonial deposition of William Herrington. *See* Herrington Depo. 40:20-44:14; 37 CFR § 2.122(d)(2); TBMP § 703.03(a). Moreover, Manna Pro has filed a certified status and title copy of the registration. *Id.*

**ARGUMENT**

Contrary to Respondents’ contentions, there is undisputed evidence that Manna Pro owns a family of “MANNA” marks. Manna Pro and its predecessors have owned and used the CALF-MANNA word mark for nearly seventy years. Herrington Depo. 26:11-21. It is a well-known mark in the animal feed industry, as established by the fact that Manna Pro markets its products nationally and internationally and promotes itself as “The Calf-Manna Company” on its product

packaging. Herrington Depo. 6:17-7:3, 27:24-28:7, 30:23-31:2, 32:7-34:23, 81:20-82:1, 82:22-83:11; Herrington Depo. Exh. 21. CALF-MANNA has been a competitive product in the industry for years. Herrington Depo. 55:7-23. Mr. Herrington, Manna Pro's Vice President and Director of Marketing, testified that MANNA is an important term for Manna Pro's marketing because MANNA "gives us identity that we did not have . . . . We had more brand identity with CALF-MANNA and we use the CALF-MANNA name and logo to launch other products such as MANNA SENIOR, MANNA ELITE, MANNA E. We use those because the MANNA name is associated with the Manna Pro Corporation and, in particular, CALF-MANNA." Herrington Depo. 39:20 -40:15. Manna Pro owns registrations for numerous marks containing MANNA, including CALF-MANNA (and Design), Reg. No. 302,619, MANNA, Reg. No. 588,509, MANNA MATE, Reg. No. 1,120,141, MANNA PRO, Reg. No. 1,406,988, CALF-MANNA (and Design), Reg. No. 1,691,827, CALF-MANNA, Reg. No. 1,694,713, MANNA ELITE, Reg. No. 1,712,042, MANNA E, Reg. No. 1,783,816, SOW-MANNA, Reg. No. 1,796,736, MANNA SENIOR, Reg. No. 2,000,257, and DUCK MANNA, Reg. No. 2,080,190.

Manna Pro's use of CALF-MANNA, and more specifically "The Calf-Manna Company," on packaging for different animal products bearing the MANNA PRO house mark as well as various other marks containing the term MANNA, are sufficient evidence of an association of common ownership in consumers' minds with respect to animal feed products bearing a "MANNA" mark. The products, and the packaging bearing "The Calf-Manna Company" and other "MANNA" marks, appear in and are sold through large distributors, feed stores, mass market retail chains, and other outlets throughout the country. Herrington Depo. 74:6-16. In effect, every time Manna Pro sells a product, it is advertising itself as "The Calf-Manna Company" and is associating the CALF-MANNA and MANNA PRO with the other "MANNA" marks.

While it is true that the registration and use of a number of marks containing MANNA “does not, *per se*, create a ‘family of marks’” (*Plus Products v. Star-Kist Foods, Inc.*, 220 U.S.P.Q. 541, 543 (T.T.A.B. 1983)), such evidence is nevertheless relevant to the issue. In addition, the undisputed fact that Manna Pro uses “The Calf-Manna Company” to create brand identity for all of its animal feed products throughout the nation is further evidence that Manna Pro uses its marks in advertising and promotional activities, and in everyday sales activities, in order to “create common exposure and thereafter recognition of common ownership based upon a feature common to each mark.” *American Standard Inc. v. Scott & Fetzer Co.*, 200 U.S.P.Q. 457, 461 (T.T.A.B. 1978).

The evidence, therefore, is sufficient to establish Manna Pro’s ownership of a family of “MANNA” marks.

In any event, Respondents’ MANAMILK mark is confusingly similar to the individual registered marks owned by Manna Pro, including CALF-MANNA, MANNA, MANNA PRO, MANNA MATE, and MILK MATE. Despite Respondents’ efforts to distinguish the marks, the goods with which the marks are used, the customers and trade channels, and other factors, Respondents cannot dispute the following facts:

1. The dominant portion of Respondents’ MANAMILK mark, namely, the MANA- prefix, is phonetically identical and nearly identical in appearance and connotation to MANNA, the dominant portion of Manna Pro’s CALF-MANNA, MANNA, MANNA PRO, and MANNA MATE marks;<sup>1</sup>

---

<sup>1</sup> Respondents’ strained attempt to use the distinctions between MANNA and MANAMAR to establish a similar distinction between MANNA and MANAMILK is without merit. MAR has no meaning; MANAMAR, therefore, looks like, sounds like, and creates the impression of a single word. MANAMILK, on the other hand, looks like, sounds like, and creates the commercial impression of a combination of MANA, or MANNA, and MILK. MANAMILK is thus much more similar to Manna Pro’s marks, most of which are two word marks that combine MANNA with a recognized English word.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petitioner's Reply Brief is being delivered via UPS Overnight Delivery, to: Beth A. Fulkerson, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, 311 S. Wacker Drive, Suite 5000, Chicago, IL 60606, on November 13, 2000.

By: Andrew B. May

TTAB



ARMSTRONG TEASDALE LLP

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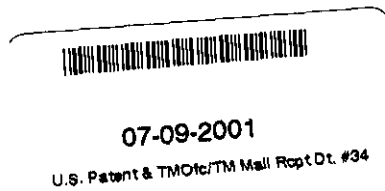
MISSOURI | KANSAS | ILLINOIS | WASHINGTON, DC | SHANGHAI | SYDNEY

July 5, 2001

ATTORNEYS AT LAW

VIA FAX TRANSMISSION

The Honorable Beth Chapman  
Administrative Law Judge  
U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington VA 22202-3513



Re: **Manna Pro Corporation v. O.H. Kruse Grain & Milling Company**  
**Cancellation No. 24,636**

Dear Judge Chapman:

I have enclosed for your immediate review a fax copy of a Stipulated Motion for Leave to File Reply Brief Effective November 13, 2000, as well as a copy of the Reply Brief. I am filing these documents today by regular mail.

Please let me know if you have any questions.

Sincerely,

Andrew B. Mayfield

7/13/01 5:32

ABM/kdd

cc: Ms. Beth Fulkerson