

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

01-18-2005

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



102829170

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

DARIGOLD, INC.

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

Citizenship (see guidelines) Washington

Execution Date(s) June 3, 2004

Additional names of conveying parties attached?  Yes  No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: Wachovia Bank, National Association

Internal

Address:

Street Address: 191 Peachtree Street, N.E.

City: Atlanta

State: Georgia

Country: US Zip: 30308

Association Citizenship National

General Partnership Citizenship

Limited Partnership Citizenship

Corporation Citizenship

Other Citizenship

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other First Amendment to Security Agreement
- Merger
- Change of Name

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

78/425728

B. Trademark Registration No.(s)

See attached Exhibit B

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

See attached Exhibit A

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

Name: Donna J. Hunter, Paralegal

Internal Address: Paul, Hastings,

Janofsky & Walker LLP

Street Address: 600 Peachtree Street, N.E.  
Suite 2400

City: Atlanta

State: Georgia Zip: 30308-2222

Phone Number: (404) 815-2301

Fax Number: (404) 685-5301

Email Address: donna.hunter@paulhastings.com

6. Total number of applications and registrations involved:

13

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 340.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers Charg  
Expiration Date fee

b. Deposit Account Number 16-0752

Authorized User Name Donna J. Hunter

9. Signature: Donna J. Hunter  
Signature

Donna J. Hunter  
Name of Person Signing

January 14, 2005  
Date

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

Documents to be recorded (including cover sheet) should be faxed to (703) 305-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

## Intellectual Property

## (a) Trademarks and Trademark Applications:

The Borrower is the registrant under the following U.S. federal trademarks and trademark applications:

Name	Registration No.	Expiration Date
Chef's Choice	2,705,818	4/15/09
Dari-Go	2,675,509	1/14/13
Darigold	0725101	6/26/12
Darigold Since 1918	2,694,417	3/11/13
Famous Fountain	2,619,537	9/17/12
Farmer Owned & Design CL 29	2,750,398	8/12/13
Farmer Owned & Design CL30	2,841,625	5/11/14
Local Cows Working Hard CL 30	2,714,189	5/16/13
Local Cows Working Hard CL 29	Ser. No. 78-425728	Application pending
Purely Pacific	2,685,204	2/11/13
Red Boy	2,113,842	11/18/07
Design Only (cow character)	2,784,258	11/18/13
Design Only (caricature of cow's head)	2,115,732	11/25/03*

\* Although the USPTO still shows this mark as an active registration, the Borrower is no longer using this mark and is allowing it to expire.

The Borrower was the registrant or applicant (as noted) under the following U.S. federal trademarks and trademark applications, all of which expired before the Amendment Date and as to which the Credit Parties make no representation, warranty or covenant under the Credit Agreement:

Name	Registration No.	Expiration Date
Grandma's Old Fashioned Ice Cream	1,313,649	6/25/91
Fancy Danish	962,144	4/4/94
Home Dairies	1,991,022	6/24/03
Classic	Ser. No. 75-932,989	Application abandoned 3/29/01
Dari-Lite	Ser. No. 75-371,253	Application abandoned 7/12/89
Farmer Owned & Design	Ser. No. 76-215,889	Application abandoned 2/22/02
Support Your Local Cow "Support Your Local Cow"	Ser. No. 73-524,021	Application abandoned 12/20/85
Clover Valley	Ser. No. 76-015,377	Application abandoned 9/9/01
Local Cows Working Hard	Ser. No. 76-170,290	Application abandoned 9/5/03
Medalist	Ser. No. 75-932,990	Application abandoned 3/29/01
Great White	Ser. No. 76-170,291	Application abandoned 10/17/02

The Borrower is the registrant under the following foreign trademarks and trademark applications:

Name	Registration No.	State/ Jurisdiction	Expiration Date
Cow's Head Logo	510538 - CL 29	Mexico	6/22/04
Darigold & gearwheel Design	33,798 - CL 29	Brunei	1/4/11
	33,799 CL 30	Brunei	1/4/11
	119163 - CL 29	Costa Rica	3/23/10
	119156 - CL 30	Costa Rica	3/23/10
	0103392 - CL 56	Dominican	3/30/09
	0103126 - CL 57	Republic	3/30/09
	1512-00	Dominican	3/27/10
	00208	Republic	10/18/10
	119,810	Ecuador	9/4/12
	646896 - CL 29	El Salvador	12/2/09
	643216 - CL 30	Guatemala	12/2/09
	643217 - CL 30	Mexico	12/2/09
	91136	Mexico	11/20/07
	00064055	Mexico	6/14/10
	351948	Panama	12/20/06
	793616	Peru	1/16/08
	00-002123	South Korea	Pending
00-002124	Taiwan	Pending	
40063 - CL 30	Venezuela	8/23/10	
49379 - CL 29	Venezuela	1/18/10	
		Vietnam	
		Vietnam	
Darigold	237/1936	Hong Kong	7/31/06
	1675827 - CL 31	Japan	4/20/04
	4378226 - CL 30	Japan	4/21/10
	527224 - CL30	Mexico	5/28/06
	659849 - CL 29	Mexico	8/3/04
	00064090	Peru	6/14/10
53491	Philippines	9/15/12	
Darigold Since 1918	33,797 - CL29	Brunei	1/4/11
	33,796 - CL 30	Brunei	1/4/11
	646896 - CL 29	Mexico	12/2/09
	643217 - CL 30	Mexico	12/2/09
	00034055	Peru	6/14/10
	37446 - CL 30	Vietnam	1/18/10
48242	Vietnam	Application Pending	
Super Pops	315289 - CL 30	Mexico	10/20/08
	112977	Dominican Republic	5/30/10
MILKPRO 30 & Design	742,475	Mexico	2/11/12
MILKPRO 40 & Design	742,476	Mexico	2/11/12
MILKPRO 42 & Design	742,477	Mexico	2/11/12

**FIRST AMENDMENT  
TO  
GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS  
AND LICENSES  
AND CONFIRMATION**

THIS FIRST AMENDMENT TO GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (this "Amendment"), entered into this 3rd day of June, 2004, by and between Darigold, Inc., a Washington corporation (the "Company") and Wachovia Bank, National Association, as agent (the "Agent") for the Lenders (as defined below).

WITNESSETH:

WHEREAS, the Company, the financial institutions identified as Lenders on the signature pages thereto (the "Prior Lenders"), The CIT Group/Business Credit, Inc., a New York corporation ("CIT"), as a lender and as agent for the Prior Lenders, and Darigold Farms, n/k/a Northwest Dairy Association, as guarantor, entered into that certain Financing Agreement dated as of June 20, 2001, a amended by that certain letter agreement dated June 28, 2001 (as heretofore amended, restated, supplemented or otherwise modified, the "Prior Credit Agreement"), pursuant to which the Prior Lenders provided a working capital line of credit to the Borrower; and

WHEREAS, the Company and CIT are parties to that certain Grant of Security Interest in Patents, Trademarks and Licenses dated as of June 20, 2001 (as amended, restated, supplemented or otherwise modified from time to time, the "Intellectual Property Agreement"), pursuant to which the Company granted to CIT, for the benefit of the Lenders, a security interest in all of its right, title and interest in the Intellectual Property Collateral (as defined therein); and

WHEREAS, the Company, the Agent and the Lenders have agreed to amend and restate the Prior Credit Agreement in its entirety as set forth in that certain Amended and Restated Credit Agreement of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Amended and Restated Credit Agreement"), pursuant to the parties have agreed that the Agent shall replace CIT as the collateral agent for all purposes under the Amended and Restated Credit Agreement and the other Credit Documents (as defined therein);

WHEREAS, in order to induce the Agent and the Lenders to enter into the Amended and Restated Credit Agreement and the other Credit Documents and to induce the Lenders to make the loans and other financial accommodations provided for in the Amended and Restated Credit Agreement, the Company has agreed to execute and deliver this Amendment in order to confirm the continuing security interest granted pursuant to the Intellectual Property Agreement.

NOW THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the capitalized terms used herein without definition shall have the same meanings ascribed to such terms in the Intellectual Property Agreement, as amended hereby, and further agree as follows:

**A. Amendments to Intellectual Property Agreement**

1. For the avoidance of doubt, the Intellectual Property Agreement is hereby amended and modified as follows:

a. All references to the "Financing Agreement" in the Intellectual Property Agreement shall be to the Amended and Restated Credit Agreement, as modified, amended, restated or supplemented from time to time;

b. All references to the "Agent" in the Intellectual Property Agreement shall be to Wachovia Bank, National Association, as the Agent;

c. All references to the "Lenders" in the Intellectual Property Agreement shall be to the Lenders as defined in the Amended and Restated Credit Agreement; and

d. All references to the "Permitted Encumbrances" in the Intellectual Property Agreement shall be to the Permitted Liens as defined in the Amended and Restated Credit Agreement.

2. Section 10 of the Intellectual Property Agreement is hereby amended and modified by deleting such Section in its entirety and by substituting the following in lieu thereof:

"THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. THIS AGREEMENT SHALL BE BINDING ON THE HEIRS, ADMINISTRATORS, EXECUTORS, SUCCESSORS AND ASSIGNS OF THE COMPANY, AND SHALL INURE TO THE BENEFIT OF THE AGENT, THE LENDERS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS."

3. Schedule A to the Intellectual Property Agreement is hereby modified and amended by deleting such Schedule in its entirety and by substituting the Schedule set forth in Exhibit A attached hereto in lieu thereof.

4. Schedule B to the Intellectual Property Agreement is hereby modified and amended by deleting such Schedule in its entirety and by substituting the Schedule set forth in Exhibit B attached hereto in lieu thereof.

5. Schedule C to the Intellectual Property Agreement is hereby modified and amended by deleting such Schedule in its entirety and by substituting the Schedule set forth in Exhibit C attached hereto in lieu thereof.

**B. Irrevocable Power of Attorney**

The Company hereby grants to the Agent the exclusive Irrevocable Power of Attorney to transfer to the Agent, the Lenders or to any designee of the Agent all Intellectual Property Collateral listed on the Schedules attached to this Amendment, including, without limitation, all patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign and transfer the business under those trademarks under the following terms and conditions:

1. The Power of Attorney granted hereunder shall be effective as of the date of this Amendment and shall last for as long as any now existing or hereafter arising indebtedness, liabilities or obligations of the Company are outstanding under the Amended and Restated Credit Agreement;
2. The Power of Attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove;
3. The Power of Attorney granted herein shall only be exercisable by the Agent after the occurrence of an Event of Default under the Amended and Restated Credit Agreement; and
4. The Agent shall give the Company ten (10) days prior written notice of the exercise of this power, and the waiver by the Agent of any particular Event of Default as set forth in Paragraph 3 hereinabove shall have no force or effect unless in writing and signed by an authorized officer of the Agent. Even then such waiver shall not constitute or be considered a waiver of any other Event of Default then existing or thereafter arising whether similar or not.

**C. Reaffirmation of Representations and Warranties**

The Company hereby represents and warrants to the Agent that the representations and warranties contained in Section 5 of the Intellectual Property Agreement are true and correct as of the date of this Amendment.

**D. Counterparts**

This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Amendment. Delivery of such a counterpart hereof by facsimile transmission or by e-mail transmission of an Adobe file format document (also known as a PDF file) shall be effective as delivery of a manually executed counterpart hereof.

**E. Reference and Effect on the Credit Documents**

Upon the effectiveness of this Amendment, on and after the date hereof, each reference in the Intellectual Property Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Intellectual Property Agreement, and each reference in other Credit Documents to the "Intellectual Property Agreement", "thereunder", "thereof" or words of like import referring to the Intellectual Property Agreement, shall mean and be a reference to the Intellectual Property Agreement as amended hereby.

**F. Costs, Expenses and Taxes**

The Company agrees to pay on demand all costs and expenses in connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder, including, without limitation, the fees and out-of-pocket expenses of counsel for the Agent with respect thereto and with respect to advising Agent as to its rights and responsibilities hereunder and thereunder.

**G. Governing Law**

This Amendment shall be governed by and construed in accordance with the laws of the State of New York, without regard for the conflict of laws principles thereof.

**H. No Other Amendments/Reaffirmation**

Except as specifically modified hereby, the text of the Intellectual Property Agreement shall remain unchanged and in full force and effect and the Company hereby ratifies and confirms that: (i) the Intellectual Property Agreement shall, in all respects, be and continue in full force and effect; and (ii) this Amendment shall not constitute a novation.

**I. Credit Document**

This Amendment shall be deemed to be a Credit Document for all purposes.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Amendment by and through their duly authorized officers, as of the day and year first above written.

**COMPANY:**

**DARIGOLD, INC.**

By: 

Name: Stephen Boyd

Its: Vice President, CFO and Treasurer

**AGENT:**

**WACHOVIA BANK, NATIONAL  
ASSOCIATION**

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

Name: Gene Wilson

Its: Director

AMENDMENT TO INTELLECTUAL PROPERTY SECURITY AGREEMENT

**TRADEMARK**  
**REEL: 003012 FRAME: 0183**

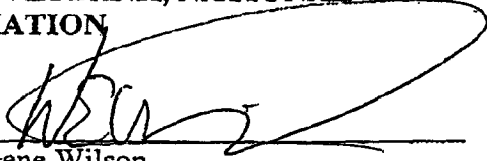


IN WITNESS WHEREOF, the undersigned parties hereto have executed this Amendment by and through their duly authorized officers, as of the day and year first above written.

**COMPANY:** **DARIGOLD, INC.**

By: \_\_\_\_\_  
Name: Stephen Boyd  
Its: Vice President, CFO and Treasurer

**AGENT:** **WACHOVIA BANK, NATIONAL ASSOCIATION**

By:   
Name: Gene Wilson  
Its: Director

AMENDMENT TO INTELLECTUAL PROPERTY SECURITY AGREEMENT

**TRADEMARK**  
**REEL: 003012 FRAME: 0184**

### IRREVOCABLE POWER OF ATTORNEY

Darigold, Inc., with offices at 635 Elliott Avenue W., Seattle, Washington 98119, (hereinafter referred to as the "Company"), hereby grants to Wachovia Bank, National Association, as agent (in such capacity, the "Agent") for certain lenders (the "Lenders") under the Amended and Restated Credit Agreement among the Company, the Agent and the Lenders (as now or hereafter amended, the "Amended Credit Agreement"), the exclusive Irrevocable Power of Attorney to transfer to the Agent, the Lenders or to any designee of the Agent all Intellectual Property Collateral listed on the Schedules attached to the Amended and Restated Intellectual Property Agreement (the "Agreement"), dated as of the date hereof, between the Company and the Agent including, without limitation, all patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign, and transfer the business under those trademarks under the following terms and conditions:

1. The Power of Attorney granted hereunder shall be effective as of the date hereof and shall last for as long as any now existing or hereafter arising indebtedness, liabilities or obligations of the Company are outstanding under the Amended Credit Agreement;
2. The Power of Attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove;
3. The Power of Attorney granted herein shall only be exercisable by the Agent after the occurrence of an Event of Default under the Agreement; and
4. The Agent shall give the Company ten (10) days prior written notice of the exercise of this power, and the waiver by the Agent of any particular Event of Default as set forth in Paragraph 3 hereinabove shall have no force or effect unless in writing and signed by an authorized officer of the Agent. Even then such waiver shall not constitute or be considered a waiver of any other Event of Default then existing or thereafter arising whether similar or not.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Company has caused this Power of Attorney to be executed as of June 3, 2004.

**Company:**

DARIGOLD, INC.,  
a Washington corporation

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

  
Stephen Boyd  
Vice President, CFO and Treasurer

IRREVOCABLE POWER OF ATTORNEY

TRADEMARK  
REEL: 003012 FRAME: 0186

**EXHIBIT A**

**Intellectual Property**

See attached.

## Intellectual Property

## (a) Trademarks and Trademark Applications:

The Borrower is the registrant under the following U.S. federal trademarks and trademark applications:

Name	Registration No.	Expiration Date
Chef's Choice	2,705,818	4/15/09
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\* Although the USPTO still shows this mark as an active registration, the Borrower is no longer using this mark and is allowing it to expire.

The Borrower was the registrant or applicant (as noted) under the following U.S. federal trademarks and trademark applications, all of which expired before the Amendment Date and as to which the Credit Parties make no representation, warranty or covenant under the Credit Agreement:

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Darigold & gearwheel Design	33,798 - CL 29 33,799 CL 30 119163 - CL 29 119156 - CL 30 0103392 - CL 56 0103126 - CL 57 1512-00 00208 119,810 646896 - CL 29 643216 - CL 30 643217 - CL 30 91136 00064055 351948 793616 00-002123 00-002124 40063 - CL 30 49379 - CL 29	Brunei Brunei Costa Rica Costa Rica Dominican Republic Dominican Republic Ecuador El Salvador Guatemala Mexico Mexico Panama Peru South Korea Taiwan Venezuela Venezuela Vietnam Vietnam	1/4/11 1/4/11 3/23/10 3/23/10 3/30/09 3/30/09 3/27/10 10/18/10 9/4/12 12/2/09 12/2/09 12/2/09 11/20/07 6/14/10 12/20/06 1/16/08 Pending Pending 8/23/10 1/18/10
Darigold	237/1936 1675827 - CL 31 4378226 - CL 30 527224 - CL30 659849 - CL 29 00064090 53491	Hong Kong Japan Japan Mexico Mexico Peru Philippines	7/31/06 4/20/04 4/21/10 5/28/06 8/3/04 6/14/10 9/15/12
Darigold Since 1918	33,797 - CL29 33,796 - CL 30 646896 - CL 29 643217 - CL 30 00034055 37446 - CL 30 48242	Brunei Brunei Mexico Mexico Peru Vietnam Vietnam	1/4/11 1/4/11 12/2/09 12/2/09 6/14/10 1/18/10 Application Pending
Super Pops	315289 - CL 30 112977	Mexico Dominican Republic	10/20/08 5/30/10
MILKPRO 30 & Design	742,475	Mexico	2/11/12
MILKPRO 40 & Design	742,476	Mexico	2/11/12
MILKPRO 42 & Design	742,477	Mexico	2/11/12

- (b) Patents: None.  
Registered copyrights: The Darigold Story: The History of a Dairy Cooperative in the Pacific Northwest. Reg. No. TX-3-741-856 (federal registration dated 12/27/93).

In addition, the Borrower has unregistered copyrights in substantially all of its publications.

- (c) Trade names: See Schedule 7.8 ("Fictitious Business Names").

Licenses:

1. Dairy License Agreement dated January 1, 1996 between Nestlé Beverage Company and the Borrower, as amended by Amendment to Dairy License Agreement dated February 25, 2000 (license from Nestlé USA - Beverage Division, Inc. to the Borrower for production of Nestlé Quik and for use of the "Quick" and "Nestlé Quik" trademarks on the product).
2. Manufacturer Agreement dated June 6, 2003 between the Borrower and CROPP Cooperative/Organic Valley.
3. Agreement for Packaging Formulated Products dated April 12, 2001 between the Borrower and White Wave, Inc.
4. Carnation Coffee-Mate Liquid Dairy License Agreement dated January 1, 1995 between the Borrower and Nestlé Beverage Company, as amended by Amendment to Dairy License Agreement dated February 25, 2000 (license from Nestlé USA - Beverage Division, Inc. to WestFarm Foods for production of Carnation Coffee-Mate and for use of the "Carnation" and "Coffee-Mate" trademarks on the product).
5. Trademark License Agreement, dated December 15, 1953, between the Borrower and Country Classic Dairies, Inc., as amended by Amendment to Darigold Trademark License Agreement, dated September 11, 2001 (license from the Borrower to Country Classic permitting use of the "Darigold," "Darigold Since 1981" and "Farmer Owned and design" trademarks on milk products produced by Country Classic; in a separate Marketing Agreement, the Borrower granted Country Classic Dairies permission to sell Darigold-branded products in Montana, western Wyoming and two counties of northern Idaho).
6. Trademark License Agreement, dated September 7, 1997, between the Borrower and Inland Northwest Dairies, LLC (the "LLC") granting the LLC a license to use the trademarks "Darigold" and "Home Dairies" in all Washington counties east of the Cascade Mountains, all Northern Idaho counties from (and including) Idaho county, north, and the Oregon counties of Morrow and Umatilla.

**Infringement:**

1. The Borrower's outside intellectual property counsel corresponded with Oberweis Dairy ("Oberweis") on March 30, 2004, as to Oberweis' possibly infringing on Borrower's U.S. Trademark Reg. No. 2,784,258. Oberweis' counsel responded on April 13, 2004, denying the alleged infringement. The Borrower does not presently intend to pursue this matter.



**EXHIBIT B**

**Trademarks**

Refer to Exhibit A attached hereto.

**EXHIBIT C**

**Licenses**

Refer to Exhibit A attached hereto.