

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ORNUA FOODS NORTH AMERICA, INC.,
a New York Corporation
1007 Church Street
Suite 800
Evanston, IL 60201
and
ORNUA CO-OPERATIVE LIMITED,
an Ireland Corporation
Grattan House
Mount Street
Lower Dublin 2
Ireland

Plaintiffs,

Case No. _____

v.

EUROGOLD USA LLC,
a Wisconsin Limited Liability Company
109 South Thompson Road
P.O. Box 837
Sun Prairie, WI 53590
and
OLD WORLD CREAMERY LLC,
a Wisconsin Limited Liability Company
109 South Thompson Road
P.O. Box 837
Sun Prairie, WI 53590

Defendants.

COMPLAINT

Plaintiffs Ornuva Foods North America, Inc., a New York corporation,
and Ornuva Co-Operative Limited, an Irish corporation, (collectively, “Ornuva”) for
their Complaint against Defendants Eurogold USA LLC (“Eurogold”), a Wisconsin

limited liability company, and Old World Creamery LLC (“Old World”), a Wisconsin limited liability company, (collectively, “Defendants”), state and allege as follows:

PRELIMINARY STATEMENT

This is an action for immediate and permanent injunctive relief barring Defendants from advertising, marketing, distributing, or selling butter products using trademarks that are identical or substantially similar to Ornuua’s federally registered trademark KERRYGOLD, which is famous in Wisconsin and throughout the United States for Ornuua’s top-quality Irish butter. This Complaint and the declarations filed with it prove that, after negotiating with Ornuua for months to package Ornuua’s Irish butter under the KERRYGOLD mark, Defendants decided instead to sell Irish butter under a new mark obviously derived from Ornuua’s KERRYGOLD mark: IRISHGOLD. Indeed, Defendants only sought to create their new IRISHGOLD mark in March 2017, just weeks before cutting off discussions concerning their packaging of KERRYGOLD Irish butter, and then announced to the world last Wednesday, April 6, 2017, that they would begin selling under the IRISHGOLD mark tomorrow, Tuesday, April 11, 2017.

Defendants’ use of the IRISHGOLD mark constitutes willful trademark infringement. Defendants’ choice of the IRISHGOLD mark and packaging substantially similar to the packaging for KERRYGOLD Irish butter shows a deliberate effort to trade off the enormous goodwill and strong reputation that Ornuua has built up in the KERRYGOLD brand for many years. Defendants could have chosen any name for their new product. Instead, they intentionally chose a name and packaging confusingly similar to the KERRYGOLD mark in

order to take advantage of the publicity surrounding the current unavailability of KERRYGOLD Irish butter in Wisconsin.

The harm that Defendants will cause, and intend to cause, is incalculable. And it is made worse here because consumers wanting to purchase Irish butter will likely be misled into thinking that Defendants' IRISHGOLD Irish butter is the work-around for selling KERRYGOLD Irish butter in Wisconsin, and will purchase Defendants' product thinking it is KERRYGOLD Irish butter. If Defendants are allowed to make such sales, they will inflict immeasurable destruction to the good will and reputation associated with the KERRYGOLD mark, developed at great effort and expense over decades. This kind of harm cannot be fixed with money damages in the future. It can only be prevented with a restraining order, until such time as Ornuia may obtain permanent injunctive relief.

NATURE OF ACTION

1. This is a civil action pursuant to federal and state law concerning Defendants' infringement of Ornuia's federally registered KERRYGOLD mark. Ornuia seeks both preliminary and permanent injunctive relief concerning Defendants' infringement of the KERRYGOLD mark.

PARTIES

2. Plaintiff Ornuia Foods North America, Inc. ("Ornuia N.A.") is a New York corporation, with its principal place of business located at 1007 Church Street, Suite 800, Evanston, Illinois 60201.

3. Plaintiff Ornuia Co-Operative Limited is an Irish corporation, with its principal place of business located at Grattan House, Mount Street, Lower Dublin 2, Ireland.

4. Defendant Eurogold is a Wisconsin limited liability company, with its principal place of business located, upon information and belief, at 109 South Thompson Road, P.O. Box 837, Sun Prairie, Wisconsin 53590. Eurogold's registered agent for service of process is William Benjamin Everson, located at 97 South Pioneer Road, Suite 300, Fond Du Lac, Wisconsin 54935.

5. Defendant Old World is a Wisconsin limited liability company, with its principal place of business located, upon information and belief, at 109 South Thompson Road, P.O. Box 837, Sun Prairie, Wisconsin 53590. Old World's registered agent for service of process is Stephen A. Knaus, located at 109 South Thompson Road, PO Box 837, Sun Prairie, Wisconsin 53590.

JURISDICTION AND VENUE

6. This action arises under the federal trademark statute (the "Lanham Act"), 15 U.S.C. § 1051 *et seq.*, and under the laws of the State of Wisconsin. This Court has subject matter jurisdiction over the federal trademark and unfair competition claims under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. The Court has subject matter jurisdiction over the related Wisconsin state law claims under 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendants as they are both Wisconsin limited liability companies with their principal places of business located in the State of Wisconsin and regularly transact business in the State of Wisconsin and in this judicial district. Defendants have caused products infringing the KERRYGOLD mark to be advertised and promoted in this judicial district, and intend to begin selling such products on April 11,

2017. The causes of action asserted in this Complaint arise out of Defendants' contacts with this judicial district. Defendants have further caused injury to Ornuia in this judicial district.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) because Defendants have extensive contacts with, and conduct business within, the State of Wisconsin and this judicial district; Defendants have caused products infringing the KERRYGOLD mark to be advertised and promoted in this judicial district, and intend to begin selling such products on April 11, 2017; the causes of action asserted in this Complaint arise out of Defendants' contacts with this judicial district; and because Defendants have caused injury to Plaintiffs in this judicial district.

FACTUAL ALLEGATIONS

ORNUA'S BACKGROUND

9. Ornuia Foods North America is a wholly owned subsidiary of Ornuia Co-operative Limited, which was formerly known as the Irish Dairy Board Co-operative Limited. Ornuia Co-operative Limited, which has its headquarters in Dublin, Ireland, is an agri-food commercial co-operative that is engaged in the purchase, marketing, and sale of consumer dairy products and dairy food ingredients on behalf of its members, Ireland's dairy processors and Irish dairy farmers. Using the highest quality Irish dairy products from its members, Ornuia Co-Operative Limited sells and markets foods and ingredients; packages and distributes butter, butter spreads, and cheese to retailers; and exports such products to numerous countries around the world. Ornuia Co-Operative Limited caused Ornuia N.A. to be

incorporated in the State of New York in 1981 to oversee distribution and marketing of its products in North America, and has licensed to Ornuia N.A. the right to use the KERRYGOLD mark in the United States.

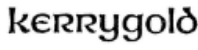
ORNUA’S KERRYGOLD MARK AND PROMOTION THEREOF

10. Ornuia has continuously used the KERRYGOLD mark in the United States in connection with butter for over 15 years. In addition to its common law rights in the KERRYGOLD mark, Ornuia owns several federal trademark registrations for KERRYGOLD in connection with butter, as listed below (collectively, the “KERRYGOLD Registrations”):

Mark	Reg. No. Reg. Date	Goods
KERRYGOLD (Stylized Mark) 	Reg. No. 883,443 12/30/1969 <i>Incontestable</i>	Dairy products – namely, butter, cheese (class 29)
KERRYGOLD & design 	Reg. No. 1,452,354 8/11/1987 <i>Incontestable</i>	Dairy products, excluding ice cream, ice milk and frozen yogurt (class 29)
KERRYGOLD MILK FROM GRASS-FED COWS & design 	Reg. No. 4,518,032 4/22/2014	Dairy products, excluding ice-cream, ice milk and frozen yoghurt; butter, cheese, butter preparations, namely, lactic butters, sweet cream butters, reduced-fat butter, flavored butters, flavored butter spreads, butters having reduced-cholesterol, butters having reduced saturated fat; cheese preparations, namely, cheddar cheeses, Swiss cheeses, Gouda cheeses, Red

Mark	Reg. No. Reg. Date	Goods
		Leicester cheeses, hard cheeses, semi-hard cheeses, soft cheese, ripened cheeses, cream cheese, farmhouse cheeses, blue cheese, flavored cheeses, cheeses containing herbs, cheeses containing fruit, cheeses containing alcohol, brine salted cheeses, reduced-salt cheeses, cheeses with and without rennet; dairy-based edible spreads; bread spreads, mainly of a mixture of one or more dairy products, especially butter, bread spreads mainly of cheese (class 29)

Copies of registration certificates for the KERRYGOLD Registrations are attached as **Exhibit 1** to this Complaint.

11. The federal trademark registration for a stylized version of its KERRYGOLD mark () issued in 1969 in connection with “dairy products – namely, butter, cheese” and long ago achieved incontestability status (Reg. No. 883,443). Ornuua’s federal trademark registration for its KERRYGOLD



mark as part of a design mark () issued in 1987 in connection with “dairy products, excluding ice cream, ice milk and frozen yogurt” and has also become incontestable (Reg. No. 1,452,354). A federal trademark registration for



KERRYGOLD as part of an updated design mark (), issued in April

2014, in connection with butter and various other dairy products (Reg. No. 4,518,032).

12. For more than 25 years, Ornuia has invested substantial time, effort, and resources in the promotion of the KERRYGOLD mark and in developing the association in the public's mind between the KERRYGOLD mark and high quality dairy products across North America. Since 2012, Ornuia has spent more than \$66 million to develop its KERRYGOLD brand in North America. This includes spending on national print media, television advertising, digital and social media, and other advertising. This also includes amounts spent on product demonstrations and price promotions.

13. As a result of Ornuia's efforts, the public has come to recognize and rely upon the KERRYGOLD mark as an indication of the high quality associated with Ornuia's products, particularly Irish butter. In AC Nielsen-measured grocery outlets, Ornuia's KERRYGOLD Irish butter is the top-selling imported butter in the United States. Ornuia has been especially proud of its successful efforts to develop awareness and public appreciation of the KERRYGOLD mark in Wisconsin over the preceding decades.

14. The State of Wisconsin is known worldwide for maintaining high standards for dairy products, including butter, which sometimes makes it difficult for non-Wisconsin producers of such products to enter the Wisconsin market. Currently, for example, retail butter for sale in Wisconsin must bear either a Wisconsin or

federal grade mark. This has prevented sales of KERRYGOLD butter in Wisconsin because KERRYGOLD butter is graded, produced and packaged in Ireland.

15. Further, because of the State of Wisconsin's efforts at maintaining high standards for dairy products, including butter, it is particularly challenging for non-Wisconsin producers of such products to cultivate awareness and public appreciation of their brand identities.

16. Notwithstanding these hurdles, Ornuu has developed such strong recognition of its KERRYGOLD mark in Wisconsin that a recent editorial cartoon published in the March 6, 2017 issue of the Wisconsin State Journal expressly referenced the KERRYGOLD mark in the context of addressing the challenges of marketing non-Wisconsin produced butter in the state. A copy of the cartoon is attached as **Exhibit 2**. Other articles referring to Wisconsin's requirement, and the difficulty of buying Irish butter in Wisconsin, consistently refer to butter sold under the KERRYGOLD mark. Copies of three such articles are attached as **Exhibits 3, 4, and 5**.

17. After working for many months with the Wisconsin Department of Agriculture and others, Ornuu found a way to make its KERRYGOLD butter more widely available to Wisconsin consumers. To meet Wisconsin's requirements, Ornuu would have its butter processed, packaged and graded a second time at a facility in Wisconsin.

18. Given its success in developing awareness and public appreciation of the KERRYGOLD brand in Wisconsin, notwithstanding the constrained market for actual sales of products bearing the KERRYGOLD mark, Ornuia is confident that, once Ornuia has implemented its solution, a great number of Wisconsin citizens will be able to, and will, purchase Ornuia's butter products sold under the KERRYGOLD mark.

19. Ornuia began discussions with Weyauwega Cheese, LLC ("Weyauwega") in September 2016 to implement the solution described above. Stephen "Steve" Knaus owns Weyauwega and is its registered agent in Wisconsin. Relevant documentation from the Wisconsin Office of Financial Institutions is attached as **Exhibit 6**.

20. After signing a confidentiality agreement, Ornuia met with Mr. Knaus in early October 2016. Ornuia disclosed its solution to Mr. Knaus, proposed packaging and grading KERRYGOLD Irish butter at Weyauwega's facility in Wisconsin, and shared product specifications and information about specific grading procedures with Mr. Knaus.

21. During the discussions between Ornuia and Weyauwega, Ornuia conducted an extensive site visit of Weyauwega's facility and a follow up visit by Ornuia technical personnel to witness the first production run. The parties also conducted successful lab tests. Ornuia provided Weyauwega with printed packaging materials bearing the KERRYGOLD mark. Ornuia proposed packing KERRYGOLD

Irish butter in packs of two 4 oz. sticks, packaging that Ornuia has used successfully in other American markets. Ornuia also shipped 40,000 pounds of KERRYGOLD Irish butter to Weyauwega, from which Weyauwega processed 417 cases of finished product.

22. During the discussions between Ornuia and Weyauwega, Weyauwega was represented by a Wisconsin attorney named William B. Everson at the law firm of Everson & Gibbs, LLC (“Everson & Gibbs”). A copy of an e-mail chain reflecting Mr. Everson’s role as attorney for Weyauwega is attached as **Exhibit 7**. The street address for Everson & Gibbs is 97 South Pioneer Road, Suite 300, Fond du Lac, Wisconsin 54935.

23. In February 2017, Mr. Everson advised Ornuia that the packaging agreement the parties had been working on since October 2016 should be in the name of Defendant Old World, instead of Weyauwega. A copy of Mr. Everson’s e-mail message is attached as **Exhibit 8**. On information and belief, Mr. Knaus owns both Weyauwega and Old World, and he serves as Old World’s registered agent in Wisconsin. Relevant documentation from the Wisconsin Office of Financial Institutions is attached as **Exhibit 9**.

24. Despite the successful trial runs, Weyauwega, now Old World, started to become less responsive in late February and early March 2017. In early March 2017, Mr. Knaus confirmed that Old World was considering packaging Irish butter for another company, known as Waterford Butter, at Old World’s Sheboygan

facility. When Ornuva objected, the parties discussed the possibility of an exclusive relationship if Ornuva would provide certain volume guarantees. On March 30, 2017, Mr. Knaus advised Ornuva that Old World would be signing an agreement with Waterford Butter no matter what terms Ornuva offered.

DEFENDANTS' UNLAWFUL ACTS

25. Unbeknownst to Ornuva, while Ornuva was continuing negotiations with Mr. Knaus as representative of Old World, Mr. Knaus was causing a new business entity to be formed – Defendant Eurogold.

26. Eurogold was formed on March 8, 2017. Relevant documentation from the Wisconsin Office of Financial Institutions is attached as **Exhibit 10**.

27. On the same day, Eurogold filed a federal trademark application for the mark EUROGOLD, in standard characters, for use in connection with “butter and butter blends.” A copy of the USPTO’s web page reflecting the application is attached as **Exhibit 11**. As reflected in this trademark application, the attorney who filed the application for the EUROGOLD mark was Nicholas A. Brannen of the Brannen Law Office, LLC (“Brannen Law”).

28. Mr. Brannen, who filed the EUROGOLD trademark application for Eurogold, shares an office with Mr. Everson, the attorney who negotiated on behalf of Old World concerning an agreement to package Ornuva’s butter under the KERRYGOLD mark.

29. The street address for Brannen Law is 97 South Pioneer Road, Suite 300, Fond du Lac, Wisconsin 54935. The street address for Everson & Gibbs is 97 South Pioneer Road, Suite 300, Fond du Lac, Wisconsin 54935.

30. On March 14, 2017, Eurogold filed a second federal trademark application, this time for the mark IRISHGOLD, in standard characters, for use in connection with “butter, butter blends, and cheese.” A copy of the USPTO’s web page reflecting the application is attached as **Exhibit 12**. The application for the IRISHGOLD mark was again filed by Mr. Brannen. On March 30, 2017, Mr. Knaus caused yet another new business entity to be formed – Irishgold USA, LLC (“Irishgold”). Relevant documentation from the Wisconsin Office of Financial Institutions is attached as **Exhibit 13**.

31. On April 6, 2017, a press release was issued by Leonard & Finco Public Relations, Inc. featuring a combined Old World Creamery / Irishgold letterhead. A copy of the press release is attached as **Exhibit 14**.

32. In the press release, Old World announced that it will be launching the sale of Irish butter under the IRISHGOLD mark on Tuesday, April 11, 2017 at 9 A.M. The press release details Old World’s plans to sell IRISHGOLD Irish butter at Woodman’s Market locations throughout the state.

33. The IRISHGOLD mark and its associated packaging is substantially similar to the KERRYGOLD mark and its associated packaging and is highly likely to cause confusion in the market.

34. Among the ways that the IRISHGOLD mark and its associated packaging are substantially similar to the KERRYGOLD Marks are:

- The terms “Irishgold” and “Kerrygold” are similar in sound and appearance – consisting of a two-syllable term preceding the word “gold” – and are virtually identical in meaning and connotation as “Kerry” is a well-known county in Ireland.
- The IRISHGOLD mark and KERRYGOLD mark are being used to promote identical – and directly competitive – products: “Pure Irish Butter.”
- The packaging bearing the IRISHGOLD mark uses what appears to be the identical or substantially identical font for the term “Pure Irish Butter” as it appears on packaging for KERRYGOLD butter.
- The packaging bearing the IRISHGOLD mark depicts black and white dairy cattle grazing in a field of green grass, just as packaging for KERRYGOLD butter features a black and white dairy cow grazing in a field of green grass. The cow and grass elements are incorporated into the design marks Ornuia has registered as Reg. Nos. 4,518,032 and 1,452,354.

35. Among the ways that the IRISHGOLD mark and its associated packaging are likely to cause confusion in the market, beyond its direct similarity to the KERRYGOLD mark and its associated packaging, as discussed above, are the following:

- Both the IRISHGOLD mark and KERRYGOLD mark are being used to market identical products that directly compete against one another.
- Upon information and belief, based on the April 7, 2017 press release, butter bearing the IRISHGOLD mark and KERRYGOLD mark will both be marketed to consumers through the same marketing channel, *i.e.*, supermarkets.
- The products are relatively low cost, making it less likely that consumers will carefully scrutinize the small differences between packaging bearing the IRISHGOLD mark and packaging bearing the KERRYGOLD mark.

Images of packaging for IRISHGOLD butter (from the web site at www.owcreamery.com) and of KERRYGOLD butter are attached as part of **Exhibit 15**.

36. The likelihood of confusion is not hypothetical. On April 7, 2017, the Chicago Tribune published an Associated Press news story discussing the aforementioned press release announcing the imminent sale of butter under the IRISHGOLD mark, but illustrated the story with a photograph of Ornu's KERRYGOLD-branded butter. A copy of the Chicago Tribune article is attached as **Exhibit 16**.

37. Ornu's monitoring of social networking sites further indicates that a growing number of individuals are interpreting media coverage of the launch of products bearing the IRISHGOLD mark as indicating that Ornu's KERRYGOLD products are or are about to become significantly more available in Wisconsin. Samples of such social networking comments are attached as **Exhibit 17**.

38. The likelihood of confusion is also not accidental. Eurogold and Old World could have chosen any number of potential marks for their butter products. The most obvious choice would have been to use the marks of Waterford Butter, the company whose butter Mr. Knaus said Old World would be packaging. Instead, after negotiating with Ornu for months to package butter under the KERRYGOLD marks, Mr. Knaus cut off discussions and decided to sell butter using Eurogold's obviously derivative IRISHGOLD mark, using packaging substantially

similar to packaging for KERRYGOLD Irish butter. Leaving nothing to chance, he also formed a new Wisconsin company called Irishgold. On information and belief, these choices were not accidental. They were and are deliberate attempts to trade off of the good will and strong reputation of Ornuua's KERRYGOLD mark in violation of Ornuua's rights under federal and state law.

39. Given the manifest confusion arising even before products bearing the IRISHGOLD mark enter the market in full force, Ornuua is already suffering irreparable harm to its KERRYGOLD mark and the goodwill and reputation therein.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement under 15 U.S.C. § 1114)

40. Ornuua realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

41. The actions of Defendants described above and specifically, without limitation, their use of the IRISHGOLD mark in commerce to advertise, promote, market, and sell butter in the United States, and particularly in Wisconsin, is likely to cause confusion, or to cause mistake, or to deceive, and therefore constitutes infringement of Ornuua's federal registered KERRYGOLD mark, in violation of 15 U.S.C. § 1114.

42. The actions of Defendants, if not enjoined, will continue. Ornuua has suffered and continues to suffer diminution in the value of and goodwill

associated with the KERRYGOLD mark, and injury to Ornuia's business. Ornuia is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

43. Furthermore, Ornuia is informed and believes, and on that basis alleges, that the actions of Defendants were undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling Ornuia to recover reasonable attorney fees pursuant to 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION

(Federal Unfair Competition and False Advertising under 15 U.S.C. § 1125(a))

44. Ornuia realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

45. The actions of Defendants described above and specifically, without limitation, their use of the IRISHGOLD mark and associated packaging in commerce to advertise, promote, market, and sell butter in the United States, and particularly in Wisconsin, is a false designation of origin; is a false representation; wrongfully and falsely designates the origin of Defendants' goods as originating from or being associated or affiliated with Ornuia and its well-known goods; and is a false description or representation in interstate commerce in violation of 15 U.S.C. § 1125(a).

46. The deception is material to consumers' purchasing decisions, and consumers are likely to be misled and deceived by Defendants' representations regarding butter products bearing the IRISHGOLD name and associated packaging.

Actual deception has already resulted as shown in the article discussing Old World's product but featuring Ornuva's butter and KERRYGOLD mark.

47. Defendants knew or should have known that their representations were and are false and likely to mislead.

48. Defendants' use of the IRISHGOLD mark and associated packaging in connection with butter is likely to cause confusion, mistake, or deception among consumers as to the affiliation, connection, endorsement, sponsorship or association of Defendants' goods with Ornuva and its goods.

49. As an actual and proximate result of Defendants' willful and intentional actions, Ornuva has suffered and will continue to suffer irreparable harm to its business, reputation, and goodwill. The actions of Defendants, if not enjoined, will continue. Ornuva has suffered and continues to suffer diminution in the value of and goodwill associated with the Marks, and injury to Ornuva's business. Ornuva is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

50. Furthermore, Ornuva is informed and believes, and on that basis alleges, that the actions of Defendants were undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling Ornuva to recover reasonable attorney fees pursuant to 15 U.S.C. § 1117.

THIRD CAUSE OF ACTION

(Federal Trademark Dilution under 15 U.S.C. §1125(c))

51. Ornuua realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

52. The KERRYGOLD mark is because it is widely recognized by the general consuming public of the United States as a designation of source of Ornuua's Irish butter products due to, among other things, the extent of Ornuua's advertising and publicity of the KERRYGOLD mark and the amount and extent of sales under the KERRYGOLD mark.

53. Defendants adopted their infringing IRISHGOLD name after the KERRYGOLD mark became famous.

54. Defendants use of the infringing IRISHGOLD name is commercial and in commerce under 15 U.S.C. § 1125(c)(1).

55. The actions of Defendants described above and specifically, without limitation, their use of the IRISHGOLD name and associated packaging in commerce to advertise, promote, market, and sell butter in the United States, and particularly in Wisconsin, are likely to cause dilution of the KERRYGOLD Marks by blurring and tarnishing in violation of 15 U.S.C. § 1125(c).

56. The actions of Defendants, if not enjoined, will continue. Ornuua has suffered and continues to suffer, among other things, diminution in the value of and goodwill associated with the Marks, and injury to Ornuua's business. Ornuua is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116 and 15 U.S.C. 1125(c).

57. On information and belief, the actions of Defendants described above were and continue to be deliberate and willful. Ornuia is therefore entitled to recover its costs and reasonable attorney fees pursuant to 15 U.S.C. § 1117.

FOURTH CAUSE OF ACTION

(Common Law Unfair Competition Under Wisconsin Law – Misappropriation)

58. Ornuia realleges and incorporates herein the allegations contained in the foregoing paragraphs of this Complaint.

59. Ornuia has expended considerable time, labor, and money on creating the positive reputation of Irish butter under the KERRYGOLD mark in Wisconsin.

60. Defendants have set themselves up as competitors with Ornuia by offering Irish butter for sale in Wisconsin, under the IRISHGOLD mark and associated packaging, through the same sales channels that Ornuia uses or would seek to use for the sale of products bearing the KERRYGOLD mark.

61. Defendants have misappropriated the positive brand identity and market share created by Ornuia through their use of substantially similar marks that are likely to cause and have caused customer confusion.

62. As a direct and proximate result of Defendants' willful and intentional actions, Ornuia has suffered and will continue to suffer irreparable harm and damage to its business, reputation, and goodwill, entitling Ornuia to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ornuva Food North America, Inc. and Ornuva Co-Operative Limited pray for judgment in their favor and against Defendants Eurogold USA LLC and Old World Creamery LLC (collectively, “Defendants”) as follows:

- a) Award to Ornuva preliminary and permanent injunctive relief, including (i) barring Defendants from advertising, marketing, distributing, or selling any butter products using any marks identical or substantially similar to Ornuva’s KERRYGOLD mark, (ii) ordering Defendants to destroy all marketing material and packaging containing marks identical or substantially similar to Ornuva’s KERRYGOLD mark;
- b) Award to Ornuva of its costs and reasonable attorney fees; and
- c) Award to Ornuva such other relief as the Court deems appropriate.

KRAVIT, HOVEL & KRAWCZYK S.C.

s/ Michael D. Huitink

Michael D. Huitink

Attorneys for Plaintiffs Ornuva Food North America, Inc., and Ornuva Co-Operative Limited

Kravit, Hovel & Krawczyk s.c.
825 North Jefferson - Fifth Floor
Milwaukee, WI 53202
(414) 271-7100 - Telephone
(414) 271-8135 - Facsimile
mdh@kravitlaw.com

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