

TRADEMARK COEXISTENCE AND CONSENT TO REGISTER AGREEMENT

THIS TRADEMARK COEXISTENCE AND CONSENT TO REGISTER AGREEMENT ("Agreement") is entered into and effective the date of the last signature below ("Effective Date") between Nufarm Americas Inc., an Illinois corporation having an address at 11901 South Austin Avenue, Alsip, Illinois 60803 ("Nufarm") and Bayer HealthCare LLC, a Delaware limited liability company having an address at 100 Bayer Road, Pittsburgh, Pennsylvania 15205 ("Bayer").

WHEREAS, since at least as early as 2003, Nufarm has used its PATRIOT mark ("Nufarm's PATRIOT Mark") on and in connection with agricultural and domestic herbicides ("Nufarm's Goods");

WHEREAS, Nufarm previously owned, but inadvertently allowed to expire, U.S. Registration No. 2787357 for Nufarm's PATRIOT Mark covering Nufarm's Goods, issued on November 25, 2003 and cancelled under Section 8 on June 27, 2014;

WHEREAS, since at least as early as 2012, Bayer has used its PATRIOT Mark ("Bayer's PATRIOT Mark") on and in connection with insecticide ear tags for livestock ("Bayer's Goods");

WHEREAS, Bayer owns U.S. Registration No. 5722306 for Bayer's PATRIOT Mark covering Bayer's Goods, issued April 9, 2019;

WHEREAS, Nufarm subsequently reapplied to register Nufarm's PATRIOT Mark for Nufarm's Goods on November 19, 2018 and U.S. Serial No. 88/199,246 ("PATRIOT Application") is pending in the United States Patent & Trademark Office ("USPTO");

WHEREAS, the USPTO has initially refused registration of the PATRIOT Application based on a purported likelihood of confusion with U.S. Registration No. 5722306 for Bayer's PATRIOT Mark; and

WHEREAS, the parties desire to memorialize their respective rights to use and register their respective PATRIOT Marks in connection with their respective goods.

NOW, THEREFORE in consideration of their mutual covenants, and other good and valuable consideration, the receipt and sufficiency which are acknowledged, the parties, intending to be bound legally, agree as follows:

1. **No Confusion Nufarm's PATRIOT Mark and Bayer's PATRIOT Mark.** Subject to the compliance with the terms and conditions of this Agreement, the parties have a good faith belief that there is no likelihood of confusion or conflict between their use or federal registration of their respective PATRIOT Marks and their respective current and intended channels of trade. This good faith belief is based upon (i) the distinctions between the use, nature, purpose and function of Nufarm's Goods and Bayer's Goods advertised and sold under their respective PATRIOT Marks; (ii) the manner in which Nufarm and Bayer promote, advertise, market and sell their respective PATRIOT-branded goods; and (iii) purchaser experience and care in Nufarm and Bayer's respective markets and industries that serves to eliminate any likelihood of confusion, namely, the particular sophistication of individuals who purchase large scale quantities of highly regulated herbicide and insecticide products.

2. **Bayer's Consent.** Bayer consents to Nufarm's use and registration of the PATRIOT Mark for Nufarm's Goods.

3. **Nufarm's Consent.** Nufarm consents to Bayer's use and registration of the PATRIOT Mark for Bayer's Goods.

4. **Cooperation.** The parties agree to execute and file with the USPTO any other documents that may be reasonably necessary or proper to effectuate and enforce the terms of this Agreement.

5. **No Challenge.** The parties mutually agree not to challenge, oppose, cancel or otherwise interfere with any application or registration of the other's trademarks that are the subject of this Agreement so long as they are consistent with the terms of this Agreement.

6. **Obligations to Address Consumer Confusion.** The parties agree to take reasonable action to prevent any confusion due to the coexistence and registration of their respective marks, to notify each other of any incidences of actual confusion of which they become aware and to take reasonable action to correct such consumer confusion.

7. **Scope.** The terms of this Agreement apply to the United States of America.

8. **Representations and Warranties.** Nufarm and Bayer each warrant and represent that: (i) this Agreement is freely and voluntarily entered into, and that each party has had an opportunity to consult with counsel with respect to the advisability of entering into this Agreement; (ii) no promise, inducement or agreement not contained in this Agreement has been made on any subject in connection with this Agreement; (iii) each party has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as it deems necessary; (iv) each party's signatory to this Agreement is fully authorized to execute this Agreement on its/her behalf; (v) each party has all necessary power and authority to enter into the releases contained herein; and (vi) the parties jointly participated in the drafting of this Agreement, with the result that any ambiguity contained therein shall not be interpreted or construed against either Party as the drafter thereof.

9. **Agreement is Contingent.** Nufarm and Bayer mutually understand and agree that the validity and enforceability of this Agreement are contingent on the USPTO's approval of Nufarm's PATRIOT Application.

10. **Reserved Rights.** The parties mutually reserve the right to object to, oppose or seek to cancel any application or registration for any trademark by the other that is outside the scope of this Agreement.

11. **Assignees.** This Agreement shall extend to, inure to the benefit of, and be binding upon the parties and their respective directors, officers, partners, proprietors, attorneys, agents, servants, employees, representatives, affiliates, subsidiaries, shareholders and other investors, predecessors, successors and assigns.

12. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties concerning Nufarm and Bayer's respective PATRIOT Marks and supersedes and replaces all prior negotiations, proposed agreements and agreements, whether written or oral, relating to such subject matter. This Agreement may not be altered, amended, modified or otherwise changed in any respect except by in writing duly executed and signed by both parties or by their authorized representatives. This Agreement shall be construed as a whole, and not strictly for or against any of the parties hereto.

13. **Waiver.** The waiver or either party of a breach or other violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this Agreement.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date.

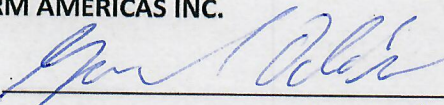
NUFARM AMERICAS INC.

By:

Name:

Title:

Date:



Geordie Oldfield

Authorised Representative

5 August 2019

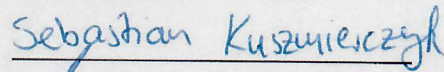
BAYER HEALTHCARE LLC

By:

Name:

Title:

Date:



Sebastian Kuszumieczyk

Head of Farm Animal Products, US

July 31st, 2019