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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

YODER BROTHERS, INC.; YODER
BROTHERS OF CALIFORNIA, INC.;
and BGA INTERNATIONAL, INC.,
Defendants.

Civil No. C-70-825

Antitrust

Filed: April 20, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under § 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain the defendants from continuing to violate §§ 1 and 2 of the said Sherman Act (15 U.S.C. §§ 1 and 2).

2. The defendants transact business and are found within the Northern District of California.

II

THE DEFENDANTS

3. Yoder Brothers, Inc., hereinafter referred to as Yoder, is made a defendant herein. Yoder is a corporation organized and existing under the laws of the State of Ohio with its principal office in Barberton, Ohio. Yoder is a commercial breeder and a propagator-distributor as those terms are used herein. Yoder is a member of defendant BGA International, Inc..

4. Yoder Brothers of California, Inc., hereinafter referred to as Yoder-California, is made a defendant herein. Yoder-California is a corporation organized and existing under the laws of the State of California with its principal office in Salinas, California. Yoder-California is a wholly-owned subsidiary of Yoder and is a propagator-distributor as that term is defined herein.

5. BGA International, Inc., hereinafter referred to as BGA, is made a defendant herein. BGA is a nonprofit corporation organized and existing under the laws of the State of Ohio with its principal office in Akron, Ohio.

III

CO-CONSPIRATORS

6. Various other persons, not made defendants herein, have participated as co-conspirators with the defendants in the offenses hereinafter charged and have performed acts and made statements in furtherance thereof. Said co-conspirators include, but are not limited to, subsidiaries of Yoder, distributors of Yoder and Yoder-California, breeder members of BGA, and various purchasers of cuttings.

IV

DEFINITIONS

7. As used herein:

(a) "Person" means an individual, partnership, corporation, association or other legal entity;

(b) "Cuttings" means sections or parts of chrysanthemum plants which may be grown into mature plants from which blossoms or additional cuttings are harvested;

(c) "Grower" means a person engaged in the business of growing cut flowers and potted plants, or either of them, from cuttings;

(d) "Propagator-distributor" means a person engaged in the business of reproducing business of cuttings for the purpose of selling cuttings;

(e) "Mutation" includes a bud variation and a sport and means a variety of chrysanthemum different from the variety of chrysanthemum from which it either appeared spontaneously or was induced to appear by such means as gamma rays;

(f) "Variety" means a subspecies or class of chrysanthemums distinguishable from other subspecies or classes of chrysanthemums by distinct characteristics, such as color, hue, shape and size of petal or blossom or any of them;

(g) "Finder" means a person who discovers a mutation.

TRADE AND COMMERCE AND INDUSTRY INVOLVED

8. Chrysanthemums are one of the most popular ornamental plants commercially grown in the United States. In 1968 some 2,750 commercial growers in the United States sold approximately 132 million blooms from some 112 million standard variety chrysanthemum plants grown by them. In 1968 some 2,730 commercial growers in the United States sold some 30.5 million bunches of blooms from some 126 million pompon chrysanthemum plants grown by them. In 1968 some 1,530 commercial growers in the United States sold some 13.4 million pots of potted chrysanthemums. The total wholesale value of said grower sales of blooms (cut flowers) and potted plants in 1968 was approximately 71.8 million dollars.

9. There is great consumer demand for cut flowers and potted plants of new varieties of chrysanthemums. Such new varieties are originated and invented by breeders, generally by the process of cross-pollination. New varieties are also discovered by finders when mutations appear. Defendant Yoder and two other companies are the only commercial breeders of chrysanthemums doing business in the United States. Yoder is and has been the originator of the vast majority of new varieties for many years.

10. Cuttings of new varieties of chrysanthemums are reproduced by propagator-distributors for sale to growers. Yoder and the other two commercial breeders of chrysanthemums referred to in Paragraph 9, above, are propagator-distributors as are a few other companies which do no breeding. Each of the three commercial breeders propagate and distribute varieties bred or found by itself and varieties bred or found by other persons. The cuttings of

all propagator-distributors, except Yoder, are sold by company-employed salesmen. Most cuttings propagated by Yoder and its subsidiaries are sold by Yoder and Yoder-California to independent distributors who in turn resell to growers located throughout the United States.

11. Sales of cuttings by propagator-distributors in the United States in the fiscal year ending June 30, 1968 were approximately \$11.5 million. Sales of Yoder and its subsidiaries of said cuttings in that year were approximately \$9 million or more than 75% of the total. Yoder, its subsidiaries and the two commercial breeders accounted for about 95% of the total sales of propagator-distributors. New varieties account for a substantial percent of the total chrysanthemum cutting sales, and such percentage has been steadily increasing.

12. Cuttings are propagated by Yoder and its subsidiaries at locations in the States of Ohio, California, Pennsylvania and Florida, and sold to purchasers located throughout the United States. Cuttings propagated by other propagator-distributors are also shipped by them to purchasers located in states other than the states in which said cuttings are propagated. Thus, there is continuous flow in interstate trade and commerce of substantial quantities of cuttings from states in which such cuttings are propagated to purchasers located in other states.

13. Eligible new varieties of chrysanthemums may be patented pursuant to the laws of the United States by persons who invent or originate them or by finders who discover them (35 U.S.C. §§ 161 et seq.). Yoder has not patented its new varieties. Instead, since about 1958 Yoder has required purchasers of cuttings of its allegedly new varieties to sign an agreement restricting use, propagation and disposition of the cuttings purchased.

1 14. From about 1958 until about 1963 Yoder allowed
2 only growers to purchase its allegedly new varieties and
3 required them to sign so-called YGA agreements which
4 prohibited propagation of the purchased cuttings except for
5 the purpose of growing the cuttings for sale as cut flowers
6 and potted plants. Said agreements also provided that all
7 mutations found on the purchased cuttings or cuttings
8 propagated therefrom were the sole property of Yoder and
9 were to be reported to Yoder immediately upon discovery.
10 Each signatory grower was required to pay a "royalty" to
11 Yoder on cuttings purchased in addition to the purchase
12 price of the cuttings.

13 15. In February 1963 Yoder caused the formation and
14 incorporation of BGA. BGA is an association whose member-
15 ship is comprised of commercial and noncommercial breeders
16 of chrysanthemums and of other plants. Breeder-members of
17 BGA may list with BGA any asexually reproduced plants
18 originated by them. Those varieties and mutations thereof
19 which are accepted by BGA are known and sold as "BGA
20 varieties." Of the approximately 300 varieties listed as
21 BGA varieties, all but a few are chrysanthemums.

22 16. Cuttings of BGA varieties are sold only to
23 persons who sign one of the three standardized written BGA
24 agreements. One agreement, the BGA Propagator-Distributor
25 Contract, permits the signatory propagator-distributor to
26 propagate the cuttings for the purpose of selling cuttings.
27 The second such agreement, the BGA Grower License, permits
28 the signatory grower to propagate and grow the cuttings for
29 the sole purpose of selling cut flowers or potted plants.
30 The third agreement, the BGA Grower Agreement, permits the
31 signatory grower merely to grow the cuttings. Each such
32 agreement requires the signatory to pay a "royalty" on

cuttings purchased at the time of purchase in addition to the purchase price. Also, each purchaser who signs a BGA Propagator-Distributor Contract or a BGA Grower License is required to pay a "royalty" on each cutting propagated from the purchased cuttings. Each of the three agreements prohibits the loaning or giving away of BGA varieties and cuttings from BGA varieties. In addition, each agreement requires the purchaser of cuttings to deliver mutations of BGA varieties found by them to BGA which has the right to release them as new BGA varieties and to sell them subject to the aforesaid BGA agreements.

17. Said BGA agreements provide for the ultimate payment of all "royalties" to BGA on each BGA variety for a period of not more than 15 years. BGA, after deducting certain of its administrative costs and expenses, distributes net "royalties" collected on each BGA variety to the breeder-member listing said variety, less any finder's fee that may be involved. Finders of mutations from BGA varieties which are in turn listed as new BGA varieties receive a fee consisting of one-half the net "royalties" collected on said new BGA varieties for a limited period of not more than three or five years.

18. Each member of BGA has a voting strength on all questions relating to BGA's operations and affairs proportionate to the amount of net "royalties" distributed to each of them as aforesaid. Since its incorporation Yoder has annually received in excess of 80% of the "royalties" distributed through BGA and has controlled or has had power to control BGA and its business and operations.

19. Two of the three commercial breeders in the United States are members of BGA. All three of them, acting as propagator-distributors, have executed the BGA Propagator-Distributor contracts hereinabove described. All other persons engaged in business as propagator-distributors in the United States have executed the BGA Propagator-Distributor contracts hereinabove described. In excess of 10,000 BGA agreements have been executed by propagator-distributors and growers as a condition to purchasing cuttings of BGA varieties.

20. Since about 1958 Yoder has utilized Grower Rights agreements to supplement YGA and BGA agreements, and since late 1968 Yoder has also utilized GRA agreements to supplement said BGA agreements. The Grower Rights agreements cover mutations of varieties not listed as YGA varieties or, after 1963, not listed as BGA varieties; GRA agreements cover mutations of varieties not listed as BGA varieties. Said Grower Rights agreements prohibit propagation of the purchased cuttings except for the purpose of growing the cuttings for sale as cut flowers and potted plants. Said GRA agreements are of three types, the terms of which are substantially the same as those of the three BGA agreements described in paragraph 16, above.

VI

OFFENSES CHARGED

21. Beginning at least as early as 1958 and continuing up to and including the date of the filing of this complaint, defendant Yoder has attempted to monopolize, and has monopolized the aforesaid interstate trade and commerce in violation of section 2 of the Sherman Act (15 U.S.C. § 2), and has combined and conspired with BGA,

1 Yoder-California and co-conspirators entered into contracts
2 to restrain and monopolize the aforesaid interstate trade
3 and commerce in violation of sections 1 and 2 of the
4 Sherman Act (15 U.S.C. §§ 1 and 2). Said offenses are
5 continuing and will continue unless the relief hereinafter
6 prayed for is granted.

In 7 22. In effectuation of the violations alleged in
8 paragraph 21 of this complaint, defendants and co-conspir-
9 ators did, among other things, the acts set forth below:

10 (a) from about 1958 until about 1963 Yoder
11 required purchasers of its allegedly new
12 varieties of cuttings to sign YGA agreements, to sign
13 the substantial terms of which:

14 (1) prohibited resale, gift or
15 loan of the purchased cuttings or the purchased cut-
16 tings propagated therefrom;

17 (2) provided that all mutations
18 found on the purchased cuttings or on purchased cut-
19 tings propagated therefrom would be the property of Yoder;

20 (b) in 1963 Yoder caused the formation
21 of BGA;

22 (c) from about 1963 and continuing
23 thereafter up to and including the date of
24 the filing of this complaint, Yoder, BGA,
25 Yoder-California, and co-conspirators have
26 agreed:

27 (1) that co-conspirator breeder-
28 members may list new varieties of
29 chrysanthemums with BGA as BGA
30 varieties;
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32

1 (2) that cuttings of BGA varieties
2 will be sold only to persons who
3 execute standardized BGA contracts
4 which restrict the purchasers' use
5 and disposition of purchased cuttings
6 and cuttings propagated therefrom;

7 (3) that all purchasers of cuttings
8 of BGA varieties will be required to
9 pay a "royalty" for each cutting pur-
10 chased and for each cutting propagated
11 from purchased cuttings;

12 (4) that cuttings of BGA varieties
13 will be sold only to persons who agree
14 to deliver all mutations found by them
15 on purchased cuttings or cuttings
16 propagated therefrom to BGA which will
17 have the right to list them as new BGA
18 varieties subject to BGA contracts; and

19 (5) to fix and stabilize the amount
20 of "royalty" to be paid on cuttings of
21 BGA varieties;

22 (d) from about 1958 and continuing there-
23 after up to and including the date of filing
24 of this complaint, Yoder has required pur-
25 chasers of cuttings of certain allegedly
26 new varieties to sign Grower Rights agreements,
27 a substantial term of which prohibits resale,
28 gift or loan of the purchased cuttings or of
29 cuttings propagated therefrom;

30 (e) from about 1968 and continuing there-
31 after up to and including the date of the
32 filing of this complaint, Yoder has required

1 purchasers of certain allegedly new varieties
2 to sign GRA agreements, the substantial terms
3 of which:

4 (1) provide that all purchasers
5 of cuttings of GRA varieties are re-
6 quired to pay a "royalty" to Yoder for
7 each cutting purchased and for each
8 cutting propagated from purchased
9 cuttings;

10 (2) restrict the use, propagation and the use,
11 and disposition of the purchased
12 cuttings and cuttings propagated there-
13 from;

14 (f) in or about 1963, Yoder secured the
15 agreement of a competing commercial breeder and
16 propagator-distributor not to solicit Yoder
17 customers;

18 (g) from at least as early as 1958, Yoder
19 and Yoder-California have required their dis-
20 tributors to resell cuttings at prices, terms
21 and conditions fixed by Yoder.

22 VII

23 EFFECTS

24 23. The aforesaid offenses have had, among other
25 things, the following effects:

26 (a) Commerce in chrysanthemum cuttings
27 has been unreasonably restrained and monopolized;

28 (b) Defendant Yoder has maintained control
29 and domination of the chrysanthemum cuttings
30 industry;

31 (c) Competition among commercial breeders
32 and among propagator-distributors has been

1 curtailed;

2 (d) Price competition on "royalties" among
3 breeder-members of BGA has been eliminated;

4 (e) Competition between and among dis-
5 tributors of Yoder cuttings has been curtailed
6 and eliminated;

7 (f) Purchasers of cuttings have had to pay
8 high and artificially fixed prices and have been
9 denied the benefits of a free and competitive
10 market.

11 VIII

12 PRAYER

13 PRAYER

14 PRAYER

15 WHEREFORE, the Plaintiff prays:

16 1. That the Court adjudge and decree that defendant
17 Yoder has attempted to monopolize and has monopolized the
18 aforesaid interstate trade and commerce in violation of
19 section 2 of the Sherman Act and has combined and conspired
20 with BGA, Yoder-California and co-conspirators to restrain
21 and monopolize the aforesaid interstate trade and commerce
22 in violation of sections 1 and 2 of the Sherman Act.

23 2. That each of the defendants and their subsidiaries,
24 and the officers, members, directors, agents and employees,
25 and all persons acting or claiming to act on behalf of the
26 defendants or their subsidiaries, or any of them, be
27 perpetually enjoined from continuing to carry out, directly
28 or indirectly, the aforesaid combinations and conspiracies
29 to restrain trade and to monopolize and that Yoder be
30 enjoined from attempting to monopolize and monopolizing the
31 aforesaid interstate commerce, and that they be perpetually
32 enjoined from engaging in or participating in practices,
contracts, agreements or understandings, or claiming any

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rights thereunder, having the purpose or effect of continuing, reviving, or renewing any of the afore-said offenses or any offenses similar thereto.

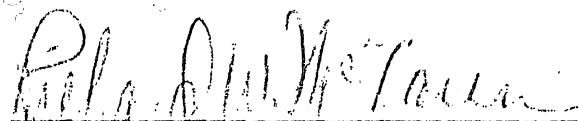
3. That the plaintiff have such other and further relief as the nature of the case may require and as the Court may deem just and proper to dissipate the effects of the violations alleged herein and to restore competition in breeding of chrysanthemums and propagation of cuttings.

4. That the plaintiff recover its costs of this suit.

Dated:


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