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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF OHIO

9 UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 v.)

12 YODER BROTHERS, INC.; YODER)
13 BROTHERS OF CALIFORNIA, INC.;)
and BGA INTERNATIONAL, INC.,)

14 Defendants.)
15

Civil No. C-70-931

Antitrust

Entered: March 15, 1972

16 FINAL JUDGMENT

17 Plaintiff, United States of America, having filed its
18 Complaint herein on April 20, 1970; the defendants having
19 filed their respective answers thereto denying the substantive
20 allegations thereof; and the parties hereto, by their
21 respective attorneys, having appeared and consented to the
22 making and entry of this Final Judgment without trial or
23 adjudication of any issue of fact or law herein, and
24 without this Final Judgment constituting any evidence against
25 or admission by any party hereto with respect to any such
26 issue:

27 NOW, THEREFORE, before the taking of any testimony
28 and upon consent of the parties hereto, it is hereby

29 ORDERED, ADJUDGED AND DECREED as follows:
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I

The Court has jurisdiction of the subject matter herein and all parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended (15 U.S.C. §§ 1 and 2).

II

As used in this Final Judgment:

(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) "Distributor" means any person who sells cuttings propagated by Yoder or Yoder-California, other than employees of Yoder or Yoder-California.

(D) "Propagator-Distributor" means any person who is engaged in the business of reproducing cuttings for the purpose of selling cuttings.

(E) "Yoder" means defendant Yoder Brothers, Inc.

(F) "Yoder-California" means defendant Yoder Brothers of California, Inc.

(G) "BGA" means defendant BGA International, Inc.

(H) "BGA agreements" means any agreements so entitled applicable to cuttings which were in effect as of December 1, 1969.

(I) "YGA agreements" means any agreements so entitled applicable to cuttings which were in effect as of December 1, 1969.

1 (J) "GRA agreements" means any agreements so entitled
2 applicable to cuttings which were in effect as of
3 December 1, 1969.

4 (K) "Breeder" means any person engaged in the business
5 of breeding new varieties of chrysanthemums.

6 (L) "Subsidiary" means a corporation which a defendant
7 controls, or has power to control, or in which fifty percent
8 (50%) or more of the voting securities is beneficially owned
9 by said defendant.

10 III

11 (A) The provisions of this Final Judgment applicable
12 to any defendant shall apply to such defendant, its sub-
13 sidiaries, successors and assigns and to their respective
14 officers, directors, agents and employees and to all persons
15 in active concert or participation with any of them who
16 receive actual notice of this Final Judgment by personal
17 service or otherwise.

18 (B) This Final Judgment shall not apply to transactions
19 or activities solely between a defendant and its directors,
20 officers, employees and subsidiaries, or any of them, when
21 acting in such capacity, or to transactions or activities
22 outside the United States.

23 IV

24 (A) Each of the defendants is enjoined and restrained
25 from directly or indirectly entering into, adhering to,
26 maintaining or engaging in any contract, agreement, under-
27 standing, plan, program or concert of action with any other
28 breeder or with any other propagator-distributor to:

- 29 (1) Fix, establish, determine or suggest royalties,
30 or other terms and conditions of sale, at or
31 upon which breeders license the use of or sell
32 cuttings to any third person;

- (2) Fix, establish, determine or suggest prices, discounts, or other terms and conditions for the sale of cuttings to any third person;
- (3) Refuse to solicit or refrain from soliciting the cuttings customers of any person;
- (4) Allocate or divide sales territories or customers with respect to the sale of cuttings;
- (5) Refuse to sell, give away or loan purchased cuttings or cuttings propagated therefrom, to any third person;
- (6) Require purchasers of cuttings to report mutations on said purchased cuttings to sellers thereof or to agree that mutations found on purchased cuttings or on plants propagated therefrom shall belong to any persons other than finders thereof;
- (7) Boycott or threaten to boycott any person who breeds, propagates, or sells cuttings or who has manifested an intent to do so;
- (8) Hinder, restrict, limit, or prevent any third person from breeding, propagating, purchasing or selling cuttings; provided however, that the provisions of this subsection (A)(8) shall not apply to any bona fide contract between a defendant and a breeder granting such defendant the option to purchase a claimed new variety of chrysanthemum, or to acquire patent rights thereto, under the terms of which the parties thereto agree not to disclose said claimed new variety to others and not to market cuttings therefrom for such a period of time as reasonably may be necessary for the evaluation of said new variety for the purposes of said option;

1 (B) Each defendant is enjoined and restrained from
2 directly or indirectly entering into, adhering to, maintaining
3 or engaging in any contract, agreement, arrangement, under-
4 standing, plan, program or concert of action with any other
5 person to prohibit, restrain, or limit the right of any person
6 either to export or to import unpatented cuttings from or
7 into the United States, its territories and possessions.

8 V

9 Each defendant herein is enjoined and restrained from
10 directly or indirectly requiring any purchaser of cuttings:

11 (A) Not to sell, give away or loan purchased cuttings,
12 or cuttings propagated therefrom, to any third person;

13 (B) To limit or confine resale of purchased cuttings
14 to any designated third person or group or class of persons
15 or to any designated territory or geographical area;

16 (C) To report to seller mutations found by any said
17 purchaser on purchased cuttings or on plants propagated
18 therefrom or to agree that said mutations so found by any
19 said purchaser become the property of any person other than
20 the finder thereof.

21 VI

22 Each defendant herein is ordered and directed:

23 (A) Within thirty (30) days after the entry of this
24 Final Judgment, to amend each BGA agreement, each YGA agree-
25 ment, each GRA agreement, and each other agreement containing
26 provisions prohibited by this Final Judgment to which each
27 defendant respectively is a contracting party by eliminating
28 therefrom all such prohibited provisions and to furnish a
29 letter of amendment to each person signatory thereto and to
30 furnish a copy of this Final Judgment to each such person
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1 requesting same, which letter of amendment shall be substan-
2 tially identical to the language of Exhibit A which is
3 attached hereto and made a part hereof; and, for the purpose
4 of compliance with this subsection insofar as it relates to
5 signatories whose names are unknown to such defendant, to
6 utilize in good faith its best efforts to obtain the names
7 and addresses of said signatories unknown to such defendant,

8 (B) Within sixty (60) days after the entry of this
9 Final Judgment, to file with this Court and to serve upon the
10 plaintiff affidavits concerning the fact and manner of
11 compliance with subsection (A) of this section VI, including
12 the method and effort utilized by such defendant in compiling
13 the list of signatories receiving said letter of amendment.

14 VII

15 (A) Defendant BGA is ordered and directed, within
16 thirty (30) days after the entry of this Final Judgment, to
17 serve by mail upon each of its members, except Yoder and
18 Yoder-California, a conformed copy of this Final Judgment
19 and, within sixty (60) days after the entry of this Final
20 Judgment, to file with this Court and to serve upon the
21 plaintiff affidavits as to the fact and manner of compliance
22 with subsection (A) of this section VII.

23 (B) Defendant BGA is ordered and directed to furnish
24 a copy of this Final Judgment to each new member at the
25 time of acceptance of such membership and to obtain from
26 each such member, and keep for a period of ten years in its
27 files, a receipt therefor signed by each such new member.

28 VIII

29 Effective July 1, 1972, each defendant herein is
30 enjoined and restrained from requiring any purchaser of
31 unpatented cuttings to pay a royalty or other similar charge
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1 for additional unpatented cuttings propagated on and after
2 July 1, 1972 by said purchaser from said unpatented cuttings.
3 Nothing in this Final Judgment shall be deemed to be an adju-
4 dication concerning the legality of the payment, receipt or
5 collection of such a royalty or charge prior to July 1, 1972.

6 IX

7 Nothing in this Final Judgment shall be deemed or
8 construed to affect whatever rights Yoder and Yoder-California
9 may have lawfully to obtain, protect and exploit any right
10 or rights existing under the patent laws of the United States
11 of America or of any foreign country.

12 X

13 Defendants Yoder and Yoder-California and each of them
14 are ordered and directed:

15 (A) Within sixty (60) days of the entry of this Final
16 Judgment, to furnish each of their respective distributors a
17 copy of this Final Judgment and a letter notifying each of said
18 distributors that he may sell cuttings purchased from Yoder or
19 Yoder-California at whatever prices, discounts or other terms
20 or conditions of sale as each of them may independently choose
21 and need not abide by prices, discounts, terms or conditions
22 of sale fixed or suggested by Yoder or Yoder-California, which
23 letter shall be substantially identical to the language of
24 Exhibit B which is attached hereto and made a part hereof;
25 and

26 (B) Within ninety (90) days of the entry of this Final
27 Judgment, to file with this Court and to serve upon the
28 plaintiff affidavits concerning the fact and manner of
29 compliance with subsection (A) of this section X.
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XI

(A) Defendants Yoder, Yoder-California and each of them are enjoined and restrained from directly or indirectly:

- (1) Suggesting, urging or requiring any distributor to adopt or abide by prices, discounts or other terms and conditions for the sale of cuttings established or suggested by Yoder or Yoder-California;
- (2) Terminating, or threatening to terminate, the distributorship of any distributor for the reason, in whole or in part, that such distributor has not adopted or adhered to prices, terms and conditions of sale suggested by Yoder or Yoder-California;
- (3) Refusing to sell, or threatening to refuse to sell, cuttings to any distributor for the reason, in whole or in part, that such distributor has not adopted or adhered to prices, terms and conditions of sale suggested by Yoder or Yoder-California;
- (4) Printing or distributing price lists purporting to contain prices, discounts and other terms and conditions at and upon which distributors sell cuttings to any third person; and
- (5) With the exception of C.O.D. shipments ordered by any distributor, transmitting invoices or bills directly to the customers of distributors for cuttings sold by said distributors, and, from and after forty-five (45) days after the entry of this Final Judgment or January 1, 1972, whichever date is later, transmitting to said distributors invoices or bills

1 containing the prices to be paid by said
2 distributors' customers.

3 (B) Defendants Yoder, Yoder-California and each of
4 them shall not be deemed to have established or suggested
5 prices, discounts, terms and conditions of sale, or otherwise
6 to have violated the provisions of this section XI, by
7 publishing or transmitting in the normal course of business
8 any list or schedule indicating prices, discounts and other
9 terms and conditions at which such defendants offer to sell
10 cuttings to end users, provided that each such list or
11 schedule shall contain, in easily legible type, the statement
12 that "The prices, discounts, terms and conditions listed
13 herein are applicable only to sales of cuttings by Yoder
14 Brothers, Inc. (or the appropriate Yoder subsidiary). Each
15 distributor of Yoder cuttings is free to set whatever prices,
16 discounts, terms and conditions of sale it may choose for
17 its sales."

18 XII

19 For a period of five (5) years after the entry of this
20 Final Judgment, defendants Yoder and Yoder-California are
21 each enjoined and restrained from purchasing or acquiring
22 the capital stock or assets of any breeder or propagator-
23 distributor without notice given to the plaintiff at least
24 ninety (90) days prior to the consummation of the merger or
25 acquisition.

26 XIII

27 (A) For the purpose of determining or securing com-
28 pliance with this Final Judgment, duly authorized representa-
29 tives of the Department of Justice shall, upon the written
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1 request of the Attorney General, or the Assistant Attorney
2 General in charge of the Antitrust Division, upon reasonable
3 notice to any defendant made to its principal office, be
4 permitted, subject to any legally recognized privilege:

5 (a) access during the office hours of said
6 defendant, to all books, ledgers, accounts,
7 correspondence, memoranda, and other records and
8 documents in the possession of or under the control
9 of said defendant relating to any of the matters
10 contained in this Final Judgment; and

11 (b) subject to the reasonable convenience of
12 said defendant and without restraint or interference
13 from it, to interview the officers and employees of
14 defendant, who may have counsel present, regarding
15 any such matters.

16 (B) Upon the written request of the Attorney General
17 or the Assistant Attorney General in charge of the Antitrust
18 Division, made to its principal offices, each of the
19 defendants shall submit such written reports with respect
20 to any of the matters contained in this Final Judgment as
21 may from time to time be requested.

22 (C) No information obtained by the means provided in
23 this section XIII shall be divulged by any representative
24 of the Department of Justice to any person other than a duly
25 authorized representative of the Executive Branch of the
26 plaintiff except in the course of legal proceedings to which
27 the United States is a party for the purpose of securing
28 compliance with this Final Judgment, or as otherwise required
29 by law.
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XIV

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: March 15, 1972

/s/ WILLIAM K. THOMAS
United States District Judge

EXHIBIT A

(To be sent to each signatory of a
BGA, YGA, GRA or similar agreement)

Dear _____:

In accordance with the terms of a decree entered by the United States District Court in Cleveland, Ohio, with the consent of the parties, terminating the Government's antitrust lawsuit, we are sending this notice to you and all others who have signed BGA, YGA, GRA or similar agreements.

The decree orders us to amend all BGA, YGA, GRA and similar agreements and we hereby do so. You are no longer bound by any provisions of such agreements which prohibit you from propagating, selling, loaning, or giving away unpatented cuttings or which require you to report to us mutations or sports found on purchased cuttings and to agree that Yoder Brothers, Inc., or anyone other than the finder is the owner of the mutation or sport. The decree also provides that after July 1, 1972 we will be prohibited from receiving royalties for additional cuttings propagated by you from unpatented cuttings of varieties presently included within the coverage of these agreements. The decree does not determine the legality of such royalty collection prior to July 1, 1972, and we are not prohibited by the decree from receiving royalties during that period. A copy of the Court's decree is available upon request to us or to the Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California.

EXHIBIT B

(To be sent to each "distributor" of
Yoder and Yoder-California)

Dear _____:

In accordance with the terms of a decree entered by the United States District Court in Cleveland, Ohio, with the consent of the parties, terminating the Government's antitrust lawsuit, we are sending this notice to you and all other Yoder representatives.

A copy of the Court's decree is enclosed. In accordance with the decree, you may sell cuttings purchased from Yoder or Yoder-California at whatever prices, discounts or other terms or conditions of sale you may independently choose, billing such customers in whatever form you may choose, and you are free to sell cuttings to any customer you may choose, and in any geographic area.