

Minnesota Apple Growers for Free Trade initiate lawsuit

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I'm going to be sending several emails to you over the next few weeks concerning an important development in our industry. You may want to watch the news the next couple days.

A small group of Growers have hired the firm of Foley and Mansfield over the issues with Sweetango. below is an introduction from our attorney.

When available, I'll send links to the legal complaint and to the news press release and anything else of importance

Please bear with me, we're in the middle of strawberry harvest.

Karl Townsend
Dassel, MN

COMMUNICATION TO ALL APPLE GROWERS

To all Minnesota Apple Growers:

The purpose of this correspondence is to notify and inform all Minnesota Apple Growers about an important case that will be commenced this week by the Minnesota Apple Growers for Fair Trade. The case involves the recent release of the newest regional variety developed by the University of Minnesota's Horticultural Research Center. The tree is called the Minneiska and it bears the fruit commonly referred to as SweeTango.®

Exclusivity of SweeTango®

While the variety was developed through the use of state and federal funding, the University of Minnesota sold the exclusive rights to produce, market and sell SweeTango® to Pepin Heights Orchard, Inc. The agreement was negotiated and executed in relative secrecy before many of the Minnesota Apple Growers had knowledge of the variety, let alone the Exclusive License Agreement. It is believed that the Exclusive License Agreement runs contrary to state and federal law and the University's policy as a Land Grant University.

The Exclusive License Agreement is problematic because the SweeTango® apple variety was developed through the use of state and federal taxpayer funds. The University of Minnesota is a Land Grant University created by the Hatch Act of 1887 establishing experimental stations at every land grant university. The Hatch Act is a federal statute that provides research and development funds for the benefit of the State's citizens. Each experimental station receives federal funds every year to support ongoing research and development of plant technology. Pursuant to the Act, states also provide matching funds to support the experiment station.

Awarding the exclusive sales and marketing rights to Pepin runs contrary to the University's own written principles that guide the management and distribution of University-developed technology including plants and plant related material.

* To ensure that the results of University research will have the maximum possible beneficial effect for Minnesotans and the larger public.

* To realize a fair return to the University so long as this does not interfere with the first principle.

The Exclusive License Agreement restricts fair trade of SweeTango.®

The agreement limits the MN Apple Growers from growing more than 1000 trees and completely prohibits pooling or combining harvests with other MN Apple Growers to sell for wholesale distribution. Further, MN Apple Growers may only sell SweeTango® in the state of Minnesota. In other words, the agreement eliminates fair competition for a market share of SweeTango.® The effect of such restrictions creates unfair competition in the wholesale distribution of apples- both in the Minnesota marketplace and outside the state of Minnesota. Further, the inability to provide a complete line of regional varieties, including SweeTango® has already resulted in the loss of entire wholesale accounts for some of the Minnesota Apple Growers.

Goals of the Minnesota Apple Growers for Fair Trade

The Minnesota Apple Growers for Fair Trade are looking to level the playing field, preserve the mutually beneficial relationship with the University and its apple breeding program, and ensure that Minnesota consumers have access to the quality locally grown apple varieties at fair and competitive prices.

In that regard, our group has filed a lawsuit against the University of Minnesota, Pepin Heights and other individuals associated with the development of SweeTango® and the formation of the Exclusive License Agreement. The lawsuit seeks a judicial determination as to the Minnesota Apple Growers' rights and status under the exclusive license agreement and Pepin's non-exclusive license agreement for Minnesota apple growers. Specifically, we are seeking a declaration that both the exclusive license agreement between Pepin and the University and the non-exclusive license agreement issued by Pepin to some of the Minnesota Apple Growers are void because these

agreements violate public policy, violate state anti-trust laws and the Minnesota State Constitution, promote unfair competition, create consumer confusion, and violate federal law prohibiting unfair agricultural-trade practices.