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Desert Glory files lawsuit for trademark infringement

By Ashley Bentley
Staff Writer

Claiming trademark infringement and unfair competition, San Antonio-based Desert Glory Ltd. filed a lawsuit against Ag-Mart Produce Inc., Immokalee, Fla., doing business as Santa Sweets Inc.

Ag-Mart copied the packaging design Desert Glory uses for its NatureSweet Cherubs-brand tomatoes, according to the lawsuit, which was filed in federal court in Tucson, Ariz.

Desert Glory is trying to prove the company intentionally chose a tomato package design similar to its own to confuse consumers and take advantage of

Cherubs' brand reputation, according to a Desert Glory news release.

Ag-Mart's SweetRipes brand tomatoes are implicated.

"Desert Glory spent years and millions of dollars to develop and protect its trademark rights in the NatureSweet Cherubs packaging," Bryant Ambelang, president and chief executive officer, said in the release. "It's wrong for a competitor to copy our hard work in ways likely to confuse consumers for their own gain."

In addition to asking the courts to stop Ag-Mart from using the packaging, Desert Glory also is suing for profits that Ag-Mart makes through use of the packaging and compensation for damage to Desert Glory and its brand

reputation, according to the release.

Desert Glory received trademark protection on its Cherubs packaging — which features a cylindrical plastic clear top on a circular yellow plastic bottom — in 2006, just seven months after launching the product. Ag-Mart launched its SweetRipes packaging in a test market in July, according to the release.

The lawsuit was

filed Sept. 20.

Ag-Mart representatives declined comment.



Desert Glory says the packaging for Santa Sweets' SweetRipes is too similar to its Cherubs packaging.

Wal-Mart sizes up smaller store plans

As the retailer looks at big city locations it finds it tough to fit supercenters in.

By Bruce Blythe
Business Editor

Wal-Mart Stores Inc. plans step up expansion efforts large U.S. cities, adding smaller-format neighborhood stores offering fresh foods to prop sagging sales.

Bill Simon, chief executive officer of Wal-Mart's U.S. operations, said the retailer must more creative with its store formats as the company expands beyond rural and suburban areas into denser urban markets.

"There are not a lot of big, empty lots that we can build 200,000-square-foot supercenters in, nor do we want to anymore," Simon said during a Sept. 15 investor conference.

Wal-Mart will have a "healthy mix" of supercenter and smaller stores, including grocery and neighborhood market formats, he said.

Aiming at urban areas

Bentonville, Ark.-based Wal-Mart has posted five consecutive quarterly comparable-store sales declines as the weak economy squeezes the retailer's core, lower- to middle-income customers.

Simon said Wal-Mart planned to build several dozen stores in the Chicago area over the next several years.

"Wal-Mart is trying to reach people in the busier cities," Jeremy Diamond, consul with Baltimore-based Dism Group, Wal-Mart's typical "needs so much room that it been unable to focus on urban areas," he said.

Amid fierce competition, Wal-Mart is trying a new venue, Diamond said.

A Wal-Mart spokesman declined to specify cities where the company might build what types of stores planned. But Wal-Mart's summer scouting locations in New York City, San Francisco and other cities, Associated Press report Sept. 20, citing real estate sources.

"You will see us taking Chicago approach with other cities," Simon said Sept. 15.

Fruits, vegetables and other fresh foods are expected to be key part of the urban expansion.

"The majority of our store today include a full grocery offering," Wal-Mart spokesman Steven Restivo said in an e-mail Sept. 22. "It's an area that customers have come to expect from Wal-Mart, and it's an area where we can save customer lot of money."

"In cities across the country residents want more options, affordable, healthy food, a we want to be part of the solution in as many cases as we can."

Wal-Mart's other formats

Wal-Mart plans to provide more details at an analyst meeting scheduled for Oct. 13, a company said.

Over the past five years Wal-Mart accelerated openings of its Neighborhood Market stores, which feature fresh foods as well as pharmacy and beauty products. The company has 181 Neighborhood Market stores in the U.S. that average about 41,500 square feet each.

Also, Wal-Mart in 2009 launched Marketside store which feature fresh produce

What's inside

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► Saw-A-Lot Food Stores is honored supporting Florida and locally grown produce



Bryan Silbermann (left), president and chief executive officer of the Produce Marketing Association, Newark, Del., talks with Gene Duff, executive vice president and general manager of Pioneer Growers Co-op, Belle Glade, Fla., at the opening session of the 67th Florida Fruit & Vegetable Association convention Sept. 20 in Naples, Fla.



Simon

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Facts behind California emission rules questioned

By Ashley Bentley
Staff Writer

Criticism of research methods used to set regulations affecting how much it costs to ship fresh produce by truck — at least in California — could delay their implementation.

The California Air Resources Board originally based its regulations on research that supported a correlation between the particulate matter emitted by diesel-burning engines, PM 2.5, and more than 20,000 early deaths per year in California.

That assessment fell under scrutiny following revelations that Hien Tran, the agency's lead author on the study, falsified his credentials, and that the board chairwoman Mary Nichols did not disclose that information to the rest of the board before the vote on the rule.

New data

A new study the air resources board seems to be adopting suggests a smaller total — 9,000 people a year — die premature-



► California's emissions fight threatens produce business Handling & Distributing B4

ly in California because of the effects of particulate matter.

That study found a causal relationship between engines burning diesel fuel and premature deaths but uses data from the EPA's assessment of 116 U.S. cities.

"We understand CARB has a public health mission, but the state of California has as much a stake in the well-being of the public and has a responsibility to protect the economy and jobs in the state as it does air quality, and that balance has not been

present in that process," said Dave Puglia, senior vice president of government affairs for Irvine, Calif.-based Western Growers.

Researcher fights for job

In another twist, University of California-Los Angeles researcher James Enstrom is fighting for his job after claiming his research shows there is no link between PM 2.5 emissions and premature deaths.

Enstrom said he believes his stance against the air resources board and his research is the reason behind his termination, according to media reports.

His appointment has been extended until March 31 while

the grievance process is followed, said Phil Hampton, assistant director in the office of media relations for UCLA.

The produce industry is also taking a play out of the construction industry's playbook.

The construction industry's heavy-duty trucks were the first to go through this process with the air resources board. It argued the original emissions estimates did not accurately reflect current emissions because of the economic downturn, which means less business, smaller fleets and less frequent use of trucks.

"It's the same thing now in highway truck use," Puglia said. "You go to the Port of Long Beach, and you can tell we're in a state of reduced economic activity, so we're going to compel CARB to reduce that number."

The air resources board is expected to release proposed amendments to the regulation by the first week of November, after which it will hold a 45-day open comment period.

Center for Produce Safety grants target causes of outbreaks

By Mike Hornick
Staff Writer

The latest round of research grants from the Center for Produce Safety — 17 projects totaling \$2.8 million — shines a light on issues that affect the industry as a whole as well as specific commodities and regions.

"The whole focus of the center is to address questions growers need answers to," said Bob Whitaker, chairman of the Davis, Calif.-based CPS technical committee and chief science and technology officer for the Produce Marketing Association, Newark, Del.

"By nature, some will be

executive director of the center, announced the research projects at the Florida Fruit and Vegetable Association's annual convention Sept. 21 in Naples, Fla.

A list of the awards are at <http://tinyurl.com/CPSresearch>.

It's too early to say what applications the new research will have, Fernandez-Fenaroli said. For recently completed re-



Whitaker



Fernandez-Fenaroli

search projects, which are co-funded by industry, have focused on tomatoes, leafy greens and melons.

"We prioritized those commodities that have had a food safety event," Fernandez-Fen-

aroli said. "Other programs," Whitaker said, "like developing a detection tool for an E. coli strain, will apply to any situation, whether it be tomatoes, leafy greens or whatever."

Many of the 17 projects targeted to fill gaps in their knowledge.

While the CPS is selective — more than 25 proposals went unfunded in next year's allocations — it responds to initiatives by commodity boards and industry on a matching-fund basis. A project's effect may prove limited to, say, to leafy greens or walnut growers, but some research is likely to have ripple effects.

"Other programs," Whitaker said, "like developing a detection tool for an E. coli strain, will apply to any situation, whether it be tomatoes, leafy greens or whatever."

but not duplicate, information.

"A lot of people had done risk assessments for different crops," Whitaker said. "Rather than reinvent the wheel, when the center was created we took all those assessments and laid them out on my dining table. They matched up. A lot of the things that concerned tomato people concerned leafy greens, melons and other commodities."

The projects, mostly by university researchers, officially start Jan. 1. Since 2008, the University of California-Davis-based Center for Produce Safety has given \$6.8 million to 41 research projects.



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Golden Checkmark



At Fresh Summit 2009, Tim York (left), president of Salinas, Calif.-based Markon Cooperative, receives the Leafy Greens Marketing Agreement's Golden Checkmark award presented by Joe Pazzini, chairman of the agreement and chief operating officer of Castroville, Calif.-based Ocean Mist Farms.

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