

STATE OF MINNESOTA  
COUNTY OF HENNEPIN



DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
Case Type: 14-Other Civil

Aamodt Apple Farm, Inc.,  
Apple Ridge Orchards,  
Vince Steffen, Richard Bremer,  
Bridal Rock Orchard, Chuck Bremer,  
Cenco Farms, Inc., d/b/a/ Afton Apple Orchard,  
Croix Farm Orchard, John Leadholm,  
Dassel Hillside Farm, Karl Townsend,  
Ferguson's Morningside Orchard, LLC,  
JQ Fruit Farm and Orchard, Dan Whitcomb,  
Minnesota Apple Producers, Inc. d/b/a Nelson's  
Apple Farm, Old Hickory Orchard, Fred  
Sandvick, Sacia Orchard, Tom Bork,  
Southwind Orchard, John Curtis,  
Van Lin Orchard, Rick Van Lin,  
Wescott Orchards and Agri Products, Inc., and  
Mississippi Valley Fruit Company, LLC,

Plaintiffs,

v.

Regents of the University of Minnesota,  
Pepin Heights Orchard, Inc., Dennis Courtier,  
Tim Byrne, David Bedford, Anthony L. Strauss,  
Michael F. Moore, and Beverly R. Durgan,

Defendants.

**COMPLAINT**

Plaintiffs, for their Complaint against the above-named Defendants, state and allege as follows:

**INTRODUCTION**

1. Plaintiffs are apple growers located primarily in the State of Minnesota. They bring this action against the Regents of the University of Minnesota ("University"), Pepin Heights Orchard, Inc. ("Pepin"), Dennis Courtier ("Courtier"), Tim Byrne ("Byrne"), David

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Bedford (“Bedford”), Anthony L. Strauss (“Strauss”), Michael F. Moore (“Moore”), and Beverly R. Durgan (“Durgan”) relative to an exclusive license agreement for the production, marketing and sales of a new and highly-anticipated apple variety commonly referred to as SweeTango.®

2. Developed through the use of state funding (33%), SweeTango® is a breakthrough apple variety. It is a cross between two popular apples—the Honeycrisp™ and Zestar!™—and it has the marketing advantage of being an early season apple variety. SweeTango® has been released to consumers in a limited fashion and has already generated overwhelming demand.

3. SweeTango® was created by Bedford and the University’s apple breeding program, which was created through the Minnesota Agricultural Experiment Station. This entity is a research center built with funds authorized by the Hatch Act of 1887 – a federal statute that provides research and development funds for the benefit of the State’s citizens.

4. According to the University’s written policy, there are two general principles that guide the management and distribution of University-developed technology, including plant germplasm and related plant materials: (1) “to ensure that the results of University research will have the maximum possible beneficial effect for Minnesotans and the larger public” and (2) “to realize a fair financial return to the University so long as this does not interfere with the first principle.”

5. The University granted Pepin an exclusive license to grow, have others grow on its behalf, and sell SweeTango.® According to the terms of the exclusive license agreement, Minnesota apple growers other than Pepin were granted permission to grow a limited number of Minneiska trees which bear SweeTango® but only if the SweeTango® were sold directly to Minnesota end consumers via on-site at Minnesota apple-grower orchards, or farmer’s markets,

or direct store delivery. The exclusive license agreement eviscerated any right to sell and distribute SweeTango® directly to wholesalers, which is an essential revenue outlet for Minnesota apple growers and the Minnesota apple industry. Likewise, the exclusive license agreement further prevents Minnesota apple growers from pooling or combining their limited production of SweeTango® in order to supply larger retail or wholesale markets.

6. In order for plaintiffs to obtain SweeTango®, they must agree to the terms and conditions of Pepin's non-exclusive license agreement for Minnesota growers. The express terms yield the same result as the exclusive license agreement with the University in that Minnesota apple growers are prohibited from selling or distributing SweeTango® to anyone other than Minnesota end consumers or direct store delivery. The plaintiffs, some of whom are smaller growers, are prohibited from pooling their production of SweeTango® together in order to meet the supply requirements of larger retailers, let alone any wholesaler. Such restrictive limitations on plaintiffs' ability to sell and distribute SweeTango® result in unfair competition likely to force some of plaintiffs out of business and significantly impair efforts of other Minnesota apple growers to remain viable, since they are unfairly limited to producing, marketing and selling apple varieties which are losing market popularity or are no longer in demand due to the introduction of SweeTango®.

7. Due to the growing restrictions (a maximum of 1,000 Minneiska trees per licensed Minnesota apple grower) and the sales and marketing restrictions, plaintiffs and wholesale fruit distributors are unable to compete in the apple marketplace. None of the plaintiffs is permitted to pool or combine any SweeTango® harvests to meet larger wholesale distributor demand required by larger wholesalers. The effect of such restrictions creates unfair competition in the wholesale distribution of apples – both in the Minnesota marketplace and

