

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 05-cv-01866 PSF-OES

POD-NERS, LLC, a Colorado limited liability)
company,)
Plaintiff,)
)
v.)
)
DWAIN MCCARTY, an individual and)
MIKE AHLBERG, an individual,)
Defendants)
)

**PLAINTIFF POD-NERS, LLC'S AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

For its complaint against defendants Dwain McCarty and Mike Ahlberg ("Defendants"), plaintiff Pod-Ners, LLC ("Pod-Ners") alleges as follows:

1. This is an action for violations of the Plant Variety Protection Act under 7 U.S.C. § 2541.
2. This Court has subject matter jurisdiction over the claims for relief set forth in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338.
3. This Court has jurisdiction over the persons of Defendants; each is a resident of Colorado, each does business in Colorado, and each committed acts complained of in Colorado.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400.
5. Pod-Ners is a limited liability company organized and existing under the laws of Colorado with its principal place of business at 2611 State Hwy 348, Delta, Colorado 81416.
6. Upon information and belief, Defendant Dwain McCarty is an individual residing and doing business in Colorado at 375 1600 Road, Delta, Colorado 81416.
7. Upon information and belief, Defendant Mike Ahlberg is an individual residing and doing business in Colorado at 3340 1500 Road, Delta, Colorado 81416.
8. Pod-Ners owns a certificate of protection under the Plant Variety Protection Act for the Variety "*Bean, Field - 'Enola.'*" A copy of this PVPA Certificate is attached as Exhibit 1.
9. On information and belief, Defendant McCarty has possessed, planted, grown, harvested, transferred and offered for sale yellow field beans of the protected Enola variety or yellow field beans that are not clearly distinguishable from the protected Enola variety.
10. On information and belief, Defendant Ahlberg has taken possession of yellow field beans of the protected Enola variety or yellow field beans that are not clearly distinguishable from the protected Enola variety for the purpose of cleaning and otherwise preparing those beans for offering and for sale by Defendant McCarty.

11. On information and belief, the actions of Defendants constitute infringements of the PVPA Certificate under 7 U.S.C. § 2541.
12. On information and belief, Defendants' infringing activities have been undertaken in willful disregard of the PVPA Certificate.
13. Pod-Ners has been and continues to be irreparably harmed by the infringing activities of Defendants.

Prayer

Pod-Ners LLC requests judgment as follows:

- A. Preliminarily and permanently restraining Defendants and all parties in privity with either of them from continuing their infringing activities.
- B. Directing Defendants and all parties in privity with either of them to convey to Pod-Ners all embodiments of the infringing compositions in their possession, custody or control.
- C. Directing Defendants and all parties in privity with either of them to inform each of its customers for infringing beans that each bean in the customer's possession, custody or control is an infringement of the PVPA Certificate and must be conveyed to Pod-Ners.
- D. Awarding to Pod-Ners all damages caused by the infringements.
- E. Awarding to Pod-Ners all of its damages trebled.
- F. Awarding to Pod-Ners such other and further relief as the Court may deem just and proper, including increased damages, attorney fees and costs.

Demand for Jury Trial

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Pod-Ners
demands a jury trial on all issues triable by jury.

Dated: October 7, 2005

Respectfully submitted,

LATHROP & GAGE, L.C.

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