AGRICULTURE LAW

The practice of agriculture law is a collaborative effort at Parker Law Firm drawing on the talents of our most experienced lawyers. As current or former farmers ourselves, we speak the language and understand the concerns of the agriculture industry. Our attorneys understand the wide variety of issues faced by family farming operations, agribusiness and cooperatives and pride ourselves on being experienced in all areas of agriculture law.

Family-owned farms pose unique estate and tax planning challenges. Our attorneys are skilled in all aspects of asset and succession planning. We help families achieve personal and business objectives through effective corporate and tax strategies that emphasize estate planning, generational wealth, business succession, and liquidity.

Parker Law Firm has played a key role in protecting the interests of our local family farms. In multi-state cases and class action suits such as, In re Genetic Rice, our firm has represented family farming operations in enforcing claims of public nuisance, private nuisance, negligence per se (based on violations of federal and state statutory law), general negligence, strict liability for ultrahazardous activities and strict product liability against one of the world's largest agribusiness companies, Bayer Crop Science. Our firm is committed to responsible agriculture practices and will seek compensatory, consequential, punitive, exemplary damages, and injunctive relief arising from any alleged wrongful conduct.

The term agribusiness is widely used as an abbreviation of the words agriculture and business, referring to the range of activities and disciplines encompassed by modern food production, including farming and contract farming, seed supply, agrichemicals, farm machinery, wholesale and distribution, processing, marketing, and retail sales.

A significant portion of our practice is dedicated to procurement and enforcement of intellectual property rights associated with proprietary plant varieties developed by agribusinesses. The Plant Variety Protection Act of 1970 ("PVPA"), 7 U.S.C. §§ 2321-2582, is an intellectual property statute in the United States. The PVPA gives breeders up to 25 years of exclusive control over new, distinct, uniform, and stable sexually reproduced or tuber propagated plant varieties. A major expression of

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plant breeders' rights in the United States, the PVPA grants protection similar to that available through patents, but these legal schemes differ in critical respects. The PVPA should not be confused with plant patents, which are limited to asexually reproduced plants (not including tuber propagated plants).

The PVPA confers a limited period of legal control to breeders of sexually reproduced or tuber propagated plant varieties. In order to be eligible for a certificate under the PVPA, a plant variety must satisfy four requirements. First, it must be new, in the sense that propagating or harvested material has not been sold or otherwise disposed of for purposes of exploitation for more than one year in the United States, or more than four years in any foreign jurisdiction (or six years in the case of a tree or vine). Second, the variety must be distinct – that is, clearly distinguishable from any other publicly known variety. Distinctness may be based on one or more identifiable morphological, physiological, or other characteristics, including commercially valuable characteristics affecting activities such as milling and baking (in the case of wheat). Third, the variety must be uniform, in the sense that any variations are describable, predictable, and commercially acceptable. Finally, the variety must be stable, in the sense that the variety, when reproduced, will remain unchanged with regard to its essential and distinctive characteristics within a reasonable degree of commercial reliability.

A plant variety certificate gives the breeder the right to exclude others from selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing (as distinguished from developing) a hybrid or different variety. The term of protection runs 20 years from the certificate's date of issue, or 25 years in the case of a tree or vine.

The PVPA contains three exemptions that significantly limit the scope of the plant breeder's exclusive right. First, the PVPA's provision safeguarding the "public interest in wide usage" allows the United States Department of Agriculture to declare an otherwise protected variety open on the basis of equitable remuneration to the owner, upon a finding that no more than two years of compulsory licensing of a protected variety is necessary in order to insure an adequate supply of fiber, food, or feed and that the owner is unwilling or unable to meet public demand at a price which may reasonably be deemed fair. Second, the PVPA's "research exemption" declares that the use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute infringement.

The PVPA's third exemption permits a farmer to save seed from protected varieties and to use

such saved seed in the production of a crop without infringement. Prior to 1994, this exemption also allowed farmers to sell such saved seed to others without infringement. However, when Asgrow Seed Company sued Denny and Becky Winterboer over the scope of this exemption the landscape of the farmer's exemption changed. The exemption to sell seeds is now defined by the 1995 Supreme Court decision Asgrow Seed Co. v. Winterboer, 513 U.S. 179 (1995). In Asgrow Seed Co. v. Winterboer, the Supreme Court held that, "a farmer who meets the requirements set forth in the [provisions of the PVPA] may sell for reproductive purposes only such seed as he has saved for the purpose of replanting [on] his own acreage."

In 1994, legislation to bring the PVPA into compliance with the 1991 Act of the UPOV Convention also included amendments that eliminated the exemption for sales, but continued to allow farmers to save and replant seed on their own farms without infringement.

In addition to representing family farming operations and agribusinesses, we also work hand-in-hand with organizations that address public policy and developing issues facing agriculture. Our experience with these organizations provides our clients with the comprehensive knowledge needed to plan for the future of the industry.

Often, agricultural cooperatives must rely on legal advice to successfully defend against antitrust claims in federal court. Our attorneys are prepared to counsel cooperatives on the antitrust implications of certain practices, including discussions between direct competitors, information exchanges, price fixing and attempts to set industry standards.

Whether you are a local family farm or one of the world's leading agribusinesses, Parker Law Firm will provide a corroborative and detail oriented approach to fulfilling your specific needs.

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