IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

The DeLong Co., Inc.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 17-cv-778
	)	
Syngenta AG,	)	
Syngenta Crop Protection AG,	)	
Syngenta Corporation,	)	
Syngenta Crop Protection, LLC,	)	
Syngenta Biotechnology, Inc., and	)	
Syngenta Seeds, LLC,	)	
	)	
Defendants.	)	**JURY TRIAL DEMANDED**

THE DELONG CO., INC.'S ORIGINAL COMPLAINT

The DeLong Co., Inc. ("DeLong" or "Plaintiff") for its Complaint against Syngenta AG ("Syngenta AG"), Syngenta Crop Protection AG ("Crop Protection AG"), Syngenta Corporation ("Syngenta Corp."), Syngenta Crop Protection, LLC ("Crop Protection LLC"), Syngenta Seeds, Inc. ("Syngenta Seeds") (now known as Syngenta Seeds, LLC), and Syngenta Biotechnology, Inc. ("Syngenta Biotech") (now merged with Crop Protection, LLC, with Crop Protection, LLC, as the survivor) (Syngenta AG, Crop Protection AG, Syngenta Corp. Crop Protection LLC, Syngenta Seeds and Syngenta Biotech are sometimes hereinafter collectively referred to as "Syngenta" or "Defendants"), allege, on personal knowledge as to themselves and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

Biotechnology holds promise to potentially improve the lives of many. But it also can cause extraordinary harm if handled irresponsibly.

Part of acting responsibly requires that biotechnology companies avoid introducing a new genetic trait into the market prematurely before it has been approved in all significant export markets. All in the industry, including Syngenta, recognize that premature commercialization can cause significant trade disruptions and enormous harm to farmers and other industry participants. That is why they have pledged to each other and to other stakeholders, including both corn farmers and other industry participants, that they will act responsibly in introducing new bio-engineered genetic traits into the market.

Syngenta had the opportunity to act responsibly in 2010. Its new genetically modified corn Agrisure Viptera®, containing the MIR162 genetic trait, had just been deregulated by the United States Department of Agriculture ("USDA"). But Syngenta was aware that a large and growing export market for U.S. corn and corn products, China, had not approved MIR162. In fact, Syngenta had only that same year sought regulatory approval in China, and at the time, the average time for regulatory approval in China was 2-3 years. The process is longer if applications are incomplete or incorrect. And Syngenta's were. Syngenta had been previously warned by industry participants not to introduce another MIR genetic trait because of lack of approval in export markets, and the devastating consequences that could occur from such premature commercialization.

But Syngenta also knew that the clock was ticking on expiration of its patent for this genetic trait. Every year that passed without commercialization meant lost monopoly profits granted by patent.

Syngenta had a decision to make. It could wait until China approved its new genetic trait and temporarily forego its monopoly profits. That is what it had pledged to do, and what responsible practice in any event dictated. Or Syngenta could immediately commercialize Agrisure Viptera®, and create an enormous risk that U.S. corn farmers (also known as "Producers" as defined in the Court's

March 10, 2015 Order (ECF No. 287 at 4) and other industry participants (also known as "Non-Producers") would lose one of their large and growing export markets.

Sadly, Syngenta opted for its monopoly profits over responsibility to its stakeholders. It chose to commercialize Viptera® for the 2011 crop year knowing that China would not approve MIR162 until sometime ***after*** that trait had entered export channels.

During 2011 – 2013, Syngenta was called upon again by industry participants to show responsibility and stop its overly aggressive commercialization. China's importance as a purchaser of U.S. corn and corn products had continued to grow and it still had not approved MIR162. Syngenta's response was to *expand* sales for the 2012 and 2013 growing seasons, and capture more monopoly profits.

In November 2013, the very occurrence that had been foreseen by industry participants, including Syngenta, occurred. U.S. exports to China were found to be contaminated with MIR162, which still had not been approved by China. China therefore began rejecting shipments of corn from the U.S. Shipment of distillers dried grain with solubles (DDGS), a byproduct of corn ethanol production sold by many industry participants, were similarly rejected and became subject to a prohibitive certification process in the summer of 2014.

After rejection of U.S. corn and corn product shipments, industry participants in early 2014 demanded that Syngenta immediately halt commercialization of Agrisure Viptera®. They also demanded that Syngenta not commercialize a brand new product, Agrisure Duracade™, which also contained MIR162 and a new event, not approved by China and other export markets -- Event 5307. The industry participants pointed out that they were "gravely concerned about the serious economic harm" to those in the industry, including both corn Producers and Non-Producers, caused by the loss of

the Chinese market. At that time, the National Grain and Feed Association quantified the economic harm as already ranging from $1 billion to $2.9 billion.

Syngenta doubled down. It continued to sell Agrisure Viptera®, and launched Agrisure Duracade™ for the 2014 crop year, thereby prolonging the economic harm indefinitely. Those irresponsible actions also ensured that the economic losses to farmers and others in the industry would continue to grow.

These events show corporate greed at its worst. But there is more. To attempt to minimize the perceived impact of its conduct, Syngenta actively misled farmers, industry participants and others about the importance of the Chinese market, the timing and substance of its application for approval in China, the timing of when China was likely to approve MIR162, its ability to "channel" Viptera® to non-Chinese markets and otherwise contain the infiltration of Viptera® into the U.S. corn supply and other issues described below. In fact, even though it represented to the USDA and the public that "there should be no effects on the U.S. maize export market" from deregulation and that it would impose stewardship and channeling requirements to steer Viptera® corn away from export markets that had not approved it, Syngenta did not follow through in any meaningful way on this commitment. Just the opposite. When one company – Bunge North America, Inc. ("Bunge") – tried to minimize the risk that Viptera® would be found in shipments to China by refusing to accept it, Syngenta sued Bunge in an effort to force it to take Viptera®. Syngenta was far more concerned about the impact on its business than it was about the loss of an important export market for the corn industry.

Under the basic laws of supply and demand, when there is less demand for a product, the price is lower than it otherwise would be. China was a large and growing export market, and was predicted by the USDA to be our largest export market for corn by 2020. China was also a large and growing market for DDGS, which are also sold by many Non-Producers. The loss of these markets has caused

enormous economic harm to U.S. corn Producers and Non-Producers, and that harm is continuing to grow. While China finally approved MIR162 in December 2014, it has not approved Event 5307. U.S. corn exports to China have not yet begun to recover, and it remains to be seen whether they will ever regain the levels they would have attained but for the embargo.

Those injured by Syngenta's conduct fall into two groups: (a) Producers (farmers and others actually involved in the production of U.S. corn) who grow corn and sell it to other market participants; and (b) all of the other Non-Producer market participants affected by the drop in corn prices and/or the rejection of U.S. corn and corn by-products in foreign markets because of the presence of MIR162. This Complaint sets forth the claims of DeLong, a Non-Producer. With this Complaint, Plaintiff seeks compensation for losses it has suffered as a result of Syngenta's irresponsible conduct, and punitive damages for Syngenta's reprehensible and outrageous behavior.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case under 28 U.S.C. § 1331, 28 U.S.C. § 1332(a)(1)-(3), and 15 U.S.C. § 1121(a) in that claims are asserted under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

2. In the further alternative, this Court has supplemental jurisdiction over this case under 28 U.S.C. § 1367(a).

3. Venue is proper in the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because DeLong suffered damages in this District due to Defendants' conduct. Additionally, venue is also proper the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because Defendants have marketed, sold, or otherwise disseminated, and continue to market, sell, or otherwise disseminate Viptera® and Duracade™ corn in this District.

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