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IN THE MATTER OF THE NATURAL PRODUCTS MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL OF THE BRITISH COLUMBIA VEGETABLE
MARKETING COMMISSION DECISION NOT TO GRANT AGENCY STATUS OR EXEMPTION
FOR THE MARKETING OF 'MINI' HOTOHOUSE CUCUMBERS BY TOWNLINE
ENTERPRISES

BETWEEN:

TOWNLINE ENTERPRISES,

APPELLANT

AND:

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION,

RESPONDENT

AND:

WESTERN GREENHOUSE GROWERS' CO-OPERATIVE ASSOCIATION,

INTERVENOR

DECISION

APPEARANCES:

British Columbia Marketing Board Mr. Doug Kitson, Chair
 Mrs. Christine Dendy, Member
 Mr. Gurmit Brar, Member
 Mr. Don Knoerr, Member

For the Appellant Mr. Karl Hann,
 Townline Enterprises

For the Respondent Mr. Charles Amor, British
 Columbia Vegetable Marketing
 Commission

For the Intervenor Mr. Glen Wong, Western
 Greenhouse Growers'
 Co-operative Association

Date and Place of Hearing:

September 13⁹, 1995,
Richmond, British Columbia

Introduction

The matter before the British Columbia Marketing Board (BCMB) is an appeal by Townline Enterprises (Townline) of a decision by the British Columbia Vegetable Marketing Commission (the Commission) to deny the appellant's application for agency status for the marketing of 'mini' hothouse cucumbers, as communicated in a letter dated August 29, 1995. Western Greenhouse Growers Co-operative Association (Co-op) applied for, and was granted, full intervenor status for the appeal hearing.

Background

The British Columbia Vegetable Marketing Commission regulates the production and marketing of greenhouse cucumbers by the issuance of marketing quota, which is based on square footage of greenhouse production space. It has appointed Western Greenhouse Growers' Co-operative Association (the Co-op) as the sole marketing agency for the lower mainland.

The Co-op has undertaken a market research program to identify potential markets for new or 'specialty' vegetables. One of the prospective markets identified was for 'Mini Cucumbers', a variety of Long English Cucumber, a regulated product. On January 13, 1995, the Co-op wrote to all of its growers advising them of market opportunities in Mini-Long English Cucumber production.

Townline was the only producer to take up the offer, and started shipping to the Co-op on April 18th, 1995. The initial price expectations for mini-cucumbers did not materialize and Townline opted to market the product directly, in contravention of the Commission's orders, and it discontinued shipments to the Co-op.

On June 5, 1995, the Appellant wrote the Co-op expressing concern about the Co-op's marketing of mini-cucumbers. The Appellant stated that they did not wish to phase out mini-cucumber production and requested permission to sell mini-cucumbers directly to small ethnic food stores.

On June 13th, 1995, the Co-op advised Townline that it could either re-plant Long English cucumbers in the designated area for mini-cucumbers or continue to grow mini-cucumbers recognizing that the returns may be very low. In either case, all hothouse-grown product must be marketed by the Co-op as stipulated in the Co-op rules and the Commission's orders.

On June 14th the Commission also wrote the Appellant, stating that the Commission had considered Townline's concern regarding the marketing of mini-cucumbers, and decided that Townline could either remain in mini-cucumber production or pull the mini-cucumber plants by June 30th and re-plant to Long English Cucumbers. The Commission also stated that in either case, all cucumbers must be marketed through the Co-op.

On June 16, 1995, Townline wrote the BCMB to appeal the decision of the Commission.

On June 30th the Appellant requested mediation.

On July 7th, 1995, the Co-op offered to pay \$19.20 per case for all mini-cucumbers produced by the Appellant for the 1995 growing season. This price was greater than the market return for either mini or regular Long English Cucumbers at that time. The Appellant declined the offer.

The BCMB conducted mediation on July 18, 1995, but was unsuccessful.

On August 22, 1995, the Appellant applied to the Commission for Designated Agency Status to market his product himself, but the application was denied. The Appellant is appealing the above decision.

Findings

The BCMB finds, from evidence presented at the hearing:

1. that Mini-Long English Cucumbers and Long English Cucumbers are a like product, distinguished primarily by length. Hothouse cucumbers are a regulated product of the British Columbia Vegetable Marketing Scheme under the Natural Products Marketing (BC) Act;
2. that Townline was sincere in their stated intention to only market mini hothouse cucumbers or products which would not be in competition with the Co-op and in their stated undertaking not to undercut the Commission's prices however, and that such intentions cannot realistically be entrenched in regulations and that the granting of agency status to a single producer could create a precedent for other producers to seek agency status;
3. that although the prices obtained by the Co-op during the first year of marketing mini-cucumbers did not meet the Co-op's or their producer's expectations, the Co-op demonstrated that it has made a significant investment in the initial research and promotion of mini-cucumbers and has demonstrated initiative and expertise in the marketing of greenhouse vegetables; and
4. that the Co-op gave due consideration to the risks incurred by Townline by waiving the normal application fee, and in demonstrating willingness to support the new production by offering a guaranteed price for the remainder of 1995.

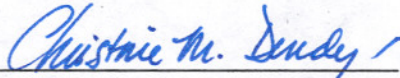
Decision

The BCMB is satisfied that the Commission considered the marketing structure and efforts of the Co-op in its position as the sole agency for the marketing of regulated greenhouse production in the Lower Mainland, and found this to be in the best interests of its producers. The appeal is denied.

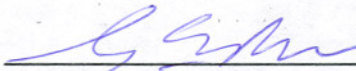
Dated at Victoria, British Columbia, this 10th day of October, 1995



Doug Kitson, Chairman
British Columbia Marketing Board



Christine Dendy, Vice Chair
British Columbia Marketing Board



Gurmit Brar, Member
British Columbia Marketing Board



Don Knoerr, Member
British Columbia Marketing Board