

Del Monte Wins \$32M In Costa Rica Pineapple Contract Row

By Jack Newsham

Law360, New York (June 20, 2016, 2:32 PM ET) -- Fresh Del Monte Produce Inc. has won \$32 million in arbitration from one of Costa Rica's biggest pineapple growers, with a divided tribunal finding that the farm's production of a nonpatented but coveted Del Monte pineapple variety after quitting its contract with the fruit giant is illegal, according to a copy of the award obtained by Law360 on Monday.

Inversiones y Procesadora Tropical SA violated its contract with Del Monte by continuing to grow the pineapple variety known as MD-2 instead of returning its crops and seeds to Del Monte after the grower's exclusive pineapple sales agreement lapsed in 2013, the arbitrators found. The arbitrators also ruled that the grower, known as Inprosta, must destroy its current MD-2 crop or return it to Del Monte.

The MD-2, which grocery shoppers know as the Del Monte Gold Extra Sweet pineapple, is a cash cow for Del Monte even though it is now also sold by competitors. The produce giant agreed in a 2002 settlement with wholesale fruit rival Dole Food Co. Inc. that the MD-2 was in the public domain, but that didn't change the fact that Inprosta had agreed in a 2001 contract that Del Monte owned its pineapple plants, the tribunal majority wrote.

"Although the settlement agreement that put an end to the Del Monte-Dole litigation may have prevented Del Monte from asserting certain proprietary rights over the MD-2 variety before third parties, this does not mean that it could not vindicate and enforce contractual rights regarding MD-2 vegetative materials originating from MD-2 seeds provided by Del Monte," the arbitrators said. "Therefore, Del Monte did not fraudulently misrepresent the exclusive nature of such rights."

The MD-2 pineapple is one of the fruit king's crown jewels. Although Del Monte's pineapple sales amounted to only \$525 million last year, or 13 percent of its total revenues, the MD-2 is the top-selling variety in the world and a major profit generator for Del Monte, partly because the variety's long growing cycle makes it so hard to compete, according to the company's most recent annual report.

Even though it's more expensive than the alternatives, the MD-2 amounts for some 45 percent of the U.S. pineapple market, the arbitration ruling said. Before going to court over its right to grow the plant, Dole Food Co. Inc. tried to replicate Del Monte's success with the MD-2, but "high mortality rates and mutation problems" led to the destruction of 60 to 70 percent of its output, the ruling said.

Del Monte announced the June 10 award on Monday, but it didn't say whether it would book it or what steps it would take to secure it. The award amounts to \$26.1 million in damages, plus interest and \$2.5 million in attorneys' fees and costs.

Horacio Alberto Grigera Naon presided over the arbitration tribunal, with Humberto H. Ocariz of Shook Hardy & Bacon LLP, and Alejandro Ogarrio Ramirez Espana serving as arbitrators.

Del Monte is represented by Brian J. Stack and Lazaro Fernandez Jr. of Stack Fernandez Anderson & Harris PA.

Inprosta is represented by Richard C. Lorenzo, Luis Enrique Graham, Alan Bonfiglio and Roland Potts of Hogan Lovells.

The case is Del Monte International GmbH v. Inversiones y Procesadora Tropical SA, case number 20097/RD, at the International Chamber of Commerce International Court of Arbitration.

--Editing by Stephen Berg.

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