

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP PROTECTION,)
LLC,)

Plaintiff,)

v.)

1:15-CV-274

WILLOWOOD, LLC; WILLOWOOD)
USA, LLC; WILLOWOOD)
AZOXYSTROBIN, LLC; and)
WILLOWOOD LIMITED,)

Defendants.)

ORDER

This matter is before the Court on motions in limine filed by the parties. For the reasons stated here and in open court at a hearing on July 25, 2017, it is **ORDERED** that:

1. Willowood's Motion in Limine Number 1 to preclude testimony about the Formulator's Exemption, Doc. 204, is **DENIED in part and tentatively GRANTED in part**. Assuming the evidence comes from witnesses with personal knowledge, Syngenta may offer evidence on Willowood's use of the Formulator's Exemption because it is relevant to damages. Subject to developments at trial, the Court will exclude evidence that Willowood misused the exemption because of its minimal probative value and the risk of undue confusion. Syngenta's related Motion in Limine Number 6 to preclude any reference to the facts that Syngenta filed petitions to cancel Willowood's EPA regulations and that the EPA has not acted on these petitions, Doc. 213; Doc.

214 at 23, is also **GRANTED**, because it is not relevant in the absence of evidence of misuse of the Formulator's Exemption.

2. Willowood's Motion in Limine Number 2 to preclude testimony about Willowood's copying of Syngenta's product labels, Doc. 206, is **GRANTED in part**, to the extent that Syngenta may not argue or adduce evidence that the copying of the labels was unlawful, but it is **otherwise DENIED**. Evidence of haste and copying tends to support Syngenta's damages theory and the use of Syngenta's name has some relevance to willfulness.
3. Willowood's Motion in Limine Number 3 regarding analytical testing performed by CAC Chemical, Doc. 208, is **DENIED in part and tentatively GRANTED in part**. The explanation of test results in the emails is hearsay in the absence of testimony from an appropriate witness from CAC and the test results are not self-authenticating. The fact that Willowood's Rule 30(b)(6) witness read the email chain at his deposition and answered some questions about it does not make it an admission. However, Syngenta can ask appropriate witnesses a few questions about the email chain to show that Willowood had notice of the test results and a reason to obtain testing at a higher detection threshold. Syngenta's expert may also rely on this evidence. Upon Willowood's request, the Court will give the jury a limiting instruction when the evidence comes in. Should Syngenta spend too much time on the email chain or inappropriately imply that the jury can consider it for the truth, Willowood can object at trial. The Court

will reconsider this ruling at Syngenta's request if the evidence at trial gives rise to any new argument for admissibility.

4. Willowood's Motion in Limine Number 4 regarding third-party reports of azoxystrobin product pricing, Doc. 210, is **DENIED in part and DEFERRED in part**. At a minimum, Syngenta may ask its witnesses about the basis for its decisions to lower prices and introduce alternative products, which is relevant to Syngenta's damages claims. Depending on how the evidence comes in and exactly what the testimony is, a limiting instruction may be appropriate, and the Court will consider giving one at Willowood's request. The Court defers ruling on whether compilations of Syngenta's internal reports and of subscription information on prices are admissible, because the Court will be better able to evaluate any hearsay objections and Rule 403 concerns at trial, if and when Syngenta offers such exhibits into evidence.
5. Syngenta's Motion in Limine Number 1 to preclude any comparison between the volume or extent of Willowood's infringing sales and the magnitude of Syngenta's lost profits, Doc. 213; Doc. 214 at 15-17, is **GRANTED in part and DENIED in part**. Syngenta seeks very large damages for lost sales and price erosion. The relatively small volume of sales by Willowood is relevant to undermine Syngenta's lost sales damages, especially for the first year of the alleged infringement. *See* Doc. 149-1 at 15. It may also undermine the price erosion damages. While Willowood cannot argue that it would be unfair to award Syngenta its proven damages in light of Willowood's small sales numbers

and it cannot argue that Syngenta's damages should be capped at the amount of Willowood's sales, it can argue that its small sales numbers undermine the accuracy and credibility of Syngenta's large damages calculations and question appropriate witnesses about the effect of Willowood's sales to that end.

6. Syngenta's Motion in Limine Number 2 to preclude reference to Willowood as a "small company" offering "affordable" products, Doc. 213; Doc. 214 at 17-19, is **DENIED without prejudice**. Should Willowood attempt to play on the jury's sympathies, Syngenta can object at trial. Willowood does not intend to mention bankruptcy; to that limited extent the motion is **GRANTED** without opposition.
7. Syngenta's Motion in Limine Number 3 to preclude any reference to EPA registrations for azoxystrobin held by other entities, Doc. 213; Doc. 214 at 19-20, is **DEFERRED**. The Court is leaning towards admitting such circumstantial evidence tending to show non-infringing alternatives. The Court will be better able to evaluate any Rule 403 concerns for this evidence at trial. Before mentioning or offering such evidence, Willowood shall bring the matter to the Court's attention outside the presence of the jury.
8. Syngenta's Motion in Limine Number 4 to preclude any reference to the fact that Syngenta sent notice letters to companies other than Willowood and has not sued those companies, Doc. 213; Doc. 214 at 20-22, is **DEFERRED in part and DENIED in part**. The letters are relevant to rebut Syngenta's contention that these companies were minor market players and Willowood may therefore ask a few questions on this topic. The fact that Syngenta did not sue these market

participants may cause Rule 403 problems and the Court will probably exclude such evidence. Before Willowood mentions or asks questions about this, it shall bring the matter to the Court's attention outside the presence of the jury.

9. Syngenta's Motion in Limine Number 5 to preclude any reference to EPA data compensation between Syngenta and Willowood, Doc. 213; Doc. 214 at 22-23, is **tentatively GRANTED**. If Willowood believes that Syngenta has opened the door and it wishes to offer such evidence, it shall bring the matter to the Court's attention outside the presence of the jury.
10. Syngenta's Motion in Limine Number 7 to preclude any reference to the fact that this Court dismissed Syngenta's unfair and deceptive trade practices claim and its copyright infringement claims, Doc. 213; Doc. 214 at 24, is **GRANTED**. Willowood can make sure the jury knows that there are no independent claims for copyright infringement or misrepresentations and that any false statements or copying are not enough by themselves to prove infringement or damages. However, the Court's dismissal of those claims is not relevant and could confuse the jury as to whether the Court has opinions about the case. The parties may not imply that these rulings should affect the jury's factual determinations.
11. Syngenta's Motion in Limine Number 9 to preclude Willowood from referring to the fact that Syngenta is seeking an injunction to prevent Willowood from importing and selling products made by a process that infringes the '761 Patent, Doc. 213; Doc. 214 at 25-27, is **tentatively GRANTED**. If Willowood believes

that Syngenta has opened the door and it wishes to offer such evidence, it shall bring the matter to the Court's attention outside the presence of the jury.

12. Syngenta's Motion in Limine Number 10 to preclude Willowood from referring to any current or prior litigation to which Syngenta is or has been a party, Doc. 213; Doc. 214 at 27-28, is **DEFERRED in part and GRANTED in part**. The Court will exclude any exhibits such as complaints and judgments, because the significant possibility of unfair prejudice outweighs their limited probative value. If and when Willowood wants to ask a witness a few questions about the Viptera litigation or the EPA FIFRA litigation, Willowood shall bring the matter to the Court's attention outside the presence of the jury.
13. Syngenta's Motion in Limine Number 12 to preclude any reference to ChemChina's acquisition of Syngenta AG, Doc. 213; Doc. 214 at 29-30, is **tentatively GRANTED**. If Willowood believes Syngenta has opened the door and it wishes to offer such evidence, it shall bring the matter to the Court's attention outside the presence of the jury.
14. The Court will issue a separate opinion on Syngenta's Motions in Limine Numbers 9, 11, and 13. *See* Docs. 213, 242.

SO ORDERED, this the 28th day of July, 2017.


UNITED STATES DISTRICT JUDGE