

#1 - This is an appeal from an injunction entered by the district court enjoining future planting of Monsanto alfalfa, called "Roundup Ready alfalfa," pending the preparation by APHIS of an environmental impact statement ("EIS"). The injunction was sought by plaintiffs Geertson Seed Farms and Trask Family Seeds, conventional alfalfa-seed farms, together with environmental groups, because they fear cross-pollination of the new variety with other alfalfa, thereby possibly causing conventional alfalfa to disappear. Monsanto and its licensee, Forage Genetics, Inc. ("Forage Genetics"), intervened on the side of the government defendants. Monsanto, Forage Genetics, and the government pursue this appeal

A district court held that the Animal and Plant Health Inspection Service (APHIS) failed to take a hard look at its decision to deregulate alfalfa genetically engineered to resist the herbicide glyphosate--the active ingredient in "RoundUp."

#2 - APHIS published a notice in the Federal Register in November 2004 advising the public of Monsanto's petition and soliciting comments. It explained that APHIS had prepared an Environmental Assessment ("EA") in accordance with NEPA and its implementing regulations. In the EA, APHIS explained that alfalfa is pollinated by insects, primarily bees, and that insect pollination has been documented as occurring up to 2 miles from the pollen source. With regard to the threat of possible genetic contamination of non-genetically engineered alfalfa, it explained that the National Organic Program mandates buffer zones around organic production operations, the size of which are decided by the organic producer and the certifying agent on a case-by-case basis. The EA concluded that it was therefore unlikely that Roundup Ready alfalfa would have a significant impact on organic farming.

- Substantial questions exist as to whether the deregulation of "RoundUp Ready alfalfa" without any geographic restrictions will lead to the transmission of the engineered gene to organic and conventional alfalfa, the possible extent of such transmission, and farmers' ability to protect their crops from acquiring the genetically engineered gene. Substantial questions also arise as to the extent to which RoundUp Ready alfalfa will contribute to the development of RoundUp-resistant weeds, especially when considered in conjunction with other genetically engineered RoundUp crops that are already or soon-to-be deregulated, and as to how farmers will address such weeds

#3 - Opponents of the petition, who included organic and conventional alfalfa growers, cited concerns that inadvertent gene transmission would occur, and that foreign and domestic markets may not accept products that cannot be guaranteed to be non-genetically engineered. They urged a full environmental evaluation through an EIS that would analyze the environmental effects of all the alternatives

- Instead of addressing these issues, APHIS concluded that any environmental impact is insignificant because gene transmission is the problem of the organic and conventional farmers and weeds always develop resistance to herbicides. Because these reasons are not convincing and do not demonstrate that the agency took a hard look at the potential environmental impacts of its deregulation decision, APHIS must prepare an environmental impact statement

#4 - The district court considered voluminous evidentiary submissions from both sides, including the detailed declarations of multiple witnesses regarding the scope of permanent injunctive relief and scientific papers on the factual issues involved. The parties' experts disagreed over virtually every factual issue relating to possible environmental harm, including the likelihood of genetic contamination and why some contamination had already occurred. Defendants' evidence included declarations and live testimony by Forage Genetics' president, Mark McCaslin, declarations of an APHIS official, Neil Hoffman, and a declaration from a scientist at Colorado State University, Bob Hammon, who had conducted a study sponsored by Forage Genetics on pollen movement from alfalfa-seed fields by bees. Plaintiffs' evidence included Hammon's study, which they argued supports their position, as well as declarations from seed growers whose 1136*1136 crops had been contaminated with the Roundup Ready gene and scientists who opined that genetic contamination is likely to occur.

Answer:

Alfalfa crop is genetically engineered, it can withstand the herbicide and was pollinated by the bees fly from plant to plant or by insects and alfalfa crop was also found up to 2 miles from the pollen source, so it mean it will lead to the genetic contamination of the environment around the Alfalfa crop.

#5 - The court entered its permanent injunction in May 2007. It adopted a middle course in determining the appropriate remedy, enjoining new planting but refusing to enjoin harvesting of already-planted Roundup Ready alfalfa. It declined to hold a further hearing to resolve the issues that it said APHIS should resolve in the EIS. "After carefully reviewing defendants' voluminous evidence, including the evidence submitted in support of the intervenors' surrepley, as well as plaintiffs' evidence, the Court declines to permit the expansion of the Roundup Ready alfalfa market while APHIS conducts the analysis it should have prepared before it allowed for the non-permitted introduction of the crop in the first instance.

Answer:

Alfalfa crop can withstand the herbicide and with the genetic contamination, the environment around the alfalfa crop will grow the new type of grasses, new type of plants which can withstand the herbicide, therefore It will lead to the Environmental pollution therefore the court entered its permanent injunction for the Alfalfa crop.

#6 - Appellants argue that the district court erred in ordering injunctive relief because it improperly presumed irreparable injury instead of applying the traditional four-factor test for the issuance of a permanent injunction, as required under *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006). They argue that, as a result, the district court's injunction was overbroad because the court did not consider the likelihood of potential harm if Roundup Ready alfalfa was planted subject to the mitigation measures proposed by APHIS. To obtain permanent injunctive relief, a plaintiff must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction

Answer :

The Alfalfa crop can't be applied by the traditional four-factor test for the issuance of a permanent injunction, it means the injunction has been incorrectly ordered because the injury to the environment was "not at all probable." The suffering can be repairable and that remedies available at law can't apply to this case in the huge area

#7 - The Supreme Court has recognized that "the balance of harms will usually favor the issuance of an injunction to protect the environment" if injury is found to be sufficiently likely because "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Amoco Prod. Co. v. Vill. Of Gambell*, 480 U.S. 531, 545, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)

The appellants in establishing their argument relying on prior cases like *Amoco Prod. Co v Vill. Of Gambell*, that an injunction is only issued when a court recognizes that "injury is found to be sufficiently likely..". The appellants Monsanto Company had argued that district erred in issuing the injunction of the Roundup Ready Alfalfa because it only assumed that there would be irreparable damage because it denied the pending investigation of the Animal and Plant health Inspection Service ("APHIS") and failed to apply the four factor test that would establish that whether the injury to the environment would more likely than not happen.

#8 - Here, the record demonstrates that the district court applied the traditional four-factor test, required by *eBay*, before issuing its injunction. It expressly recognized that an injunction does not "automatically issue" when a NEPA violation is found and said that it was required to "engage in the traditional balance of harms analysis." The court then discussed each of the four factors of the traditional balancing test and concluded that the equities favored an injunction against the future planting of Roundup Ready alfalfa ("RRA").

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction

- The Appellate court reviewed the four-factor test as it was applied in *eBay v. MercExchange*, the factors that the district court looked over was that Monsanto Company and Forage Genetics with the evidence provided at trial had shown that damage to the environment had already occurred and that contamination that such damage is irreversible because the crop alfalfa cannot be replanted for a period of 2-4 years after the appellants RRA had been planted. The court continued to reason because the Monsanto had already failed to adhere to their contractual obligations would be unable to comply with any other proposed mitigation besides the permanent injunction that was issued to them it further reasoned that it was also because the government cannot oversee everything due to lack of resources. Considering the hardship to both parties the court found that a permanent injunction of RRA was not huge as the product was only 15% revenue of Forage and a small amount of the Monsanto Company. The fourth category being the public was that though RRA has potential social value it would be wrong for RRA to potentially contaminate non genetically altered alfalfa till all tests are finalized.

#9 - The district court applied the traditional balancing test, and not a categorical rule, in fashioning the injunction here, *see eBay*, 547 U.S. at 394, 126 S.Ct. 1837, and its factual conclusions were not clearly erroneous. The district court therefore did not abuse its discretion in formulating the remedy.

- It was stated in the ebay case that courts cannot deny or issue a injunction by applying a broad set of rules or a rule that is absolute, it must apply the traditional test that looks at the issue at hand within the parameters of the test objectively to both parties. It was concluded that court followed the parameters of the four-factors therefore did not abuse its power as the appellants alleged.

#10 - Explain who won and provide a conclusion

- In conclusion the appellate court affirmed the previous holding of the district court that the four-factor test was applied correctly and was not just based on the NEPA violation, making permanent injunction valid making the plaintiff Geertson Seed Farms the winning party.