SUPREME COURT OF THE UNITED STATES

Syllabus

ASGROW SEED CO. *v.* WINTERBOER ET AL., DBA DEEBEES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 92–2038. Argued November 7, 1994—Decided January 18, 1995

Petitioner Asgrow Seed Company has protected two varieties of soybean seed under the Plant Variety Protection Act of 1970 (PVPA), which extends patent-like protection to novel varieties of sexually reproduced plants (plants grown from seed). After respondent farmers planted 265 acres of Asgrow's seed and sold the entire saleable crop—enough to plant 10,000 acres—to other farmers for use as seed, Asgrow filed suit, alleging infringement under, *inter alia,* 7 U. S. C. §2541(1), for selling or offering to sell the seed, and §2541(3), for ``sexually multiply[ing] the novel varieties as a step in marketing [them] (for growing purposes).'' Respondents contended that they were entitled to a statutory exemption from liability under §2543, which provides in relevant part that ``[e]xcept to the extent that such action may constitute an infringement under [§2541(3)],'' a farmer may ``save seed . . . and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: *Provided*, That'' such saved seed can be sold for reproductive purposes where both buyer and seller are farmers ``whose primary farming occupation is the growing of crops for sale for other than reproductive purposes.'' In granting Asgrow summary judgment, the District Court found that the exemption allows a farmer to save and resell to other farmers only the amount of seed the seller would need to replant his own fields. The Court of Appeals reversed, holding that §2543 permits a farmer to sell up to half of every crop he produces from PVPA-protected seed, so long as he sells the other half for food or feed.

Held: A farmer who meets the requirements set forth in §2543's proviso may sell for reproductive purposes only such seed as he

has saved for the purpose of replanting his own acreage. Pp. 6–14.

ASGROW SEED CO. *v.* WINTERBOER

Syllabus

(a) Respondents were not eligible for the §2543 exception if their planting and harvesting were conducted ``as a step in marketing'' under §2541(3), for the parties do not dispute that these actions constituted ``sexual multiplication'' of novel varieties. Since the PVPA does not define ``marketing,'' the term should be given its ordinary meaning. Marketing ordinarily refers to the act of holding forth property for sale, together with the activities preparatory thereto, but does not require that there be extensive promotional or merchandising activities connected with the selling. Pp. 6–9.

(b) By reason of the proviso, the first sentence of §2543 allows seed that has been preserved for reproductive purposes (saved seed) to be sold for such purposes. However, the structure of the sentence is such that this authorization does not extend to saved seed that was grown for the purpose of sale (marketing) for replanting, because that would violate §2541(3). As a practical matter, this means that only seed that has been saved by the farmer to replant his own acreage can be sold. Thus, a farmer who saves seeds to replant his acreage, but changes his plans, may sell the seeds for replanting under the proviso's terms. The statute's language stands in the way of the limitation the Court of Appeals found in the amount of seed that can be sold. Pp. 9–13.

982 F. 2d 486, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion.