

SUPPLEMENTAL PROBLEM A

In 2005, Samantha and Jorge Sanchez formed a Minnesota corporation named Minnesota Garden Magic, Inc. (“MGMI”). MGMI purchased a ten-year exclusive right (subject to some conditions) to distribute in the Twin Cities metro area a new line of garden devices, GreenClean. This device kills most types of invasive weeds using microwave technology. The owner and manufacturer of GreenClean technology is Planet Villa, Inc. (“PVI”), a Delaware corporation with its principal offices in New York. The business relationship and dispute between the parties is outlined in the three statements reproduced below.

Chapter 325P of Minnesota law, known as the Garden Equipment Dealer Act (GEDA), protects garden equipment dealers from unfair actions by garden equipment manufacturers to terminate exclusive rights to distribute equipment. In particular, Minn. Stat. § 325P.21 of the GEDA provides as follows:

An exclusive right to distribute garden equipment products can be cancelled only if the garden equipment distributor materially violates the contractual conditions for maintaining the exclusive right and the garden equipment manufacturer’s cancellation of the exclusive right is not substantially different than the garden equipment manufacturer’s treatment of other similarly situated garden equipment dealers. Notwithstanding the above, a garden equipment manufacturer may cancel an exclusive right to distribute garden equipment if it can prove that the cancellation is reasonably necessary to maintain its business position in the affected market.

- a. What does MGMI have to prove to show that PVI violated the GEDA (i.e., identify the elements of proof for a GEDA claim)?
- b. Do you think MGMI could succeed on this claim?

STATEMENT OF SAMANTHA SANCHEZ dated March 17, 2009:

1. I am 49 years old and reside at 5217 Bloomington Avenue South in Minneapolis, Minnesota.
2. My husband, Jorge, and I are the sole owners and operators of Minnesota Garden Magic, Inc. ("MGMI"). The address of MGMI is 440 Kasota Ave in Minneapolis, Minnesota.
3. We started the business in 2005 after we met with a childhood friend of mine, Bill Sandalow of Eureka, California. Mr. Sandalow is the inventor of the GreenClean gardening device. GreenClean uses microwave technology to kill invasive weeds. Mr. Sandalow convinced us that this product would be a big seller throughout the country.
4. After forming the company, we quickly agreed with Planet Villa, Inc., Mr. Sandalow's company, on the terms of a ten year exclusive distribution agreement for the Twin Cities metropolitan market. We made an initial payment of \$100,000 to obtain this exclusive distribution right. We also invested over \$400,000 in lease improvements, equipment, employee training, inventory and other assets to get our distribution system established in the Twin Cities market.
5. During late 2005 and 2006, we experienced sales growth every month. Our first month, August 2005, we sold about \$2,500 worth of GreenClean units. By December 2006, we had a monthly volume in excess of \$155,000.
6. Our monthly sales volume of CleanGreen units leveled off at about \$155,000 to \$165,000 after 2006. After 2006, only three months (November 2007, February 2008 and January 2009) were less than \$155,000 in sales volume. Our highest month ever was April 2006, when we sold \$165,990 worth of units.
7. We have worked consistently hard to promote the GreenClean product since we started selling it in August 2005. We have trained our salespeople to sell the product exactly as PVI headquarters instructed us. We have visited every garden center at least three times during the year, and we have visited every hardware store at least once each year. We distribute promotional material, point of sale merchandising, and other marketing material whenever the retail store will allow its use. We are proud of our sales force and believe that we have done a great job selling the product.
8. During the Spring of 2007 we began to introduce other products to sell along with GreenClean. We added a line of electronic hybrid power motors (Clean Cuts) that produced lower emissions but did not have the problems of electric mowers. We also began to manufacture and distribute a solar-powered pond filtration system, SunFlow. These pond systems were highly successful. By the end of 2008, in terms of revenue we sold almost as much in pond systems as we did in GreenClean units. For the entire calendar year 2008, our revenue breakdown was as follows: 48% GreenClean, 34% Clean Cuts and 18% SunFlow.
9. While we sold these other product lines, MGMI never stop promoting and doing everything we could to sell GreenClean. This is true even though it became harder to understand PVI's marketing strategy after Mr. Sandalow left the company following the buyout of PVI by Wilson Consolidated in about February 2007. Once PVI became a subsidiary of Wilson, the marketing strategy seemed

- to switch from a concentration on traditional garden center and hardware retail stores to a sales approach emphasizing sales to gift shops and other nontraditional outlets for garden equipment products. We were not able to generate significant sales through this market.
10. I have spoken with the exclusive distributors in five similar markets—Milwaukee, Seattle, Atlanta, Denver and Kansas City-- about their success with this new marketing strategy. Only the Atlanta distributor indicated any success with this new approach. None of the other four distributors has seen more than 5% of sales through alternative market outlets. The markets where the company has used this approach successfully, which is primarily in smaller cities, would not work in our market because most people in larger cities shop for garden equipment almost exclusively through garden centers, big box retailers and hardware stores. In smaller areas, people are more likely to buy garden equipment through other sales channels.
 11. MGMI believes that it has saturated the market for CleanGreen products in this area. Although we have gained very few new customers in the last two years, we also have not lost a single customer who is selling GreenClean units.
 12. In late January 2009, we received a letter dated January 20, 2009 from Marsha Gore, PVI's Vice President for Dealer Relations threatening to terminate our dealership. My husband and I were shocked to receive this letter. We knew that PVI wanted us to increase our sales, but we had no prior notice that the company was considering an attempt to terminate the dealership.
 13. The letter stated that we had violated our contract by not distributing to our retailers an end aisle banner entitled "Scare The Weeds This Halloween." The letter stated that we did not provide to PVI our annual sales data for 2008 by the January 15, 2009 deadline for receipt of this data.
 14. The January 20, 2009 letter is correct that MGMI did not distribute the end aisle banners with the picture of a GreenClean unit looking like a monster and seeming to come off the poster. My husband and I thought this campaign was particularly ill-conceived. The first and only time we showed the end aisle poster to a long-time customer, he started laughing and made a comment about this poster winning some bad advertising "award." We do not believe that this amounts to "failure to implement PVI's prescribed marketing program." This was just one bad advertisement we didn't like. We have never failed to put up any other in-store merchandising provided to us by PVI.
 15. The January 20, 2009 letter also is correct that MGMI failed to provide certain sales data by the January 15, 2009 deadline. We had a problem with our accounting software, which we maintain in-house, and we were not able to provide that data until early February 2009. My husband called PVI prior to January 15th and told them that this information would be late this year. The person with whom he spoke at PVI said only that he would let Wilson know about the problem. He did not tell my husband that this would cause a termination letter to be issued.
 16. On or about March 13, 2009, I received a letter dated March 10, 2009 from Boyd Strafaccia, CEO of PVI, stating that effective immediately MGMI was no longer a dealer of CleanGreen products.

17. MGMI tried to order GreenClean products today, March 17, 2009, from PVI and we were told that MGMI was no longer eligible to purchase PVI products for distribution.
18. If MGMI were to lose its ability to sell GreenClean units, we would be significantly harmed. We estimate that for 2009 GreenClean will constitute about 40% of our sales, while SunFlow will grow to more than 50% and Clean Cuts will shrink to less than 10%. Without the GreenClean sales, MGMI would lay off about a third of its workforce (about 3 full-time and 3 part-time employees) and would go from a highly profitable small business to, at best, a break-even operation and perhaps run a loss for the year.

STATEMENT OF BOYD STRAFACCIA:

19. I am the Chief Executive Officer of Planet Villa, Inc. ("PVI"). I have been CEO of PVI since it was acquired by and became a wholly-owned subsidiary of Wilson Enterprises in January 2007.
20. PVI is a research, development and marketing company that manufactures under license and sells "GreenClean" brand products. Currently, our only product is a weeding machine, but we have in development an entire line of environmentally friendly garden equipment under the GreenClean brand.
21. PVI sells GreenClean products only through retail stores. We have a network of dealers in every metropolitan area in North America that sell the product under an exclusive sales arrangement. Therefore, it is critical to the success of the company that these exclusive distributors maximize the marketing potential of the GreenClean product.
22. Minnesota Garden Magic, Inc. ("MGMI") has been the exclusive distributor of GreenClean in the Minneapolis-Saint Paul, Minnesota market since the product was launched in 2005. MGMI initially had significant sales growth with the product and by the end of 2006 was ranked 8th in per capita sales among our distributors in the top 25 metropolitan markets.
23. Unfortunately, since 2006 MGMI has consistently failed to aggressively market and sell the GreenClean product. MGMI was the only distributor to gain no new customers at all for GreenClean in 2008. Its sales of the GreenClean product have plummeted relative to other large market dealers. GreenClean now ranks 20th among the top 25 metropolitan area dealers in per capita sales.
24. Starting in the fall of 2007, PVI began to increase sales of the GreenClean product by moving from selling only to "traditional" garden equipment outlets (such as garden centers and hardware stores) to selling the product to "expanded" market retailers, such as specialty shops and similar up-quality market conduits.
25. MGMI has shown little interest in PVI's new marketing strategy. MGMI currently ranks in the bottom 5% of distributors in terms of penetration into the expanded market. Among the top 25 market distributors, MGMI ranks next to last in expanded market sales, with about 2.6% of its 2008 sales in this category. Only the Portland, Oregon area distributor ranks lower. The average for top 25 market distributors is 6.2% of sales through the expanded market outlets.
26. Attached as Exhibit A is a list of all distributors and their sales, sales per capita, and the sales breakdown by traditional and expanded outlets. **[NOT ATTACHED]**
27. In the summer of 2008, PVI provided notice to any sales distributor who had shown no growth or declining sales in the previous 12 months that PVI would conduct a review of its marketing operations to assist in increasing GreenClean sales. MGMI was one of 19 distributors, and one of 5 major market distributors, to receive this notice. A copy of the notice is attached as Exhibit B. **[NOT ATTACHED]**
28. As part of this review, PVI discovered by customer store visits that MGMI had failed to distribute to GreenClean retail sellers the Halloween promotional campaign materials, including an elaborately produced end aisle poster with

three-dimensional effect.

29. Attached as Exhibit C [**NOT ATTACHED**] is the Distributorship Agreement between PVI and MGMI. Paragraph 14 of the agreement states, in part:

MGMI agrees to make all reasonable efforts to implement the marketing program provided to it by PVI, including appropriate use of the product image in advertisements, distribution of promotional brochures and material as needed to promote the product, and effective use of all aspects of the marketing program given to MGMI by PVI. Failure to implement PVI's prescribed marketing program is grounds for dealer termination.

30. The Halloween merchandising campaign was an essential part of the 2008 marketing program. MGMI was ranked 23rd in major markets in per capita sales in October 2008 and in November 2008 following its failure to use the merchandising posters.
31. PVI also requires that all distributors report annual sales numbers to PVI by January 15th of each year. This requirement is set forth in paragraph 31 of the Agreement, as follows: "At the beginning of each calendar year, no later than January 15, the distributor shall submit annual sales data to PVI in a form and manner to be reasonably prescribed by PVI." See Exhibit C.
32. PVI had provided MGMI with a notice of this reporting requirement and a current copy of the reporting format. The notice was sent to MGMI on December 6, 2008. A copy of that notice is attached as Exhibit D. [**NOT ATTACHED**]
33. MGMI failed to provide the required sales numbers by January 15, 2009. This breach of the agreement contributed to a delay in PVI complying its annual sales report that helps to guide company strategy.
34. It was necessary for PVI to terminate MGMI in order to maintain its position in the market. PVI's primary sales growth strategy for more than a year has been to expand the sales of its product to retail outlets other than traditional sellers of garden equipment. PVI projects that 20% of its sales will occur through the expanded market outlets by the end of 2009.
35. Development of expanded market outlets is particularly important for the planned introduction of new GreenClean branded products during early 2010. These new products include items that are better suited to the expanded market than traditional garden equipment dealers. For instance, the company has already announced its planned introduction of a new low energy use, decorative outside lighting system that is best suited for retail stores other than traditional garden equipment outlets.
36. At the same time that PVI terminated the MGMI distributorship, it also terminated 7 other dealers, including 2 other dealers in top 25 metropolitan markets—in Portland, Oregon and in San Diego, California.
37. PVI regrets the necessary termination of its dealer relationship with MGMI. It is unfortunate that MGMI was unable to adapt to the company's changing marketing strategy.

STATEMENT OF HAROLD GOLDEN:

38. I am a Marketing Compliance Specialist with Planet Villa, Inc. I have held this position since June 2008. My job responsibilities as a Marketing Compliance Specialist require that I meet with customers who sell GreenClean products in order to assess whether distributors are successfully marketing GreenClean products with our customers and whether distributors are in compliance with the marketing program of PVI.
39. During the last week of October 2008, I visited with four Minnesota customers of PVI who receive their GreenClean products through Minnesota Garden Magic, Inc. ("MGMI"). Those customers were: Borden Garden Centers, Minnetonka; Earth Protection Gardens, Minneapolis; Great River Tools and Hardware, Elk River; and Sampson Hardware, Saint Paul.
40. At each of the retail stores listed above I observed that no merchandising material for the PVI Halloween promotion was present. In particular, none of the stores had the elaborate three-dimensional Halloween end-aisle poster.
41. I spoke with a manager at each of the stores and inquired about whether the manager had been contacted about the Halloween promotion. All the managers stated that they had been contacted recently by MGMI but that no one from MGMI had mentioned Halloween promotional material.