



**NEW ZEALAND
INTELLECTUAL
PROPERTY OFFICE**
Plant Variety Rights

New Zealand

Plant Variety Rights

Journal

No. 152 – October to December 2017

Published: 3 January 2018

www.pvr.govt.nz

ISSN 1175-0413

I. GENERAL INFORMATION

I.A CLOSING DATES – NOTICE TO BREEDERS ENTERING VARIETIES IN CENTRAL DUS TRIALS

CONDUCTED BY THE PVR OFFICE

You will need to meet the following deadline in order to have your variety included in the central trials to be established in 2018 –

Clover	Make application by 14 January 2018
Grasses	Make application by 1 February 2018
Roses	Make application by 31 March 2018
Winter and Alternate Cereals	Make application by 15 April 2018

I.B NEW UPOV MEMBER STATE

Bosnia and Herzegovina became the 75th member of UPOV on 10 November 2017.

I.C CASE OF INFRINGEMENT

In the High Court of New Zealand, Invercargill Registry

Cropmark Seeds Limited (plaintiff) v Southland Grain and Seed Ltd (defendant)

In September 2016, seed of the protected Barley variety `Sumit`, was advertised for sale, by the defendant. The defendant was not licensed to sell this variety and did not have the permission of the variety owner to sell propagating material. The defendant did not contest the facts and admitted infringing the plaintiff's proprietary rights in relation to the variety `Sumit`.

Following the conclusion of the legal proceedings, Cropmark Seeds released the following statement which is reproduced with their permission.

A recent court case underscores the message that Kiwi farmers, contractors and rural merchants should not sell or trade uncertified seed of PVR protected cultivars unless authorised to do so by the holder of the PVR grant. In April the Invercargill-based company Southland Grain & Seed admitted to the High Court that it breached the Plant Variety Rights by selling uncertified barley without the authority to do so. Southland Grain & Seed is not a licensee of `Sumit` barley but advertised it for sale in September 2016 and sold uncertified `Sumit` seed to one or more farmers. By doing so it was in breach of the New Zealand Plant Variety Rights Act 1987. Cropmark Seeds is the New Zealand head licensee for the Syngenta portfolio of cereals which includes `Sumit`. Cropmark Seeds runs Syngenta's southern hemisphere breeding nursery in Canterbury. Cropmark CEO Glen Jarvis says under the Plant Variety Rights Act, farmers are allowed to save seed they grow to plant on their own properties but they are not allowed to give, sell or barter that seed to another party for further propagation.

Glen says one scenario that can occur is farmers putting aside some grain derived from a PVR protected cultivar that they then clean and treat, but in addition to their own use they sell or give some to a neighbour. Or a farmer might sell some grain to a merchant for legitimate use as feed or grain but the merchant treats some and resells it as seed. "In both these cases what is being traded is uncertified seed of a PVR protected cultivar and this breaches the seed breeder's rights," he says. Plant variety rights are similar to patents. Holding plant variety rights gives the owner of the variety the exclusive right to produce it for sale and to sell propagating material of the variety. The owner may assign those rights to another person or organisation to produce or sell the protected cultivar. Under the Act, it is an offence to produce or sell a protected cultivar without the express authorisation of the owner of the plant variety rights, who in this case is Syngenta, the breeder and owner of the barley variety 'Sumit'. "The process of breeding and trialling a cultivar can take up to 12 to 15 years and is inherently very expensive. It costs hundreds of thousands of dollars per variety," Glen says. "It is a serious investment by Syngenta and ourselves, and is of significant benefit for New Zealand farmers through productivity gains brought about by new cultivars. "Breaching plant variety rights deprives plant breeding companies of a return on their investment. If the practice of breaching plant variety rights continues unabated, plant breeding companies could abandon their plant breeding programmes. If that happens, of course, farmers will be the losers. "Given the significant global spend on research and development, the longevity of investments in plant breeding depends on patents being protected. This will ensure New Zealand growers will continue to benefit from new innovations." Glen says in this case the merchant sold uncertified seed, which Cropmark was able to determine was 'Sumit' by using high-performance liquid chromatography (HPLC). The defendant has agreed to pay costs for the breach. "There is a misconception out there among some farmers and smaller merchants that it is legal to sell uncertified seed if it is not labelled or referred to as a specific cultivar. This is certainly not true. If anyone is caught and proved to be trading in uncertified seed of a PVR protected variety it is breach of plant variety rights. "Contractors should also be careful. They could be implicated if they are asked to drill uncertified seed from unmarked bags. They could potentially be drilling someone else's genetics." Uncertified seed can also have reduced yield or disease resistance benefits that the latest cultivars can provide, due to inter generation genetic deterioration. Seed that is uncertified could be many generations away from the original and it may lack all the traits that the cultivar has been bred for. The NZ Plant Breeding and Research Association represent plant breeders, intellectual property owners and managers of proprietary agricultural seed. Glen says the Association is ramping up its effort to protect proprietary cultivars. "With new technology we have a number of tools that allow us to determine the identity of seed so it is easier for us to detect the origin of uncertified seed," he says.

I.D WITHDRAWAL OF APPLICATIONS FOR A COMPULSORY LICENCE

The compulsory licence application for each of the following varieties was withdrawn on 16 August 2017

'New Zealand Nelson Sauvignon'

'Pacific Sunrise'

'Pacific Jade'

`Southern Cross`

`Pacific Hallertauer`

I.E NEW TECHNICAL GUIDANCE DOCUMENT ON THE WEBSITE

A new technical guidance document regarding Variety Testing in New Zealand is now available at

<https://www.iponz.govt.nz/about-ip/pvr/technical-guidance/current/variety-testing-in-new-zealand/>

The guidance document summarises the arrangements for variety testing and the use of plant material in the testing and examination process, with the objective of providing an overview for foreign breeders and owner who may wish to protect and commercialise their varieties in New Zealand.