

## **Trade Marks and Plant Variety Names**

### **What is a variety denomination?**

The denomination is the name of a plant variety as legally recognised under the New Zealand Plant Variety Rights Act.

Every application for a Plant Variety Right must propose a denomination for the new variety.

The denomination should conform to internationally accepted guidelines. The name cannot be directly descriptive of any characteristic the new variety possesses and should not include comparatives or superlatives like 'increased' or 'best'. If the proposed denomination is not acceptable, the Commissioner will reject it and require the applicant to propose an acceptable alternative.

### **What is a trade mark?**

A trade mark is a unique identifier, often referred to as a "brand" or "logo", used to distinguish one trader's products or services from a competitor's products or services. Trade marks can include words, logos, colours, sounds, smells – or any combination of these, so long as they can be graphically represented. Once a trade mark is registered, the ® symbol can be legally used against the trade mark. A ™ symbol indicates that a trader is using a sign as a trade mark but does not indicate whether a sign is registered.

### **Can a trade mark be accepted as a variety denomination or vice versa?**

No, a denomination cannot be registered as a trade mark or a denomination used as a trade mark for plants or plant material. The Intellectual Property Office of New Zealand (IPONZ) will search the New Zealand Plant Variety Rights Register, and the New Zealand Plant Variety Rights Office (NZPVRO) will search the New Zealand Register of Trade Marks (Class 31 which includes agricultural, horticultural and forestry products, grains, seeds, live plants and flowers) before accepting a trade mark application in class 31 or a proposed variety denomination.

### **Can a trade mark be added to the denomination of a protected variety?**

Yes. Under the New Zealand Plant Variety Rights Act anyone selling seeds or plants of a protected variety may associate a trade mark with the denomination, provided the denomination is always used and clearly recognisable. For example, Rose variety 'Macrexy', protected under the PVR Act, grant number 318, is sold using the trademark Sexy REXY™

## **Can the name of a variety not protected by a PVR be registered as a trade mark?**

A trade mark will not be eligible if it merely indicates the kind, quality, origin, intended purpose or dollar value of the goods for which registration is sought. A recognised plant cultivar name may not be acceptable as a trade mark due to common usage. A colloquial or taxonomic term used to describe a botanical characteristic of plants or plant material may also not be able to be registered. For example, the terms bloom or creeper or the name of a plant genus such as Hebe.

## **What are the rights of a registered trade mark owner?**

The registration of a trade mark gives the owner the exclusive right to use the trade mark within New Zealand. The initial registration period lasts for ten years and the right is renewable every ten years thereafter. Trade marks can be bought, sold or licensed like other intellectual property assets.

## **What are the rights of a registered plant variety rights owner?**

The grant of a Plant Variety Right (PVR) gives the owner the exclusive right to produce for sale and to sell propagating material of the variety within New Zealand. The full term of a PVR is 20 years for non-woody plant varieties and 23 years for woody plant varieties. Payment of the annual grant fee is due each year on the anniversary of grant. PVRs can be bought, sold and licensed like other intellectual property assets.

## **Who enforces trade mark or plant variety rights?**

A PVR or a trade mark is personal property and it is the responsibility of the owner to pursue any remedies for infringement. It is recommended that you seek legal advice.

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For more information on Trade Marks and Plant Variety Names talk to Carrick or Jennifer at James & Wells Intellectual Property [carrickr@jaws.co.nz](mailto:carrickr@jaws.co.nz) [jenniferl@jaws.co.nz](mailto:jenniferl@jaws.co.nz)