



# SANA

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## Plant Breeder Rights and Trademark Rules and Guidelines

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### **SANA INTERPRETATION OF THE PBR AND TRADEMARKS ACTS AS TO BE APPLIED WITHIN THE GREEN INDUSTRY.**

It is agreed that not only is it in the best interest of the Nursery Industry for new plants to be brought into the country, but it is also reasonable for people who fulfill this function to be remunerated for their efforts.

It is also of utmost importance that South Africa be seen as a country where international hybridisers want to see their plants being propagated, with the knowledge that their plant material is protected.

### **PLANT BREEDERS RIGHTS - GENETIC PROTECTION**

All new plants that are introduced into the country must be protected by the Plant Breeder's Rights Act (PBR) if genetic protection is required. This means that nobody is allowed to propagate the plant material unless permission has been granted by the holder of the Plant Breeder's Right. The actual plant is protected and not the name of the plant.

### **TRADE MARKS - NAME PROTECTION**

A holder of a trademark does not have the protection offered by the Plant Breeder's Rights Act. What the trademark protects is only the trademark name. The actual plant material is not protected, so anyone can grow the plant material as long as it is not sold under the trademark name.

1. A) The correct use of a trademark under class 31 of the Trademarks Act is where the trademark is applied to a **group** of plants as a **brand** and not to the individual plants (E.g.. "Paradise ® Impatiens"). This trademark would now distinguish the plants of one person (or group of people contracted by license) from the plants of another person (or group of people contracted by license) as defined in the Act. The life span of a trademark under these conditions is for a

period of ten years and can be renewed for further ten-year periods if applied and monitored correctly.

B) The trademarks act does allow for the registration of trademarks on individual plants as long as this name is not the varietal name, or used or applied as a varietal name. However as soon as the trademark becomes the customary (when referred to or become known as the varietal name) or common name, of the individual plant, as defined in the Trademarks Act Sec 10 (2) b and c the trademark becomes unregistrable and must be removed from the register.

2. Any Plant Name that is currently or was ever commercially available in South Africa may not be applied for as a trademark.
3. The group agreed that in future the naming of the plants on labels will be indicated as follows:

**Trademark\* - Genus - Species – Variety – Common Name**

\* This is a registered trademark of X Company used under license. Unauthorized use of the trademark name is prohibited by the Trademarks Act.

**Example from SANA:**

**\*BLUE FLAME<sup>tm</sup>, Rosa, Hybrid, SANA12, Blue Lady**

**\* This is a registered trademark of Malanseuns used under license. Unauthorized use of the trademark name is prohibited by the Trademarks Act.**

4. Any plant names that appear in local or international books and/or catalogues should not be considered for trademarking, unless a valid overseas trademark exists and is brought into South Africa under contract with the original breeder.
5. Royalties can be collected on a valid trademark on new plants that are brought into the country from date of registration of trademark.

## **SANA SUB COMMITTEE GUIDELINES**

The SANA sub committee has been formed to monitor and control the trademarks and plant breeder's rights.

### **Referring to 1.B.**

This period between the application for registration of a trademark on an individual plant and when the name becomes customary could be as short as one year or could run indefinitely.

1. SANA will get all relevant information from the department of Trade & Industry.

All applications for trademarks, linked to a specific plant, must be submitted to this structure and receive a stamp of approval, before submission to the department of Trade and Industry.

The sub-committee will follow up with the registrar to get this system in place.

2. Current and pending Trade Marks and PBR varieties fall into the following categories:

A. Trade marks and PBR that need to be removed immediately:

- i) Expired PBR varieties.
- ii) Varieties where no trademark was registered, or where trademarks or PBR applications were withdrawn.
- iii) Any plant name that is currently or was ever commercially available in South Africa.

- iv) Where the varietal name was registered as a trademark.

B. Trademarked Varieties with a Grace Period of 3 (three) Years:

All plants that fall under this category must be plants where there is a verifiable, written contract with an overseas principal and where it would lead to an embarrassing situation for the local agent if this trademark were cancelled immediately.

- i) Where there was no Varietal name and a Trademark was then registered as a varietal name.
- ii) Where there is a technical problem in the registration of a trademark where both the varietal name and a trademark were registered.

C. Legal trademarks as defined by the Act.

3. Money collected on illegal trademarks whether abandoned, withdrawn, expired, rejected, pending or illegal for whatever reason need not be repaid, unless the sub licensee requests such repayment.
4. It was decided that the funds required for putting into place the sub-committee and ensuring it's smooth, efficient and effective running will be provided for by the trademark applicants.
5. The licence holder is responsible to protect his own Trademark with regards to use of the Trademark in the media.
6. It is advisable, where royalties are in dispute, to continue paying them in the interim.