

COMMON DISEASES IN NURSERY PRODUCTION

The discussion covered a full range of common symptoms; powdery and downy mildews, leaf spots, rusts, cankers, and galls. The most common pathogens causing disease in cultivated plants are fungi such as *Phytophthora* spp., *Pythium* spp., *Fusarium* spp., *Botrytis* spp., *Verticillium* spp., etc

PRACTICAL STEPS FOR PROPAGATORS

Observation is critical to all disease management. The ability to recognise symptoms of disease early is advantageous. Timeliness in observing disease symptoms can lead to a quick response to the disease and resulting in savings of time and money.

Recording the observed symptoms can be useful for the accurate identification of the disease. Recording the instance and identity of the disease can assist overall management practices for that disease. If the same symptoms are observed in the future, the records can tell you when they previously occurred and under what conditions.

Observation and recording in combination should create an effective monitoring system. An effective monitoring system creates greater overall plant protection and leads to improved disease management practice for each crop.

Whenever disease symptoms are observed and identified, attempt to locate the possible causes. Look at all factors such as propagating material, hygiene, cultural practices, and the growing environment.

Following the above four steps should lead to improved strategies for disease prevention. You can treat disease but prevention is a better strategy.

Pitfalls in Intellectual Property Agreements for Nurserymen and Growers[©]

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INTRODUCTION

Often clients come to us asking for assistance in sorting out serious problems they have with another party that they have entered into a working relationship with, due mainly to the fact that an inappropriate or no written agreement at all has been entered into between the parties. I want to give you some basic pointers regarding the most important factors to consider and agree upon with the other party, prior to entering into a legal contract. These factors are particularly important in relation to arrangements regarding plant variety rights (PVR), trade marks, or other forms of intellectual property. This is very important, because if these arrangements go wrong, you could end up spending a lot of money sorting it out or end up losing control of your hard-earned intellectual property.

WHAT TYPES OF ARRANGEMENTS?

You may enter into a working relationship with another party, in which you want to licence them to market, propagate, trial, or bulk up your plant cultivar; to develop

a new cultivar on your behalf, or to use your trade mark. Alternatively, you may want to transfer ownership of plant variety rights, trade marks, or copyright materials to the other party. In such situations, the terms of the relationship agreed between the parties should be clearly documented, to ensure that the chances of problems occurring later in the relationship are minimised.

DOCUMENTATION OF AGREEMENT

It is very important that any commercial arrangement between two parties is documented in writing, and is signed (and dated) by both parties to confirm they have each agreed to it. If no written documentation is put in place, it is much more difficult later to enforce any oral agreement there may have been, particularly if the parties later disagree as to the terms of the oral agreement. In summary, the first important point is to document the terms of the relationship agreed on between the parties, so that it is clear what the parties have agreed are their respective obligations/rights and responsibilities. This may sound simple, but it often does not occur.

TERMS OF AGREEMENT

In terms of the content of a legal agreement, what are the most important issues to cover in the above situations?

Term. How long is the arrangement to last for? Specify exact dates if possible. Is the agreement to be renewable? If so, on what terms?

Territory. What parts of New Zealand or the world is the agreement to have effect in relation to?

Fees. What are the quantum of fees (e.g., royalties, licence, or trialling fees) to be paid by one party to the other, how is the quantum to be calculated, and when are such fees due? What is to happen if the fees aren't paid on time, or not paid at all?

Intellectual Property. Are there trade marks or plant varieties protected by PVR, or other intellectual property that is being licenced, used, etc. by the other party under the agreement? If so, what conditions are imposed on such use (e.g., trade marks must be represented in the format in which they are registered. Is use of the ®, ©, or ™ symbol in relation to the trade mark/logo required? What products/services can the trade mark/logo be used in relation to, and in what territories; in relation to PVR, is there to be a restriction on selling reproductive material of the variety? Is it necessary for the PVR application/grant number to be displayed on plant material being sold? Can the other party propagate the cultivar, produce new cultivars from the cultivar, sell the cultivar, give away or sell fruit/flowers of the cultivar?)

Exclusivity. Is the arrangement to be exclusive to the party you're contracting with or will other parties be granted similar rights/obligations?

Quality Control. What restrictions are there on sale/use/reproduction of goods bearing the trade mark or plant material of your cultivar?

Grant. What rights exactly are being granted to the other party? This should be clearly and expressly specified, i.e., are you granting a licence to use/sell/propagate/trial a plant cultivar or trade mark, or are you assigning your ownership rights absolutely?

Liability. What liability is placed on each party under the agreement? What is the scope of the indemnities (if any) you are receiving or being asked to give?

Confidentiality. Are any of the obligations under the agreement confidential? If so, under what conditions and for how long?

Assignment. Can the other party assign its rights under the agreement to a third party, or can it sub-licence others under the agreement?

Damages. Can damages/loss of profit be sought from the other party if its obligations under the agreement are not complied with?

Amendments. In what situations (if any) can these be made to the agreement by either party?

Advertising. Which party is to be responsible for this, and which party bears the cost of such? How does this tie in with the royalty fee payable?

Disputes. What arrangements have been put in place if a dispute arises between the parties regarding the terms of the agreement: i.e., mediation, arbitration, negotiation in good faith?

Termination. In what situations can the agreement be terminated by either party? For example, if the other party breaches a term of the agreement, or fails to pay outstanding fees due?

CLARITY

It is very important that terms used in the agreement are capable of objective definition. This is best achieved by defining essential terms in a definitions section in the agreement.

LEGAL ADVICE

If each of the above points (and any other terms agreed upon between the parties) are comprehensively spelt out in a written agreement between the parties, then there is less likely to be disputes between the parties later. We recommend obtaining legal advice on any contract or arrangement you are entering into with a third party prior to signing an agreement. This may save you legal fees later that may otherwise be incurred in resolving disputes regarding the agreement. In my experience the quantum of legal fees to resolve disputes is generally larger (because of the complexity and time involved) than legal fees incurred to draft or review a contract before signing it. In addition, specialist legal advice should always be sought if the subject matter of your contract is any form of intellectual property, such as plant variety rights, trade marks, trade secrets/confidential information, inventions, or copyright material.