

Naming plants

It is not easy to name a plant. Plant breeders want a name that is distinctive so that people will recognise it in the market place; marketers want a catchy name that is easily recognised by consumers. This means plants often end up with multiple names.

There are four key systems used for naming plants. Each have rules which limit the names and how they can be used.

These are the:

- **scientific name**, which is governed by the international rules for naming plants;
- **plant breeder's rights (PBR) variety name**, which is governed by the rules in domestic PBR laws;
- **branding or marketing name**, which is governed by the rules in the trade marks law, common law rules relating to passing off, and rules imposed by consumer protection legislation relating to deceptive and misleading conduct; and
- **common name**, which is used in everyday language instead of the more complex Latin scientific name or the brand name.

The naming rules are important for agricultural and horticultural businesses as they need to use each of these names correctly to maximise the marketing opportunities available through different forms of intellectual property protection such as PBR and trade marks. They also need to comply with all other relevant laws.

Scientific names for plants

Scientific names are developed by specialists using very specific rules to differentiate groupings of like plants into genus and species with very specific Latin names (*International Code for Botanical Nomenclature*). The rules are used internationally to ensure that the same plant has the same scientific name wherever it is found. For example, an apple (common name) is in the genus *Malus*. Most apples that we eat are grouped into the species *domestica* because of their similarities. As a result, the common apple is known scientifically as *Malus domestica*.

Variety names

A variety name is given to a plant within the species that has some unique identifying characteristics that separates it from other plants in the species.

If a new plant variety is to be protected by PBR, it is the variety name that is registered and must be used in each country where PBR protection is sought. If the variety is known by more than one name, then all the other names (or synonyms) must also be on the PBR register.

In the apple example, there is a PBR protected variety registered in Australia called 'Obelisk' with the Synonym 'Flamenco'. The full name of the apple variety is *Malus domestica* 'Obelisk' or *Malus domestic* 'Flamenco'.

If a variety is to be protected by PBR, there are a number of naming rules that must be adopted. The name (including the synonym):

- used in the first lodged application in a UPOV member country is the name that must be registered domestically unless it is already in common usage or is a trade mark in relation to live plant material;
- must meet the criteria in the *International Code of Nomenclature for Cultivated Plants*;
- must be unique and not easily confused with any existing plant variety name anywhere in the world;
- should not be more than 10 syllables or 30 characters;
- should not have the potential to exaggerate the merit of the variety;
- cannot be deceptive or misleading;
- should not use simple descriptor words, eg 'big red', 'tough nut';
- should not include the words: cross, hybrid, grex, group, seedling, form, maintenance, sport, selection, strain, mutant, improved, transformed or variety;
- cannot include genus or species names, even if they also have a common usage, eg 'iris' and 'veronica' are examples of words in common usage which are also genus

names and therefore cannot be included in variety names; and

- cannot, without written consent, include the name of a person who is alive at the time of application or the name of an organisation or a company. Consent is required from the estate's legal representative if the person died less than ten years prior to the application.

It is a good idea to seek assistance from a specialist IP lawyer or national PBR Offices.

Branding or marketing names: trade marks

Agricultural and Horticultural businesses often want to market the plants they sell using a unique brand for their specific trade or business. As a result, there is sometimes confusion between the plant variety name and the brand name. It is important that people using a range of names use them correctly and without confusion.

Trade marks are used for marketing and branding purposes to distinguish the applicant's goods or services from those of similar goods or services in the market.

A trade mark cannot be the same as a variety name or synonym. Using a trade mark in close proximity to the variety name can lead to

rejection of the trade mark because it cannot be readily distinguished from the variety name and may cause confusion or be deceptive or misleading.

In the apple example, the Australian licensee of the PBR variety markets it as 'Flamenco'. The licensee also has a registered trade mark and brand name Ballerina® that it uses to associate the trade brand with the apple variety. Other plant varieties could also be marketed in association with the Ballerina® brand.

Correct use of names

Some key points to remember when using names for plants:

- The common name should be followed, by the Latin scientific name (eg Apple, *Malus domestica*);
- The PBR name (or synonym) should immediately follow in single quotation marks (eg 'Obelisk' or 'Flamenco');
- A plant variety name or synonym cannot be trade marked; and
- The trade mark or business name should be clearly distinguished from the variety name so there is no confusion. This can be done by placing one name at the top and the other at the bottom of a swing tag.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

This Fact Sheet was prepared independently by the Australian Centre for Intellectual Property in Agriculture (ACIPA).

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