

PLANT NAME LEGISLATION

DUS Testing

In the European Union, the marketing of seed, and in some cases plant material, is regulated through a process known as National Listing. This legislation applies to varieties of the main agricultural and horticultural crops; however, not all species are within the scope of this legislation.

To comply with the marketing legislation, a variety must be registered on a National List. In order to add a variety to a National List, it must be shown to be Distinct, sufficiently Uniform and Stable (DUS) in officially controlled trials. Furthermore, agricultural crops must satisfactorily complete an assessment for Value for Cultivation and Use (VCU). DUS and VCU tests usually take between one and three test cycles to complete.

EU legislation also regulates the marketing of seed of landraces and traditional varieties of certain agricultural and vegetable crops and these may be registered as Conservation Varieties. No VCU test is required for the registration of agricultural Conservation Varieties, however if any seed is sold, it has to be certified.

In addition, seed of vegetable varieties sold in small packets to the amateur market have to be registered as Amateur Vegetable Varieties.

Both Conservation and Amateur Vegetable Varieties do not require a formal DUS test and requirements of this marketing legislation are less rigorous.

Useful links

The following websites may be useful to those wishing to find out more:

[Animal and Plant Health Agency \(APH\) - Plant Varieties and Seeds](#), which includes a guide to national listing of varieties of agricultural and vegetable crops in the UK and information on conservation varieties, amateur vegetable varieties and variety denominations.

[Plant variety database - European Commission \(v.3.0\)](#)

Plant Breeders' Rights

Plant Breeders' Rights (PBR) are a type of intellectual property designed specifically to protect new varieties of any species of plant, and are available in countries which are members of the International Union for the Protection of New Varieties of Plants (UPOV).

PBR are granted under the terms of the International Convention for the Protection of New Varieties of Plants (see [International Union for the Protection of New Varieties of Plants \(UPOV\)](#)) and are usually administered at a national level, providing protection within each country.

In Europe, PBR may either be administered at a national level by individual Member States or at a European level providing protection within the European Union. European PBR is administered by the [Community Plant Variety Office](#)

PBR entitle the holder of a Plant Breeders' Right to prevent anyone propagating, producing or reproducing (multiplication), offering for sale, selling or marketing, exporting/importing or stocking, for any of the purposes mentioned above, their material without authority. Breeders can choose whether or not to apply for PBR, which enable them to charge royalties for protected varieties, providing a means for breeders to fund future work. Varieties must be novel (new) and be DUS in order to be granted PBR. PBR last for 25 years with the exception of trees, vines and potato varieties which last for 30 years.

National Listing and PBR in the UK is administered by Plant Varieties and Seeds, Animal and Plant Health Agency, Eastbrook, Shaftesbury Road, Cambridge, CB2 8DR.

Useful links

The following websites may be useful to those wishing to find out more about Plant Breeders' Rights:

- [Australian PBR](#)
- [Canadian PBR](#)
- [Dutch PBR](#)
- [EU PBR](#)
- [UK Animal and Plant Health Agency \(APHA\) Plant varieties and seeds](#)
- [Japanese PBR](#)
- [New Zealand PBR](#)
- [Polish PBR](#)
- [UPOV Database](#)
- [US Plant Variety Protection Office](#)

Trademarks

A cultivar name is a means of identification. These names should be free to use and are usually unique but there are instances when names can be legally re-used in the EU. Whilst UPOV discourage the re-use of variety names, CPVO allow the re-use of a variety name after the expiry of a ten year period from the time when the variety name has been deleted from an official register of plant varieties.

A trade mark indicates the origin of a product and not the product itself. It is not unique and only free to use when unprotected. So a registered trade mark cannot be an acceptable cultivar name.

In the UK, it is permissible to use a trade mark or trade name when selling seeds of the variety providing the name registered on the national list is clearly shown on the packaging.

Useful links

The following websites may be useful to those wishing to find out more about trade marks in relation to plants:

- [Benelux Office for Intellectual Property](#)
- [European Union Trade Marks](#)
- [International Trade Marks](#)
- [USA Trade Marks](#)
- [UK Intellectual Property Office](#)

US Plant Patents

This is a patent granted by the United States Government. It provides legislative protection to a new plant cultivar. The Plant Patent Act dates from 1930 and a grant may be made to applicants who have discovered, or bred, and asexually reproduced a new cultivar. A USPP cannot be granted to a plant propagated from a tuber or to a plant found 'in the wild'. A USPP expires 20 years from the filing of the patent application and during this time precludes others from reproducing (and using the plant so reproduced) or selling the patented plant without the permission of the patent owner.

A USPP must be limited to one plant or genome, thus a sport or mutant derived from the patented plant would not be covered by the patent of the parent (although, subject to meeting the requirements of patentability a sport or mutant could be patented separately).

Unlike PBR systems in most other countries, an application for a USPP does not demand that the new plant(s) be submitted for testing. However, the application must be accompanied by a complete botanical description and an accurate representation (either a photograph or a drawing).

For more information see the [United States Patent and Trademark Office](#) website. Plants holding USPP or with application pending can be searched for on the same website here or on the [Free Patents](#) website.