

# National Seminar on the Management and Enforcement of Breeders' Rights

**Ho Chi Minh City - Vietnam**

**August 24, 2017**

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**Royalty Administration International®**



**Presence is the best  
protection of your  
Genetics**

## **Agenda:**

- 1. RAI Organization**
- 2. Services Performed**
- 3. License Agreements**
- 4. Controlling Methods**
- 5. Conclusions**



# 1. Royalty Administration International®

- Worldwide active in IP in vegetative propagated species;
  - Cut flowers, pot plants, annuals, perennials, bulbs, tubers, shrubs, woody ornamentals, vegetables, fruits and berries
- Independent service company protecting the IP Rights of breeders
- No sales, distribution, or promotional activities
- Not exclusive to any plant breeder, crop/species, region or service
- Representing several breeders and/or crops in one visit  
increases the controlling results !!

## ■ Worldwide Organization with own staff:

4 offices – total 28 employees

### **RAI Europe**

Main Office in 's-Gravenvzande, The Netherlands  
Territory: Europe, Africa, Asia, Pacific Countries

### **RAI North America**

Office in Fort Myers, Florida, USA  
Territory: USA and Canada

### **RAI Latin America**

Office in Bogota, Colombia  
Territory: Central and South America

### **RAI Japan**

Office in Chiba, Japan  
Territory: Japan





## To Serve and Protect.

That's what Royalty Administration International does for the industry by protecting the rights of breeders. By working to develop new, stronger, healthier, and more vigorous varieties, breeders provide you with top-performing, innovative plants that you can offer your customers. So by protecting their interests we're serving your interests, too. Strong breeding creates a strong industry. Let's keep it that way.

### Royalty Administration INTERNATIONAL

North America Fort Myers, Florida info@rai-na.com 800-472-4724

Royalty Administration International represents breeders' rights worldwide. To learn more about our breeders, individual patent policies or verify that a grower is in good standing, call **800-472-4724** toll-free. This message is provided on behalf of the following breeders/clients represented by RAI:

**Ball FloraPlant™**

**Proven Winners®**

**Selecta The Suntory® Collection Syngenta**



## 2. Services Performed

- Servicing/Representing approximately 325 Breeders
- Working with 300 different species

- IP applications:

Plant Breeder Rights + Plant Patents + Trademarks:

- 500 - 550 appl. / year
- In 30 different countries
- Maintaining about 8.000 IP titles (annual fees !)
- Follow up on application problems/DUS issues
- Advising breeders in their IP strategy



## 2. Services Performed

### Licensing + Monitoring:

- Issuing License Agreements + Exhibits - 2.250 in total
- Issuing Royalty Report Forms - 7.000 / year
- Royalty invoicing + Collection + Payout to breeders
- Controlling/ Monitoring/ Grower visits - 4.500 / year
- Follow up infringements - up to court cases
- Service to Breeder is tailor made
- Support to Breeder and to Licensee



# 3. License Agreements

## Authorization of breeder is required for:

- Production or reproduction (multiplication)
- Conditioning for the purpose of propagation
- Offering for sale
- Selling or marketing
- Exporting
- Importing
- Stocking for any of the above purposes

# 3.1 License Agreements

- Testing Agreements for new varieties
  - Controlled testing of new varieties by a third party grower
- Propagation/Distribution agreements
  - Selling Plant material; URC, RC, Liner, Pre-Finished, etc.
- Self-Propagation agreements
  - Cutting Propagation for own finished plant production only
- Non Propagation agreements for finished product growers
- Tip-cutting agreements - no motherplants allowed
- Root and Sell agreements



## 3.2 Royalty Collection

- Report forms to licensees
- Royalty payment per plant, pot, m2, etc.
- Invoicing to licensees and non-licensees
- Collection of payment from licensees and non-licensees.
- Disbursement of the royalties to the Breeder.
- Accounting report per variety, licensee, etc.





## 4. Controlling Methods





## 4. Controlling Methods









# 4. Controlling Methods

- 1. Licensees
- 2. Tip-cutting control – (Proven Winners)
- 3. Combined crop control
- 4. Legal Actions
- 5. Auditing

# 4. Controlling Methods

- 4.1. Licensees:
  - Announced or unannounced on-site visits
  - Counting mother stock + rooting + finished plant production
  - Check with correct royalty reporting
  - Check variety names, labelling, tagging, container type, etc.
  - Check on all production locations !!
  - Check catalogues, websites, marketplaces, exhibitions
  - Follow-up on any delinquent reporting and/or payment
  - EE stock deliveries from breeder

# 4. Controlling methods

- 4.2. Tip-cutting control at (non licensed) growers:
  - Actual + complete delivery info from Breeder + Propagator Distributors makes the control successful
  - Unannounced on-site visits to growers to check proper use of cuttings + check no illegal propagation is performed
  - Each breeders applies his own infringement sanctions
  - RAI search for any other variety they represent
  - Example: Proven Winners' (USA)





**PW**  
PROVEN  
WINNERS®

SUPERTUNIA®  
VISTA BUBBLEGUM

FULL SUN part shade 16 - 24"

Annual  
*Petunia hybrid*

AWARD WINNER

**PW**  
PROVEN  
WINNERS®

The Number One Plant Brand

# About Proven Winners®

- Started in 1992 with four varieties
- 2 x U.S. propagators + 3 x Canadian licensees
- International network:  
N. America, Europe, Japan, S. Africa, Australia
- PW is a marketing company, no breeding !
- Work with approximately 75 breeders
- IP => PW-trademarks + variety PBR/Plant Patents
- Create a complete program surrounding the Proven Winners brand
- Protecting our genetics and our brand
- Strong controlling policy






## Example: The effect Proven Winners USA practice

- All Products Protected => TM + Plant Patents
- Strong and clear message into the market
- Strict rules and structure
- Many visits => high chance to be caught
- All delivery info available
- Infringers are punished hard
- Controlling costs are financed by infringers  
US \$ 1 mio penalty in 8 years !!
- Publication of actions
- Honest playing field





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## Proven Winners Taking Action Against Illegal Propagators

December 17, 2008

Occasionally, you'll read about growers who've been caught propagating cuttings illegally. But in many cases, those growers may get away with a slap on the wrist. Proven Winners North America takes a different approach. In the most recent year alone, Proven

Winners, through Royalty Administration International (RAI), caught 137 growers illegally propagating its plants. And it is taking even more aggressive steps in the coming year to protect its breeders and the integrity of the industry.

Since 2000, Proven Winners has levied assessments of more than \$1 million against illegal propagators. To discourage illegal propagation, Proven Winners recently increased its illegal propagation fine from \$1 to \$2 per cutting. And RAI, an organization providing patent and royalty enforcement support to Proven Winners North America, flower breeders and other plant marketers, will be increasing the number of grower visits it makes with better territorial management and the hiring of additional field representatives.

Besides paying a fine, growers caught illegally propagating Proven Winners plant varieties must continue to destroy illegally propagated plants in the presence of RAI reps.

"The number of illegal propagators has most likely remained fairly constant over the past few years" says Mark Broxon, executive director of Proven Winners. "However, the number of illegal discoveries has increased because RAI has been adding field reps to better monitor enforcement activities."

Both Proven Winners' and RAI's enforcement activities play a large role in the protection of plant breeders and their rights. Doing this ensures the continued availability of great new plants from breeders to all growers. And this also serves to protect the interests of the majority of growers themselves, who are honest and pay the royalty and marketing fees associated with protected plants.

Most illegal propagators of Proven Winners plants are first-time offenders, Broxon says. Proven Winners has a tiered system of consequences for growers who propagate illegally. If growers pay the penalty and destroy the plant the first time they're caught, Proven Winners will continue to ship to them. If growers are caught a second time, besides paying the fine and having the illegal plants dumped, they'll go on an illegal propagator list, and Proven Winners' propagators automatically stop shipping to them for a minimum of three years. They are also subject to possible legal action.



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## 4. Controlling methods

### 4.3. Combined crop control

- Multiple breeder controlling in EU:
  - Pelargonium's
  - Garden mums/Belgium mums
  - Bed & Bedding Plants - Fleuroselect
- For crops which are widely spread, many users, several breeders/suppliers per crop, multiple supplier to one grower, varieties hard to identify, easy to propagate, etc.
- Effective for new EU countries to create IP awareness
- All delivery info in hand at visit
- Standard and uniform invoicing for infringements
- Financially self supportive



# 4. Controlling methods

## ■ 4.4. Legal actions:

- Lawyer warning letter on illegal activities
  - low costs and often successful
- Bailiff actions to collect evidence of illegal propagation
- Official seizure and/or inspection by court order
- Juridical actions by court

Requires very good preparation and timing:

- Expensive + unpredictable result
- Loosing relation ship licensee/grower
- Requires a lot of patience => years !!
- Advertisement against illegal propagation
- A must from time to time !!



## 4. Controlling methods

- 4.5. Auditing books - Checking:
  - Quantities delivered + sold in period ⇔ correct reporting
  - Royalty level per variety applied
  - Incorrect naming of varieties
  - Unauthorized export
  - Follow-up on any delinquent reporting
  - Invoicing + collecting delinquent royalty + penalty + audit costs
  - Largest catch ever \$ 700,000



# 5 Conclusion

- IP innovations are beneficial for the entire Industry
  - IP innovations are costly and time consuming
  - Protect your genetics and products
  - Royalties support innovation
  - No protection => no rights => no illegal propagation => no money
  - Being present on the site is the best prevention
  - Together we are stronger
  - Use strict and clear systems
  - Maintain a level playing field
- 
- **Structured IP and controlling creates income for Breeders and Producers!!**



*Worldwide watching your rights*



**Thank you**

