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FACTS ABOUT: NAMING AND LABELING VARIETIES OF SEED

INTRODUCTION

Every year new varieties of agricultural and vegetable seed enter channels of commerce. New varieties of seed can provide farmers and home gardeners with a wider selection of seed.

Marketing seed by its correct variety name is the appropriate way to do business. However, a variety is sometimes named, labeled, or advertised improperly as it passes through marketing channels.

Marketing seed under the wrong variety name can lead to financial loss for several participants in the seed marketing chain. For example, farmers buy seed to achieve specific objectives such as increased yield, competitiveness in a specialized market, or adaptability to growing conditions of a specific region. When the variety is misrepresented, the harvest may be less valuable than anticipated, or there may not be a market for the crop.

Seed companies and plant breeders also suffer in a market where problems with variety names exist. For instance, if the name of a newly released variety is misleading or confusing to the potential buyer, the variety may not attract the anticipated sales.

This fact sheet outlines requirements for naming agricultural and vegetable varieties. The information in this fact sheet is based on the Federal Seed Act (FSA), a truth-in-labeling law intended to protect farmers, home gardeners, and others who purchase seed.

WHO NAMES NEW VARIETIES?

The originator or discoverer of a new variety may give that variety a name. If the originator or discoverer chooses not to name a variety, someone else may assign a variety name for marketing purposes. In any case, the name first used when the seed is introduced into commerce will be the name of the variety.

Once a variety name has been legally assigned, it cannot be changed except under exceptional circumstances. For instance, a buyer may not purchase seed labeled as variety "X" and resell it as variety "Y." For exceptions to this rule, see the section on changing variety names.

WHAT'S IN A VARIETY NAME?

To fully understand the process involved with naming a variety, it is important to realize the difference between a "kind" of seed and a "variety" of seed.

"Kind" is the term used for the seed of one or more related species or subspecies known by a common name such as carrot, radish, wheat, or soybean (see section 101(a)(11) of the FSA).

"Variety" is a subdivision of a kind. A variety has different characteristics from other varieties of the same kind of seed (see section 101(a)(12) of the FSA).

The following rules relate to naming varieties of seed:

- A variety must be given a name that is unique to the kind of seed to which the variety belongs. For instance, there can only be one variety of wheat named "Prairie Road."
- Varieties of two or more different kinds of seed may have the same name if the kinds are not closely related. For example, there could be a "Prairie Road" wheat and "Prairie Road" sorghum because wheat and sorghum are kinds of seed not closely related. However, it would not be permissible to have a "Prairie Road" tall fescue and a "Prairie Road" red fescue because the two kinds of seed are closely related and both varieties could be in the same grass seed mixture.
- Once a name is assigned to a variety, that name cannot be used for another variety of the same kind. Even if "Prairie Road" wheat has not been marketed for many years, a newly developed and different wheat variety cannot be given the name "Prairie Road."
- A company name may be used in a variety name as long as it is part of the original, legally assigned name. Once part of a legal variety name, the company name must be used by everyone, including another company that might market the seed. When a company name is not part of the variety name, it should not be used in a way that gives the impression that it is part of the variety name. For example, Ajax Seed Company cannot label or advertise "Prairie Road" the wheat variety as "Ajax Prairie Road" because "Ajax" could be interpreted as part of the variety name. The appropriate way to avoid confusion is to clearly distinguish the company name and variety name in the advertising or labeling.
- Descriptive terms may be used in variety names as long as such terms are not misleading. "GBR," for instance, is accepted among sorghum growers as meaning "green bug resistant." It would be inappropriate to include "GBR" as part of a variety name, if that variety were not green bug resistant.
- A variety name should be clearly different in spelling and in sound. The name "Alan" for a cucumber variety would not be permissible if "Allen" is already the name of a cucumber variety.

HYBRIDS

Hybrid designations are treated as variety names. The rules for naming varieties presented here also apply to hybrid seed.

In the case of hybrids, the situation is more complex. Two or more seed companies may use identical parent lines in producing a hybrid variety. One company could then produce a hybrid that would be the same as a hybrid already marketed by another firm. When this happens, both firms must use the same name because they are marketing the same variety.

If the company who developed the parent lines has assigned the hybrid variety a name, that is the legal name. Otherwise, the proper variety name would be the name assigned by the company that first introduced the hybrid into commerce.

SYNONYMS—OLD VARIETIES WITH SEVERAL NAMES

As noted earlier, the name originally assigned to a variety is the name that must be used. Some old varieties may be marketed legally under more than one name. If several names for a single variety of an agricultural or vegetable seed were in broad general use before July 28, 1956, those names still may be used. For hybrid corn this exception applies to names in use before October 20, 1951 (see section 201.34(d)(6) of the FSA regulations).

With the exception of old varieties with allowable synonym names, all vegetable and agricultural varieties may have **only one** legally recognized name, and that name must be used as the variety name in labeling and advertising. This includes interstate seed shipment labeling and all methods of advertising.

USE OF EXISTING VARIETY NAMES

There are several acceptable ways to name a new variety that is derived from an existing variety. One way to name this new variety is to give it an entirely new name. Another possibility is to use the name of the original variety plus a prefix or suffix that makes the variety name unique. If the name of an existing variety is used as part of the name of a new variety, the new variety must be derived from or closely related to the existing variety. It is expected that the new variety will be similar to the existing variety but contain one or more new, improved, or value added traits.

IMPORTED VARIETIES

If the name of the imported variety will cause a conflict with the name of an existing variety being sold in the U.S., the name of the imported variety must be changed prior to sale in the U.S. If the imported variety is identified by an experimental designation (e.g., E123), the variety can be named prior to the first sale in the U.S. However, if the variety is offered for sale in the U.S. with the experimental designation, the experimental designation becomes the variety name.

If the variety name of imported seed is in a language not using the Roman alphabet, the name must be changed to a language using the Roman alphabet prior to sale in the U.S. In addition, letters and numbers are considered as part of the Roman alphabet; therefore, a variety name

consisting of letters and numbers cannot be changed when imported into the United States for sale.

CHANGING VARIETY NAMES

The variety name is the name assigned by the originator of the variety or the name used when the variety first enters U.S. commerce for sale to the public. Once a variety has been named, that name must be used for the life of the variety. However, there are several circumstances that will require a variety name to be changed.

- The name chosen for a new variety is the same as the name of an existing trademark: Occasionally, a seed company will inadvertently choose a name for a new variety that is the same as an established trademark. In response to legal action taken by the owner of the trademark, the owner of the variety may be required to choose a new name for their variety.
- The name chosen for a new variety is the same as the name of an existing variety of the same kind of seed: The name is valid for the existing variety because the name was assigned to this variety first. Therefore, a different name has to be chosen for the new variety.
- The name of an imported variety is the same as the name of an existing variety of the same kind of seed that has been previously sold in the U.S. A new name will have to be chosen for the imported variety prior to sale in the U.S. because two varieties of the same kind are prohibited from having the same name.
- The name of a variety imported for sale in the U.S. is in a foreign language that does not use the Roman alphabet: If a variety was imported from China and the variety name was in Chinese characters, the variety would have to be assigned a name in English prior to sale in the United States.
- A variety name is considered misleading: For example, the name ‘Giant’ for a cherry tomato variety would be misleading because the name infers that the variety would produce large fruit. Therefore, the variety would have to be assigned a more suitable name that would not be misleading.

VARIETY NAMES vs. BRAND NAMES and MIXTURE/BLENDS

A variety name cannot be used as a brand name and a brand name cannot be used as a variety name. When used in labeling and advertising a brand name cannot be used in a way that could convey the impression that it is a variety name.

Seed lots comprised of mixtures of kinds or blends of varieties can be provided with mixture or blend names. However, labeling and advertising of mixtures and blends must not create the impression that the seed comprising the mixture or blend is a single variety. Also, a variety name cannot be used as a name of a mixture or blend, even if the variety is a component of the mixture or blend.

CHOOSING A NEW VARIETY NAME

If you plan to name a new variety, you should investigate the name you wish to use. You should not use a name if it has been used before or if a confusingly similar name exists for that kind.

Researching a name to avoid potential conflict is not foolproof. The Seed Regulatory and Testing Branch in USDA's Agricultural Marketing Service can assist you in your research. To request a variety name clearance, please visit our Web site www.ams.usda.gov/seed and click on variety names. There are detailed instructions on applying for variety name clearance and providing a release date. Because there is no variety registration system in the U.S., we cannot assure you that these names are free of conflicts. Moreover, our clearance confers no legal precedence.

FOR MORE INFORMATION

For more information on naming, labeling, and advertising seed, contact:

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