



# Retail Reflection\$

## Profiting by Propagating?

by James L. Gibson and Lane Greer

Do you remember when we...

- Had greenhouse rafters full of nothing but zonal geranium and New Guinea impatiens baskets?
- Produced the top ten bedding plants, a few herbs and perennials, and a handful of vegetable transplants?
- Grew most of our own stock from seed and maintained entire houses full of stock plants?
- Had very few point-of-purchase marketing programs?
- Put upright annuals like 'Romance' verbenas, 'Floral Carpet' snapdragons, and 'Bikini' strawflower in 10" hanging baskets?

But, in the last twelve years, species diversity in the floriculture industry has dramatically increased. Now the number of species a grower-retailer produces has tripled or even quadrupled. Mixed color bowls and containers of every size and shape constitute a huge part of our business. Now we have trailing Wildfire™ verbenas, Chandelier™ snapdragons, and Sunblaze™ strawflowers for those 10" hanging baskets. Let me ask you this: Is bacopa now your substitute for alyssum, has nemesia depressed lobelia production, and has scaevola replaced ageratum in your operation?

Everything changed when we were introduced to the wonderful world of vegetative annuals. It was really exciting to see something fresh, with new colors and textures, increased drought tolerance, and with an emphasis on different landscape uses. Not only has the spring product line expanded tremendously, but we're now rotating color in mid-summer, and the cool season program has also exploded. A typical inventory of fall plants may now include those that complement mums and pansies, such as plants in the Fall Magic™ series and other cold tolerant vegetative annuals. University research now focuses on vegetative annuals just as much as bedding plants or potted crops, with experiments involving plant growth regulators, photoperiod manipulation, plant nutrition, and trialing. We are just now becoming acquainted with these plants — the sky is the limit with vegetative annuals.

Compared to the marketplace of twelve years ago, we have better plants with improved performance features that give us higher profits. Because these plants are so versatile, the grower-retailer can justify charging a higher retail price. Profits are greater when we sell a 4 1/2 inch vegetative “instant color” annual for \$3.99 rather than only \$.85 for a 4 inch bedding plant. The propagation industry has been at the forefront of this revolution. They have bred superior plants, established propagation networks, and created entire marketing programs, and we have all benefited tremendously from them.

All these wonderful benefits come with a price, however. Growers now pay much higher prices for cuttings, because most of these new introductions are patented. This is in keeping with the spirit of patents and the royalties that go with them – breeders who invest the time and resources to develop and test new cultivars or species should be compensated for their work. Unfortunately, breeders’ efforts are diluted when unlicensed propagators benefit from poorly maintained or diseased stock that provide inferior cuttings. This is a notable occurrence. Overall, most people play by the rules, while a minor portion disregard the strict propagation laws that presently exist. Yes, it is frustrating to pay higher prices for cuttings, but that is not an excuse to propagate illegally. Profit must not come as a result of illegal propagation.

Why do patented cuttings cost so much? It starts with the space, time, and money that are allocated for growing plants for selection. Only 10-15% of the crop is selected as premium genetic material. This small percentage of plants is then put through rigorous testing for disease resistance, cold tolerance, and other characteristics that benefit both the grower and consumer. Making sure that cuttings are clean and have been checked for viruses is another big part of the propagators’ job. Royalties also help pay for future breeding, micropropagation, legal work, and the marketing efforts that encourage customers to buy these new varieties.

How do breeders and large propagation firms combat illegal propagation on a global scale? One of the leading organizations that maintain business integrity in the propagation industry is Royalty Administration International® (RAI). RAI is hired by propagation firms to ensure that growers are following the rules. Number of cuttings produced has to be reported to RAI so that royalties can be allocated appropriately. This organization is not the only policing group. Tag companies, patent owners, sales and broker groups, and other growers all have a responsibility to maintain a working system.

With the increase in popularity of vegetatively propagated annuals has come a growing confusion over the differences between patents, registered trademarks, unregistered trademarks, and brand names. Here is our attempt to clarify the situation.

### **Patents, Trademarks, and Branding**

The U.S. Patent and Trademark Office (USPTO) issues plant patents to anyone who has invented or discovered and asexually propagated a new and distinct plant, including new varieties or cultivars. A plant can be new and distinct based on several characteristics: growth or flowering habit; disease resistance; drought or cold tolerance; tolerance of heat, wind, or soil conditions; color of flower, leaf, fruit, or stems; productivity; storage

qualities; fragrance; form; or ease of asexual reproduction. This new plant can be a sport, mutant, or hybrid, and all of these terms are clearly defined in the plant patent application. A plant patent lasts for 20 years, after which time it cannot be renewed. Patenting does not mean that a plant is trademarked or vice versa.

Contrary to public opinion, a patent is not a government seal of approval. It simply guarantees the rights of all propagation and royalties to the owner of the patent. The USPTO is not telling us that this new plant is the greatest thing since sliced bread; only that it is different enough to be recognized as unique. The marketplace will determine the ultimate value of a patented plant.

Why don't more growers apply for plant patents? First, the process can be very long and complicated. The Patent Office advises applicants to hire a patent attorney, and this attorney must be registered with the Patent Office. Second, the applicant must pay a filing fee and an issue fee, and the process can be quite expensive. Third, many of the submitted applications are rejected the first time. As a result of these obstacles, large companies apply for more patents than do independent, small or medium-sized propagators.

According to the Federal Trademark Act, trademark means any word, name, symbol, or device, or any combination thereof that will be used to identify and distinguish his or her product from those sold by others. Trademarks are valid for 10 years and can be renewed for perpetuity. A federal trademark is identified by the symbol ® or by the words "Registered in the U.S. Patent and Trademark Office". State trademarks are also available. The symbol ™ is used to denote trademarks that are not registered with the USPTO or with a state.

A trademark should be used to indicate the source of the product. Patented plants *may* or *may not* be trademarked. The rights accorded to the owner by a trademark and by a patent stand independent of each other. According to the National Association of Plant Patent Owners, "If a plant unprotected by a patent is identified by a particular grower's trademark, anyone else may grow the same cultivar and sell it under the proper generic cultivar name, with or without using his or her own trademark, but he/she must avoid using a trademark that is the same as, or similar to, the mark used by the original grower or any other grower."

A cultivar name should not be confused with a trademark. Since cultivar names are used to identify a particular plant, the cultivar name cannot be a valid trademark and cannot be registered with the USPTO as such. Cultivar names can be registered under the International Commission for the Nomenclature of Cultivated Plants and remain universally available to be used by anyone.

Branding adds yet another twist to the plant labeling quandary. Most of us recognize the increasing awareness of brand names. Why has branding become so important of late? One of the reasons traces back to the fact that one in six Americans relocates every year. This means that familiar names offer some feeling of home and comfort, as well as

insuring some level of quality that is consistent from location to location. In floriculture crops, offering a brand name increases the chance that consumers will recognize and appreciate plant sources. Furthermore, since consumers have generally less time to spend shopping, they have less time to make decisions. Buying a trusted brand name eliminates much of the time and mental resources needed to evaluate new products, whether in the grocery store or the garden center. In the best case scenario, known brands are trusted and comfortable choices.

## **The Current Situation**

Off-shore production of cuttings will continue to be the trend because of optimum environmental conditions and cheap labor. In order to satisfy the demands of the market, rooting stations were established nationwide in order for propagation firms to sell rooted or unrooted material. These stations were granted propagation licenses by demonstrating exemplary growing practices. Licensed rooting stations have a great situation because more money is generated per square foot than in a regular greenhouse, but these growers earned the right to propagate by planning for the future — installing concrete walks, adding thrips screening, consulting with insect and disease specialists, and consulting with propagation experts.

Because there has been some concern over cutting quality, growers now have the option to purchase unrooted cuttings directly off-shore or from the rooting stations. A primary reason for this concern is the rough handling that rooted cuttings often receive during shipping. We're all familiar with the box of cuttings that looks as if it were used as a football during Superbowl Sunday in an airport hangar in Detroit. Also, consider buying rooted cuttings if they can be purchased locally. Rooting stations are doing everything they can to bring you quality material by improving packing to prevent problems incurred during shipping.

For those grower-retailers who have the time and resources to grow stock plants on-site, consider maintaining easy-to-grow, unpatented cultivars that are easy to propagate. This strategy offers relief from paying the price for something so easy and legal to propagate. There are several species that do not involve royalty fees: Mexican heather (*Cuphea hyssopifolia*), licorice plant (*Helichrysum petiolare*), 'Blackie' sweetpotato vine (*Ipomoea batatas*), vinca vine (*Vinca major*), 'Homestead Purple' verbena (*Verbena canadensis*). These filler plants complement the numerous patented species available today. Keep in mind, though, that growing these stock plants takes away from the time that could be devoted to seasonal crops, or, heaven forbid, a vacation in the off-season. Consider these responsibilities before establishing a stock plant program: fertigation, insect management, environmental regulation (light, temperature, and humidity), and chemical growth regulation. Keeping plants and greenhouses free of disease is a never-ending task. All of these factors must then be applied to the rooting environment. All in all, it's a big job.

Hopefully, this article has provided insight into the very sensitive issue of propagation rights. We are not attempting either to encourage or discourage on-site propagation. This article is merely an opinion voiced by the authors. Best of luck growing.