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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

**WORKING GROUP ON BIOCHEMICAL AND MOLECULAR
TECHNIQUES AND DNA PROFILING IN PARTICULAR**

Twelfth Session
Ottawa, Canada, May 11 to 13, 2010

VARIETY TRACER PROGRAM

Document prepared by experts from the Netherlands

1. As reported at the eleventh session of the Working Group on Biochemical and Molecular Techniques and DNA-Profiling in Particular (BMT) held in Madrid, from September 16 to 18, 2008, (document BMT/11/28) the Variety Tracer Program at Naktuinbouw is an important tool for variety identification and verification of various crops. Naktuinbouw is the institution in the Netherlands responsible for DUS testing and seed quality control. The Variety Tracer Program is based on AFLPs and microsatellites. SSR databases of Rose, Carnations, Tomato and Potato are available now and new SSR databases are developed for Strawberry, Apple and Phalaenopsis.
2. Following the methodologies used in the Freesia and Tilia cases reported at the eleventh session of the BMT, new cases of alleged infringement have been investigated with AFLPs on blind samples of confiscated produce of Tomato, Gypsophila and Sweet Pepper. Recent cases of confiscated produce of Osteospermum, Carnation, Potato and Campanula are under investigation and AFLP databases are being developed for several crops.
3. An interesting case has recently (March 2010) been settled between the licensors of two Geranium varieties 'Gerwat' and 'Jolly Bee', which were proven to be similar in the Variety Tracer Program by AFLPs and by morphological testing in parallel. Both 'Gerwat' and 'Jolly Bee' have been protected amongst others by Plant Breeder's Rights in the European Union and by Plant Patents in the United States for several years. As a result the Plant Breeder's Rights for 'Jolly Bee' will be annulled in Europe and the Plant Patent in North America for 'Jolly Bee' will be assigned to the licensor of 'Gerwat'. 'Jolly Bee' will be withdrawn from the market and existing licence agreements will be replaced by licence agreements for 'Gerwat'. Press releases from the Royalty Administration International[®] for the European Union and for the United States are attached to this document as Annex I and Annex II, respectively. A paper containing questions and answers related to this case, issued by Blooms of Bressingham[®] is attached as Annex III.

[Annexes follow]



Rozanne® ('Gerwat') and 'Jolly Bee' Update

Blooms of Bressingham NA from Sacramento (California), the worldwide exclusive licensor for the well-known geranium variety Rozanne® ('Gerwat') and Marco van Noort Vaste Planten v.o.f. from Warmond, The Netherlands, have concluded a settlement agreement to their dispute regarding the geranium 'Jolly Bee' sold by Van Noort.

Both Rozanne® ('Gerwat') and 'Jolly Bee' have been protected amongst others for several years by plant variety rights in the European Union and by Plant Patents in the United States; Rozanne® ('Gerwat') since 2000 and 'Jolly Bee' since 2003.

Blooms of Bressingham NA holds the opinion that no difference exists between Rozanne® ('Gerwat') and 'Jolly Bee'. Predecessors of Blooms of Bressingham NA initially objected to the grant of plant variety rights for 'Jolly Bee', but after the Community Plant Variety Office decided to grant a title for 'Jolly Bee' in 2003, Blooms of Bressingham NA did not appeal this decision. Consequently, both varieties have co-existed in the market place for several years.

In the meantime, independent DNA research revealed that there are virtually no differences in the DNA of both varieties. In addition, new investigations revealed that both varieties are not, at least not clearly, distinct from one another from a morphological point of view.

Blooms of Bressingham NA recently informed Marco van Noort about these test results and requested that Van Noort cease and desist the exploitation of 'Jolly Bee'.

The parties have now reached a mutual settlement arrangement which includes the following:

- The exploitation of 'Jolly Bee' will end no later than July 1st 2010;
- The plant variety rights issued for 'Jolly Bee' will be cancelled;
- Marco van Noort will become a licensee for Rozanne® ('Gerwat');
- Both parties have the objective to trade plant material of 'Jolly Bee' under the name Rozanne® ('Gerwat'), after a transitional period and under the terms and conditions that apply to Rozanne® ('Gerwat'). The replacement of licence agreements for 'Jolly Bee' by licence agreements for Rozanne® ('Gerwat') will be coordinated by Royalty Administration International of 's-Gravenzande, The Netherlands, as the worldwide agent for Blooms of Bressingham NA.

The settlement between parties has been concluded in a good manner and relationship. Although Blooms of Bressingham NA already had doubts about 'Jolly Bee' in the past, by using the DNA research and the simultaneous planting and growing of both varieties, it succeeded in convincing Marco van Noort that there was no basis any longer for the continued existence of 'Jolly Bee' as an independent variety.

The Netherlands, 9th March 2010

G. Doerr
Blooms of Bressingham NA

M. Van Noort
Marco van Noort Vaste Planten v.o.f.

Please direct all inquiries to:

- Maarten Leune at Royalty Administration International c.v. – maarten@royalty-adm-int.nl (+31.174.420171)
- Gary Doerr at Blooms of Bressingham – grdoerr@bloomsofbressinghamplants.com (+1.916.716.1889)



For Immediate Release

For more information, contact:
Gary Doerr at grdoerr@bloomsofbressinghamplants.com

***Geranium* 'Rozanne' – The most garden worthy *Geranium* to grow**



So many good garden plants have come about through the keen eyes of attentive gardeners. *Geranium* 'Rozanne' is a shining example.

'Rozanne' was discovered in the garden of the late Donald and Rozanne Waterer in Somerset, England. The large, violet-blue blooms that flowered non-stop from June until the first hard frosts in November caught the couple's attention!

Being plants people, the Waterers sought the advice of *Geranium* experts, including Graham Stuart Thomas, who recommended they contact Blooms of Bressingham® to handle introduction of this marvelous new plant to be named after Rozanne herself.

After considerable trialing by Blooms New Plant Discovery Team, the plant's exceptional qualities were confirmed and *Geranium* 'Rozanne' was launched at the Chelsea Flower Show in London in 2000. 'Rozanne' not only performed magnificently at Bressingham, but also in trials in Europe and North America where it began to show its versatility in a wide range of soil and climatic conditions. *Geranium* 'Rozanne' went on to be selected the Perennial Plant Association's 2008 Perennial Plant of the Year and its merits continue to be recognized worldwide.

Blooms of Bressingham

PO Box 660872 Sacramento, CA 95866-0872 Phone/Fax: 916.716.1889
www.bloomsofbressinghamplants.com www.geraniumrozanne.com



Geranium Rozanne® ('Gerwat')

European Young Plant Suppliers

January 1, 2010

Walter Blom B.V. + Japan
The Netherlands

Denis Plants B.V.B.A.
Belgium

Ditoplant Export B.V.
The Netherlands

Gootjes-AllPlant B.V.
The Netherlands

Paul Nihot, Tissue Culture
The Netherlands

Selecta Klemm GmbH & Co. KG
Germany



Rozanne® ('Gerwat') and 'Jolly Bee' Update

Blooms of Bressingham NA from Sacramento (California), the world-wide exclusive licensor for the well-known geranium variety Gerwat (Rozanne®) and Witteman & Co Multiflora B.V. of Hillegom, The Netherlands ("Witteman") have concluded a settlement agreement with regard to their dispute regarding the geranium Jolly Bee offered by Witteman.

Both Gerwat and Jolly Bee have been protected amongst others by plant variety rights in the European Union and by Plant Patents in the United States since several years.

Blooms of Bressingham NA holds the opinion that no difference exists between Gerwat and Jolly Bee. Nevertheless, both varieties have co-existed in the market place for several years.

In the meantime, independent DNA research revealed that there are no or virtually no differences in the DNA of both varieties. In addition, new investigations revealed that both varieties are not, at least not clearly, distinct from one another from a morphological point of view.

Blooms of Bressingham NA recently informed Witteman about these test results and requested Van Noort to cease and desist the exploitation of Jolly Bee.

The parties have now in good mutual consultation reached a mutual settlement arrangement which includes in essence the following:

- The exploitation of Jolly Bee will end no later than June 30, 2010;
- The plant patent issued for Jolly Bee will be assigned to Blooms of Bressingham NA;
- Both parties have the objective to trade plant material of Jolly Bee under the name Gerwat (Rozanne®), after a transitional period and under the terms and conditions that apply to Gerwat (Rozanne®). Eligible licencees may seek replacement of licence agreements for Jolly Bee by licence agreements for Gerwat. Such replacements will be coordinated by Royalty Administration International, of 's-Gravenzande, The Netherlands, the world-wide agent for Blooms of Bressingham NA.

The settlement between parties has been concluded in a good manner and relationship. Although Blooms of Bressingham NA already had doubts about Jolly Bee in the past, by using the DNA research and the simultaneous planting and growing of both varieties, it succeeded in convincing Witteman that there was no basis any longer for the continued existence of Jolly Bee as an independent variety.

Sacramento, California USA, March 30 2010
Blooms of Bressingham NA

Hillegom, The Netherlands, March 30 2010
Witteman & Co Multiflora B.V.

by:

Mr. Doerr

by:

Mr. Williams/Mr. Meiland

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Being plants people, the Waterers sought the advice of *Geranium* experts, including Graham Stuart Thomas, who recommended they contact Blooms of Bressingham® to handle introduction of this marvelous new plant to be named after Rozanne herself.

After considerable trialing by Blooms New Plant Discovery Team, the plant's exceptional qualities were confirmed and *Geranium 'Rozanne'* was launched at the Chelsea Flower Show in London in 2000. 'Rozanne' not only performed magnificently at Bressingham, but also in trials in Europe and North America where it began to show its versatility in a wide range of soil and climatic conditions. *Geranium 'Rozanne'* went on to be selected the Perennial Plant Association's 2008 Perennial Plant of the Year and its merits continue to be recognized worldwide.

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Geranium 'Rozanne'

North American Young Plant Suppliers

January 1, 2010

Boo-Shoot Gardens, LLC – Washington

Creek Hill Nursery – Pennsylvania

Emerald Coast Growers – Florida

Green Leaf Plants™ – Pennsylvania

Gulley Greenhouse – Colorado

James Greenhouses – Georgia

North Creek Nurseries, Inc. – Pennsylvania

Pioneer Gardens, Inc. – Massachusetts

Skagit Gardens, Inc. – Washington

Takao Nursery – California

Walters Gardens, Inc. – Michigan

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[Annex III follows]

QUESTIONS AND ANSWERS



Geranium Rozanne® and 'Jolly Bee' Update

Blooms of Bressingham® NA from Sacramento (California, USA), the world-wide exclusive licensor for the well-known *Geranium* variety Rozanne® ('Gerwat') has concluded settlement agreements with Marco van Noort Vaste Planten v.o.f., The Netherlands, (plant finder, or owner, of 'Jolly Bee') and Witteman & Co. Multiflora B.V. of Hillegom, The Netherlands, (plant breeder agent for van Noort) regarding their dispute with the *Geranium* 'Jolly Bee' offered by these companies in Europe and North America.

Q1. What is the dispute regarding *Geranium* 'Rozanne®' ('Gerwat') and 'Jolly Bee'?

A1. That there are virtually no differences in the morphology and DNA of the two cultivars, which have been protected for several years by Plant Variety Rights in the European Union and by plant patents in the United States.

Q2. Why did Blooms of Bressingham take action?

A2. Blooms of Bressingham has a unique history of introducing new plants that goes back nearly 90 years, with such varieties as *Phlox subulata* 'Oakington Blue Eyes' (1936), *Heucherella* 'Bridget Bloom' (1953) and *Crococsmia* 'Lucifer' (1966). Since 1976 and starting with *Potentilla fruticosa* 'Red Ace', Blooms has a history of using the Plant Variety Rights Act in Europe and Plant Patents in the USA, working with breeders, and building an extensive network of licensees to bring these plants to market. *Hebe* 'Margret', *Polemonium* 'Brise d' Anjou' and *Geranium* Rozanne® ('Gerwat') are among the many notable introductions. An important part of this activity is protecting breeder clients' rights and taking the necessary action to do so.

In this case, Blooms is protecting the rights of their breeder client, the Waterer family, who are the owners of *Geranium* Rozanne® ('Gerwat').

Q3. Why was action not taken when *Geranium* 'Jolly Bee' was put on the market?

A3. In fact, Blooms of Bressingham did object to the granting of Plant Variety Rights for 'Jolly Bee' and were told more testing was required at Blooms of Bressingham's expense. Blooms determined that a DNA test would be needed to support their objection. At that point, the cost of such a test was prohibitive. However, Blooms did gather genetic material at the time, in the event DNA testing became more affordable in the future.

(continued)

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Q4. What is the evidence that *Geranium* Rozanne® ('Gerwat') and 'Jolly Bee' are the same plant?

A4. A highly respected, independent lab in The Netherlands conducted a morphological comparison and a DNA tracer examination. In both cases, the two varieties were shown to be remarkably similar.

Morphological and DNA examination go hand in hand. Morphological testing involves examination of the plants grown side by side. DNA testing is new, trendy, and expensive. It is the evidence of the two examinations taken together that provides the basis for comparison.

Everyone will draw their own conclusions as to whether they are exactly the same. However, Blooms of Bressingham, Marco van Noort and Witteman & Co. agreed that the two cultivars were not different enough to warrant the two varieties co-existing in the marketplace

Q5. What are the terms of the settlement?

A5. The terms are:

- Exploitation of 'Jolly Bee' will end no later than June 30th 2010 in North America, July 1st 2010 in Europe.
- Plant variety rights issued for 'Jolly Bee' will be annulled in Europe. The Plant Patent issued for 'Jolly Bee' will be assigned to Blooms of Bressingham in North America.
- All parties have the objective to trade plant material of 'Jolly Bee' under the name Rozanne® ('Gerwat'). After the transitional period, and under the terms and conditions of the settlement agreements, former licensees of 'Jolly Bee' may seek a licence for Rozanne® ('Gerwat'). This activity will be coordinated by Royalty Administration International of 's-Gravenzande, The Netherlands, as the worldwide agent for Blooms of Bressingham NA.

Q6. What does this mean in other countries worldwide?

A6. Currently, the largest markets involved are North America and Europe, which are now covered with the settlement agreements.

Geranium Rozanne® ('Gerwat') is arguably the best garden-worthy perennial to be brought to market over the last several decades. Blooms of Bressingham NA will continue to work with Royalty Administration International to protect their breeder clients' variety rights internationally. We have confidence in the plant protection process and it's integrity to satisfactorily resolve situations that may arise.