

 BREEDERS TRUST





“RESPECT PBRights!”


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UPOV GENEVE

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 BREEDERS TRUST **Today's agenda** 

- **About Breeders Trust**
- PBR infringements in Potatoes and Grasses
- Some concrete examples
- Discussion




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Who are behind Breeders Trust

- 9 Shareholders (W. European Seed Potato Breeders):




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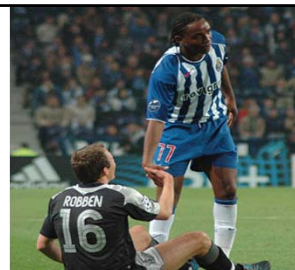
Our 6 Grass Seed Members







Vision BT



“By creating awareness and if necessary initiating enforcement actions against PBR infringements and illegalities, BT contributes to a fair production, processing and trading of plant propagation material in a level playing field for everyone.”




Without PBR protection no innovation.
Without innovation no food security!




Income and Infringements



- Breeders income:
 1. Royalties per certified kg
 2. Granting licenses
 3. Equitable remunerations FSS
- Infringements PBR lead to:
 - > Disruption of the market
 - > Image attack (loss of exclusivity)
 - > Lower turnover plant breeder

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3 types of Infringers PBR

Action BT:

1. **Unwitting** -> Educate and create awareness
2. **Unwilling** -> Raise awareness and convince them
3. **Undeterred** -> Start up legal proceeding and set example

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Our Approach

- Hints infringements from local agents/informants
- Internal investigation (collect evidence)
- Determine strategy with local lawyer
- 3 options:
 1. **Warning:** (friendly settlement / abstinence st.)
 2. **Civil action:** (the lead with BT but expensive)
 3. **Penal action:** (hand files over to authorities; cheap but BT not any longer in command)



Contact with Authorities



Maintaining good contacts with Authorities is crucial:

- Phytosanitary regulations: **Phyto sanitary Service**
- Seed law offence: **Seed Inspection agency**
- Unfair Competition: **Anti Fraud Agency**
- Tax evasion and fraud: **Customs / Police**

And.. very important: mutual contacts and exchange of information between authorities (NDA's)




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Plant Breeder's Rights!

UPOV Art 14.1 Scope of the Breeders Rights




Rights Conferred on the Holder



ARTICLE 14- Breeder's right shall confer on the holder following exclusive rights for protection of the variety:

- production or reproduction.
- conditioning for the purpose of propagation.
- offering for sale.
- selling or other marketing.
- exporting or importing.
- stocking .

The holder may subject his rights referred in the provisions mentioned above to conditions and restrict these rights.



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Most common types PBR infringements and illegalities in seed potatoes / Grasses *

- Producing / trading ware potatoes for seeds *
- Multiplication without consent of variety owner *
- Trading with forged certificates (using name of populair PBR variety) *
- Misuse of Farm Saved Seed (FSS)



Farm Saved Seed (FSS)



UPOV 1991 Convention:


- Art. 15(2): optional exception to the breeder's right to allow farmers to use for propagating purposes the product of the harvest they obtained by planting the protected variety on their own holdings.

FSS: legal permission of re-using a protected variety on the own farm but.. paying a fair share to the variety owner (equitable remuneration).




FSS use in EU (Inventory ESA, 2015)


- FSS use Potatoes in EU: ± 35% (cereals: ± 40%)
- Black seed use in potatoes: ± 10% (cereals: ± 15%)
- In EU potatoes ± 1/3 of potential FSS royalties is collected
- In EU cereals ± 2/3 of potential FSS royalties is collected



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1) BT actions FSS in Belgium
(Collecting FSS royalties + enforcement actions)

- Since 2011: BT has Agreement Agrofront
- Declaration FSS royalties take place via: www.hoevepootgoed.be
- BT Enforcement actions are based on 3 pillars:
 1. Belgium farmers are legally obliged to provide information and declare their FSS tonnage to FAVV. BT receives yearly all records from FAVV
 2. Random checks and auditing processors
 3. Yearly trace some infringers -> court case -> set example
- Effectiveness: 60-70%



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2) Demand for information FAVV



- April 2011: BT started main proceedings against FAVV since FAVV persisted in refusing to hand over FSS data base (brought for the Court Commercial Issues in Brussels)
- July 2012: Ruling:
 - Claimant(s) have the right to request the information
 - According to Art. 14(3) CVPR, official bodies are obliged to provide info
 - No additional burden or substantial costs:
- So.. Refusal was unlawful
- From Autumn 2012 on: BT formally requests annually this FSS info
- November 2012: FAVV skipped the variety name on application forms



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3.1) Selling ware potatoes for seeds



BT received hints that 3 farmers have planted illegal seeds. After they mentioned the name of their supplier, BT signed abstinence agreements with all farmers

BT started legal proceedings against Dutch trader W. Indictment:

- W. is not allowed to sell without consent of variety owner 12.950 kg protected seed potatoes to these farmers
- W. breached **duty of care**. Since he had knowledge that those potatoes were meant for propagation, he should have informed the variety owner

Defense trader W:

- I have not sold seed potatoes but ware potatoes and I'm not responsible!



3.2) Evaluation by the Court



- In case of suspect that ware potatoes are used as seeds, there is no obligation to notify the variety owner. This can not be deduced from the CPVR (Art. 13) nor can such lead to rewarding
- no duty of care upon the sale of ware potatoes. Not even when the trader has knowledge that those potatoes are being planted
- CPVR: the sale of harvest material (ware potatoes) only requires consent if it was obtained by the unauthorized use of components of the protected variety
- Crucial for BT: did trader W. sell seed potatoes or ware potatoes yet?



3.3) Evaluation by the Court



- highly unlikely because price of seed potatoes was on the invoice W.
- Accountant of W. stated in annual report that seeds were traded
- Fact that seeds are delivered just beginning of the planting season to farmers and were actually planted indicates that W. sold and delivered seed potatoes and not ware potatoes



3.4) Interlocutory ruling

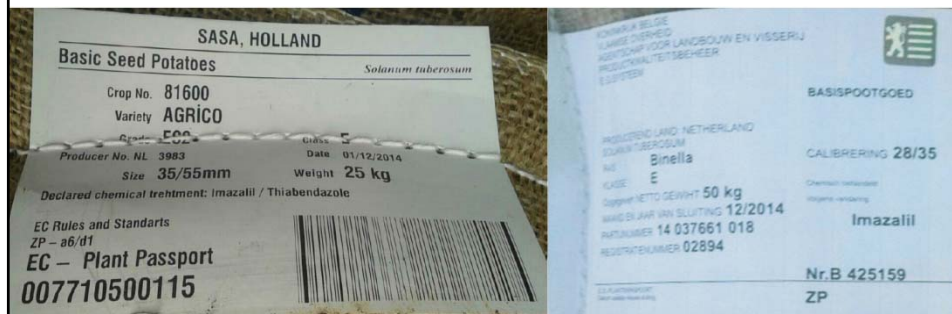
- With this state of affairs the Court deems it sufficiently proven that W. traded in 2011 seed potatoes to several farmers
- Court granted W. to deliver counterproof against the assertion that no seeds potatoes but ware potatoes were traded.
- W. had to come with counterproof (submission of documents and / or witnesses) before July 1, 2015.
- End 2015: BT reached friendly settlement with W.



4) Counterfeit EU certificates

EU certificates are copied and attached on (jumbo)bags by using:

- unknown local produced or imported (untreated) ware potatoes
 - cheap unprotected seed potato varieties (grasses: bird seed)
- => Unknown lots received new identity of a protected variety
=> Intensive contacts with SASA, NAK, SOC/GNIS and ALV (improve quality certificates: forged proved!)





Thanks for your attention!

