



Rules of the Name

By Stephanie Fehr

WOULD CLOVER by any other name smell as sweet? While Shakespeare may have thought so, when it comes to seed, only one name will do – the variety name. According to the Federal Seed Act, seed must be marketed under the variety name so that it does not cause confusion for growers when purchasing seed. This truth-in-labeling law is intended to protect growers and to serve as quality control, so that if there's a name associated with a particular seed, it performs as expected.

What happens when you want to add a brand name to a seed label though? According to the law, the brand or trademark name needs to be clearly identified as being separate and unique from the variety name. If, for instance, Acme Seed Company markets a variety of soybean called "5", on the bag they could put "Acme Brand Soybean 5". Using "Acme Soybean 5", on the other hand, is not an option because it does not adequately distinguish between the brand and the variety name.

Another thing to consider is if a brand or a registered trademark is contained in a variety's name, it can ruin the value of the trademark. This is because anyone who markets that variety must use the exact legal name – including trademark. So if another company markets the variety, the trademark loses its status because you haven't protected it commercially.

"There is a big move toward branding, particularly as royalties are becoming a larger portion of seed cost," says Peter Berger, a lawyer who deals in matters of seed law in San Francisco. "The problem is that a lot of people don't do it quite correctly. A particular pitfall is if you name a seed after your company, you've just successfully voided the trademark, which can be very expensive because people spend a lot of money developing a trademark, building up that brand, and then all of a sudden somebody is able to co-opt that because the law says they have to."

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— Dean Mohr

Dean Mohr, Assistant General Counsel for Pioneer Hi-Bred, says the company chooses not to use brand names to ensure that customers understand with clarity which products they're buying. “It's an issue of how it affects farmers – they're really the ones that have everything to gain with truth-in-labeling laws. Some companies would lead you to believe that farmers know the difference between the brand name and a variety,” says Mohr. “We are not so convinced. When we talk to farmers they don't have an understanding that there is a difference. If they believe that a brand name is in fact a variety name, without checking or doing any further investigation on the tag or bag, they may think they are buying a unique product, when in fact it's a brand name and they could easily be purchasing the same variety that another company offers.”

There are some cases when Pioneer does market its seed under a brand name, and that is when they are selling a seed blend. In this case, to ensure that growers understand the seed is not a single variety, the seed is assigned a brand name and not a variety name. It is also clearly marked as a blend. Grassland Central, which deals in forage and turf seeds in a number of states across the country, also sells branded blends of seed. “If we're selling a particular variety of alfalfa then it would say the variety's name,” says Dallas Grekoff, General Manager of Grassland Central. “On branded alfalfa, varieties are not stated and they don't have to be.” In this case “varieties not stated” must be printed on the label.

However, there is more than just the Federal Seed Act involved in the label-

ing of seed. State laws also govern seed labels and these rules change from state to state, which can make it pretty confusing. For instance, Kentucky does not allow “varieties not stated” to be on the label. “In Kentucky you have to use ‘variety unknown,’” says Grekoff. “You have to put on the label that you don't know the varieties of alfalfa you're using and in a lot of cases that's probably true.” And

in other states (and for other crops) the percentages of each variety have to be listed, even in a blend.

While labeling confusion can be a problem in interstate commerce, Grekoff says by adhering to the most stringent regulations you should be okay for any state you do business in. “It's just something you have to keep up on; it would be the same in any business.” **SW**

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For more information on the seed regulations check out:

- the Agricultural Marketing Service web site at www.ams.usda.gov/lsg/seed/factsabt.pdf
- ASTA's guide to state seed regulations at www.amseed.org