

Court upholds firm's right to plant variety protection

MISSION, Kan. — Farmers are the real winners, seedsmen say, in a recently-completed, precedent-setting court case which upheld plant breeder's rights under the Plant Variety Protection Act of 1970.

A Pendleton, Oregon federal court jury has found Farmterials, Inc., Baker, Oregon guilty of illegal sales of Lud barley, a variety owned and marketed in the U.S. by North American Plant Breeders, Mission, Kansas. Lud had been granted U.S. protection under PVP in 1977.

"The precedent of this case assures farmers a continued supply of improved, high-quality crop varieties from plant breeders in the private sector," said L.C. Nelson, president of NAPB.

"This verdict tells the breeder that his investment in developing new hybrids and varieties is indeed protected under the law. Therefore, the farmer can expect the private sector to continue the search for better crops. Ultimately, better crops mean higher returns for the farmer."

NAPB was awarded \$7,051.55 in the litigation and has sought an injunction prohibiting Farmterials' further propagation and sale of Lud barley.

"We felt damages were important, but really our main concern was that PVP be upheld," Nelson said. "Therefore, we rejected an out-of-court settlement, and it became a test case."

The suit was the first to go

to trial since the law was passed in 1970. Other cases have been resolved out of court.

This case highlighted and upheld three important aspects of the Plant Variety Protection Act. First, under PVP, Lud variety barley was to be sold by variety name only and as a class of certified seed.

NAPB charged Farmterials with openly advertising and selling certified Lud seed under the name of "Crud." Farmterials said that this did not constitute a sale of Lud under its variety name.

However, the jury's verdict rejected the legality of selling a protected variety under a similar name.

A second defense disallowed was Farmterials' contention that it is common practice in the industry to

sell uncertified seed of protected varieties as "variety unstated."

The court ruled the contention not applicable to the case as it was based solely on practices in the lawn seed industry.

The court also rejected the defense that the "Crud" seed was a mixture with six to eight percent of seed of other barley types and therefore, by definition, was not certifiable.

Nelson said the "Contamination" argument was a major reason why NAPB took the case to court. It wanted to test whether a sheller could by-pass PVP by selling mixed or contaminated seed.

The Plant Variety Protection Act was passed by Congress to protect the breeder's investment in developing new varieties of

agricultural seeds. PVP allows the breeder to obtain a fair return from that investment through seed sales of his protected new varieties.

Improved crops are the

result. Farmers benefit because these new products will have higher overall quality, better disease-resistance, other improved agronomic traits, and, above all, higher returns per acre.

Plant variety protection laws are not unique to the United States. They have existed in Europe since the 1940's where they served similar purposes to the U.S. law.

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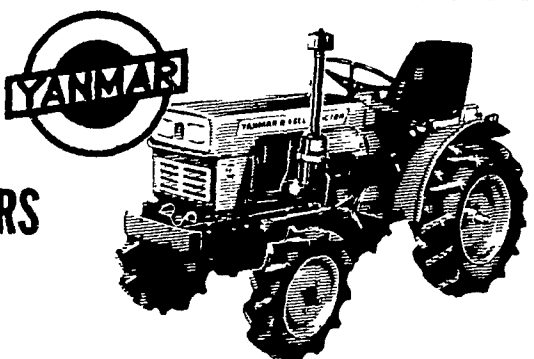
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