



## Protocol relating to breeders' rights infringement



FloraHolland and Plantum NL (Dutch breeders' association) have made agreements about the procedure regarding the supply of flowers and plants for which no royalties have been paid and the use of incorrect product codes. This entails incidental cases in which suppliers (consciously) use incorrect product codes. Growers who, for example, propagate or import varieties to the Netherlands without permission from breeders' rights holders, infringe breeders' rights.

FloraHolland has its own responsibility to prevent the trading of products within FloraHolland that infringe upon breeders' rights. An agreement has been reached with Plantum that FloraHolland will assist the breeders' rights holders by actively taking action against infringers. The interests of the growers must at all times be considered. A thorough procedure ought to prevent growers from being wrongly accused and harmed. The breeders' rights holders must therefore take their own initiative.

This protocol describes the procedure with which breeders' rights holders can submit a request for action to FloraHolland and how and in what situations FloraHolland may become involved.

FloraHolland and Plantum have established procedures to deal with the five most frequently occurring cases of plant breeders' rights infringement in the supply of end products.

1. A grower (name known) supplies a product without having a contract or breaches the agreements of the contract.
2. Products are supplied by growers (name unknown) without a contract from a certain country.
3. A grower who has a contract with a breeders' rights holder supplies more than he has reported to the breeders' rights holder, or a grower supplies more as a result of having propagated his purchased material without permission.
4. A protected variety is offered under the code "other", and therefore without variety name/product code.
5. A variety is wrongfully offered under a (variety) name of the breeders' rights holder.

Note: any mention of "the breeders' rights holder" in this text can also be read as "his representative".

### How can the breeders' rights holder submit a request for action to FloraHolland?

The request should be submitted by e-mail to Xander Berents, department of Product and Concept development (PCO) at FloraHolland.

A letter and/or e-mail with further information then follows. This includes:

- the concrete problem and the manner of infringement on the plant breeders' rights
- the concrete request to FloraHolland and the actions expected from FloraHolland

The following should be added if applicable:

- copies of the relevant breeders' rights certificates or at the very least the registration numbers;
- the names of the involved growers/suppliers without a contract with the breeders' rights holder;
- a list of growers that have a license agreement with the breeders' rights holder.

### What are FloraHolland's next steps?

FloraHolland follows the established procedure for infringement of breeders' rights per situation:

- FloraHolland checks the suspicions of the breeders' rights holder.
- If infringement of the breeders' rights is confirmed, FloraHolland takes the established steps per situation.
- The grower will be informed of the infringement and the corresponding sanctions by the account manager. The grower will be contacted and required to, for example, correct his behavior and use the correct product code.
- An official, written confirmation by FloraHolland will follow the abovementioned conversation.
- The grower in question will be asked to provide a reply and will be given the opportunity to demonstrate that he has not infringed the breeders' rights.
- If the grower does not respond in a timely fashion or fails to provide clear evidence to the contrary and/or repeatedly infringes the breeders' rights, FloraHolland will proceed to the following actions, varying from recoding and auctioning last or, ultimately, an auctioning embargo of the products concerned. The grower in question is informed of the sanctions in advance.

### What sanctions apply at FloraHolland?

- **First sanction:** If an infringement is ascertained, FloraHolland will correct the product code and the product in question will be auctioned in the last group of the relevant auction clock.
- **Second sanction:** If a second infringement is ascertained, the supplied product will not be auctioned and the product will be destroyed by FloraHolland at the expense of the supplier.
- **Third or further sanction(s):** If a further infringement is ascertained, FloraHolland reserves the right to, in addition to destroying the products, impose further sanctions, including the imposing of a fine and/or ending membership at FloraHolland. This third sanction will always be imposed by (or with permission from) Management or the Board.

#### Who pays for the prosecution?

FloraHolland will itself pay for these costs insofar as the actions are within the normal scope of its duties. If the breeders' rights holder requests for specific actions that require great effort on the part of FloraHolland or if he/she receives specific information from FloraHolland, FloraHolland may charge said costs to the breeders' rights holder. In all events, the breeders' rights holder will be informed in advance of the contribution to be expected in the costs.

#### Information?

For further information about the breeders' rights protocol, please contact Xander Berents,  
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