

Developments and Potential Management Issues of a Perennial Hot Selling Cut Flower Case

Feng C.-F. *, Huang L.-C., Chiu Y.-C.

National Taiwan University, Republic of China (Taiwan), No. 1, Sec. 4, Roosevelt Rd., Taipei 10617, Taiwan (R.O.C.),

*e-mail: d06630003@ntu.edu.tw

Purpose. The commercial life of cut flower varieties was generally considered to be as short as fashion. However, this study provides an example of a perennially popular cut flower variety that offers an alternative perspective on the potential of the cut flower market. **Methods.** Semi-structured interview and qualitative document analysis. **Results.** This article presents an analysis of the evolution of the cultivation and sale of a popular cut flower species over time. It also discusses the impact of a trading company on various stakeholders in the supply chain, as well as relevant business and legal considerations. **Conclusions.** This article highlights the importance of effective management of the Notification Letter, related agreements and intellectual property rights, taking into account the potential legal and business implications arising from the relevant transactions and statute of limitations. In addition, the article provides valuable insights for breeders and stakeholders seeking to establish identities for new plant varieties in markets, highlighting the importance of understanding the supply chain and implementing appropriate intellectual property strategies and portfolios, such as trademarks and plant variety rights, to facilitate business success.

Keywords: Cut flower; plant variety right; statute of limitations; trademark; unfair competition.

1. Introduction

The commercial life of cut flowers was considered to be as short as fashion [1], and a variety of cut flowers that are hot-selling perennials are not often discussed. The global health issue and economic crisis have created not only challenges but also new business opportunities for the horticultural industry [2, 3]. The global export value of cut flowers and foliage exceeded USD 10 billion in 2019, and the total market value of cut flowers was approximately USD 34 billion and is expected to reach USD 45 billion by 2027 [4, 5].

Cut flowers are generally consumed for decoration, personal enjoyment and as gifts, and there is an increasing demand from the perfume and fragrance industry, as well as from the healthcare sector [6–11]. At the individual level, cut flower consumption is determined by personal lifestyle and is closely related to social values, manners and fashions [11–14]. Consumers are diverse, with a wide range of demands and desires, and there is a dynamic

in their preferences in general [3, 8]. This makes the cut flower business a highly competitive industry, with constant innovations in production and logistical support, as well as new plant varieties being bred and introduced to the market.

The commercial advantages that denominations, appearances, flavors, textures and the associated legal and management systems can bring to various horticultural plants, including fruits, recreational plants, medicinal herbs and crop varieties, have been examined in the literature [15–21]. However, due to high perishability and relatively limited commercial life, cases of cut flowers with relatively competitive advantages are rare in the literature.

Breeders and product companies often seek to obtain patents and plant variety rights for new species in order to capitalise on their substantial investments in breeding and production and to secure their competitive advantage. Trademarks are often used to ensure quality assurance in supply chains [17]. In some cases, trademark protection is sought not only for company names and logos, but also for the names of specific varieties [17, 20, 21]. In addition, a royalty based on the

Chi-Fong Feng

<https://orcid.org/0000-0002-7592-844X>

exclusive rights, including the patent, plant variety right, trademark or other intellectual property rights (IPRs), is usually charged to realise their benefits [15–21]. It is important to note, however, that any claims or statements are always subject to corresponding legal liabilities.

Most of the studies in this area focus on the business, management and IPR strategies of breeders and final product companies. However, research on the business drivers of importers in the supply chain and the long-term success of popular cut flower species appears to be lacking. This article seeks to address these research gaps by presenting a case study and discussing the relevant ethical and legal issues associated with the promotion of this case.

2. Literature Review

2.1. Cases Regarding the Competitive Differentiations and Intellectual Property Rights of Plants

Research suggests that creators of new niches in horticultural markets often seek to differentiate their goods or services from those of other firms, to ensure that customers can rely on their supplies, and to secure their long-term business advantages and interests by asserting exclusive legal rights [15–21].

Different types of horticultural crops, including fruits, vegetables, medicinal herbs and floricultural plants, face different challenges and developments. For example, in the retailer markets or the e-commerce platforms, the fruit and vegetable products were usually offered by types or categories, and the consumers tend to differentiate them based on their appearances, flavors, and textures, rather than their specific cultivar's names. The recognition of new fruit and vegetable varieties by consumers and their breeders, and the associated business implications, have attracted the attention of some researchers [22, 23]. In addition, the use of variety denominations, trademarks and exclusive licensing management systems to regulate the quality, production volumes and market access of fruit and vegetable varieties, and the promotion of new varieties as brands to consumers, growers and traders were also reported in journals [15, 16, 18, 19].

In addition to the fruit and vegetable cases, in the medicinal herb business, not only the protection of company names and logos, but also the names of special medicinal varieties have been claimed through the trademark protection system, and some research has further emphasised the impact of such recognition

[17, 20, 21]. In addition, it has been shown that in the commodity-based plant market, patents and plant variety rights are often used as a means to protect the substantial investments that have been made in the process of breeding. Conversely, in the artisanal plant market, trademarks are often used as a means of quality assurance in supply chains, rather than as a means of reliance on patents or plant variety rights [17].

In contrast to fruit, vegetables and medicinal herbs, there are fewer cases in the literature for floricultural crops. A previous academic study of the New Zealand cut flower industry highlighted the importance of differentiation for exporters through superior quality, innovative product offerings, improved customer service, effective communication and the maintenance of strong relationships [24]. However, this study lacked clarity in terms of business recognition and IPR strategy, and did not address the role of importers within the cut flower supply chain.

2.2. Background and Development of this *Oncidium* Cut Flower “Honey Angel” Case

2.2.1. Taiwanese *Oncidium* Cut Flower in Japanese Market

In Japan, one of the world's top three flower markets, the majority of imported *Oncidium* orchids (*Oncidium flexuosum*) come from Taiwan, accounting for 85% of total imports [25]. In 2017, Taiwan exported more than 22.1 million *Oncidium* stems to Japan, accounting for nearly 90% of Taiwan's total production and more than 88% of the market share of imported *Oncidium* cut flowers in Japan. The wholesale trade of ornamental plants in Japan is mainly conducted through auction systems, with more than two thirds of the plants traded this way. Approximately 26% of cut flowers in Japan are imported, with Taiwan being the leading supplier [26]. According to the Agricultural Statistics Database of Taiwan (2021), the total production value of flowers in Taiwan reached US\$593.8 million in 2019, with the value of cut flowers reaching US\$208 million [27]. The Taiwan Floriculture Exports Association (TFEA) reported that the amount of *oncidium* stems exported from Taiwan to Japan was 22.1 million, 22.1 million and 18.9 million in 2018, 2019 and 2020, respectively.

2.2.2. Royalty Fee for *Oncidium* Cut Flower “Honey Angel”

We first heard about the “Honey Angel” case in 2012. At that time, some stakeholders

in the Taiwanese cut *Oncidium* industry complained about a royalty fee related to a cut flower called “Honey Angel”, and we had the opportunity to interview some of them and learn about developments in the market. Some relevant background and developments of the “Honey Angel” case had already been reported [28]. However, in 2018, some members of a floriculture organisation in Taiwan reminded us that the royalty fee for the “Honey Angel” case was still a concern for some stakeholders in the industry.

According to Chung, Tseng, Tsai, & Li (2012), the pure yellow *Oncidium* plant in Taiwan had several names, including Pure Yellow, Summer Time, Lemon Heart, Honey Drop, Mayfair Yellow Angel, and Honey Angel. These names refer to mutations of the species, *Oncidesa* Gower Ramsey [28]. The name “Honey Angel” has become increasingly popular for the *Oncidium* cut flower in the Japanese market since 2011.

The official website of Plant Variety Protection (PVP) Office at Ministry of Agriculture, Forestry and Fisheries in Japan (<http://www.hinshu2.maff.go.jp/vips/cmm/apCMM110.aspx?MOSS=1>) and [28] show that on March 25th, 2002, an agricultural cooperative association in Okinawa, “沖縄県花卉園芸農業協同組合” (“Okinawa Flower Agricultural Cooperative Association”, hereafter named as OAA) was granted a plant variety right with registration number of 10159 for its yellow *Oncidium* orchid having Japanese denomination “ハニードロップ” (“Honey Drop”). On February 7th, 2005, an orchid nursery enterprise in Tokyo, “株式会社東京オーキッドナーセリー” (“Tokyo Orchid Nursery”, hereafter named as TON) was granted a plant variety right with registration number of 12801 for its yellow *Oncidium* orchid with Japanese denomination “メイフェアイエローエンジェル” (“Mayfair Yellow Angel”).

According to our interviews and [28], both *Oncidium* orchid plants “ハニードロップ” (“Honey Drop”) and “メイフェアイエローエンジェル” (“Mayfair Yellow Angel”) have been granted plant variety rights respectively and should be distinguished from each other. However, there have been arguments about possible infringements of these two plants between OAA and TON, which were mediated by a company called “株式会社翠光トップライン” (SUIKOH TOPLINE, hereafter named as ST), and then these three entities agree to create a business unit called “ハニーエンジェル事務局” (“Honey Angel Secretariat”, hereafter named as HAS).

HAS, along with ST, sent a letter (hereafter named as LETTER) to TFEA and mentioned

the latest statuses of the consensus among some Japanese importers, the owners of the plant variety rights, and themselves, as well as the potential fine for infringing on plant variety right in Japan on November 11th, 2009 [Letter to Taiwan Floriculture Exports Association] [29]. As a result, HAS appears to be a key gatekeeper in Japanese markets for Taiwanese *Oncidium* cut flowers.

The LETTER advised the growers and production and marketing groups of pure yellow *Oncidium* cut flowers in Taiwan to make agreements with importers in Japan and use the Japanese name “ハニーエンジェル” (“Honey Angel”) for the traded pure yellow *Oncidium* cut flowers. The LETTER also requested a royalty fee based on IPRs, but, the basis for this fee was unclear and caused some concerns.

One respondent mentioned in 2012:

*“No idea why to pay this. The pure yellow *Oncidium* orchids we planted did not come from Japan”.*

*“These pure yellow *Oncidium* orchids have been planted in Taiwan before the royalty fee was reminded”.*

Another respondent said in 2012:

“I was told to pay the royalty fee due to a plant variety right was claimed in Japan, but no one explained which the claimed plant variety right is”.

*“It is not easy to identify whether the planted *Oncidium* in Taiwan is the same as those with plant variety rights in Japan”.*

The other respondent replied in 2012:

“Some growers asked me to deal with the royalty fee issue since they don’t know what it for”.

2.2.3. IPRs relating to *Oncidium* cut flower “Honey Angel” Case in Japan

The official databases of Japan Platform for Patent Information (J-PlatPat) (<https://www.j-platpat.inpit.go.jp/>) and PVP Office (<http://www.hinshu2.maff.go.jp/vips/cmm/apCMM110.aspx?MOSS=1>) contain information regarding to the potential patent, trademark and plant variety right for the plant called “Honey Angel”. Here are the relevant details.

2.2.3.1. Patent

New plant variety is not an object belonging to the statutory exclusion in Japan. A Simple Search was conducted on November 25th, 2021 using the applicants of OAA and TON, as well as ST and HAS, along with the term of “Honey Angel” to update the relevant statuses in the official database of J-PlatPat. The search

results indicated that none of the aforementioned applicants had been granted a plant patent, and no plant patent related to “Honey Angel” had been issued prior to the mentioned search date.

2.2.3.2. Trademark

A trademark search with the Japanese term “ハニーエンジェル” in the official J-PlatPat database was conducted on March 18th, 2021, and the results showed two trademarks with the Japanese term “ハニーエンジェル” and two with English term “Honey Angel” were granted trademark rights. (Even though only the Japanese term “ハニーエンジェル” was used by us to do the trademark search, the official system automatically represented the results with its corresponding English translation “Honey Angel”). Table 1 were these search results.

Based on the Class No. in Table 1, just the trademark “ハニーエンジェル” with the registration number of 5364339 and registration date on October 30th, 2010, and owned by OAA and TON, was granted for floricultural product. A further search at J-PlatPat database, on March 18th, 2021, showed the protection term of this trademark “ハニーエンジェル” (Regis. No. 5364339) has been extended to October of 2030.

Table 1
Trademark search results for “ハニーエンジェル”
on March 18th, 2021

Regis. No.	Regis. Date	Trademark	Class No.
5364339	Oct. 29 th , 2010	ハニーエンジェル	31
5495095	May 18 th , 2012	Honey Angel	18
5495096	May 18 th , 2012	Honey Angel	25
5912585	Jan. 13 th , 2017	ハニーエンジェルバス	03

Moreover, a further search with the English term “Honey Angel” in J-PlatPat database was conducted on March 18th, 2021, and Table 2 represented the results.

Table 2
The trademark search results for “Honey Angel”
on March 18th, 2021

Regis. No.	Regis. Date	Trademark	Class No.
4892668	Sep. 9 th , 2005	AngelHoney エンジェルハニー	03、25
4822686	Sep. 9 th , 2005	AngelHoney エンジェルハニー	14、18、29
5495095	May 18 th , 2012	Honey Angel	18
5495096	May 18 th , 2012	Honey Angel	25

Based on the Class No. information in Table 2, no trademark with English term “Honey Angel” regarding the floricultural products had

been registered in Japan before March 18th, 2021.

2.2.3.3. Plant Variety Right

In order to realize the potential means of propulsion of “Honey Angel”, a search was conducted in the official PVP database on March 19th, 2021, and it was reported no protected plant variety with the denomination in Japanese “ハニーエンジェル” or with the name in English “Honey Angel”.

The developments for the popularities of “Honey Angel” initially piqued our interests in 2012. However, upon conducting literature reviews, it became apparent that this case could serve an example for highlighting the value of clear recognition within the cut flower supply chain, and a cautionary example demonstrating the legal risks associated with the statute of limitations and unfair competition as well. The subsequent sections provide a detailed account of the methods employed, findings, discussions, and conclusions.

3. Methodology

The qualitative case study is a valuable tool for researchers to conduct an in-depth investigation of complex phenomena in specific contexts [30]. In this particular case study, the primary data were collected through semi-structured interviews aimed at assessing the development status of the *Oncidium* cut flower case in 2012, the interviews with members of a floriculture organisation in Taiwan in June 2018, and the follow-up conversation with some relevant stakeholders in 2021. Respondents were selected in 2012 using purposive sampling and snowball sampling techniques, and were contacted by personal invitation, telephone calls or emails. Three growers, one production and marketing group leader, three exporters and one other stakeholder in the *Oncidium* cut flower industry were interviewed between June and October 2012. Two of these respondents were re-interviewed in February-March 2021. The interviews covered various topics including the background of the Honey Angel case, business practices, financial data and market status related to the *Oncidium* cut flower industry.

Furthermore, during the period of February to November, 2021, we conducted a search for secondary data from the sources including news, general articles, and other publications using the keywords “Honey Angel”, and “*Oncidium*” as well as the corresponding Chinese term “文心蘭” on Google Search, and the System for Library Information Management

(SLIM) of National Taiwan University Library. The purpose of this search was to extract information related to the background of the “Honey Angel” case, business practices in Oncidium industry, financial data, and market statuses of Oncidium in Japan. We identified two relevant documents, one general article and two periodicals, which were used as references in this article. In addition, we conducted searches for the Japanese term “ハニーエンジェル” and the English term “Honey Angel” in the official databases, J-PlatPat and the PVP Office of Japan from March to November 2021 to clarify the statuses of relevant IPRs. We also provided some respondents with the IPR search results and analysed their responses to gain insights into the case of the long-standing popular cut flower variety, the associated marketing investment, and the potential business and legal issues of unfair competition and statute of limitations.

4. Result and Discussion

4.1. Pure Yellow Oncidium Cut Flower is a Perennial Hot Selling in Japanese Market

The consumption of cut flowers is determined by a variety of factors, including individual lifestyles, societal values and mannequins, and the fashion trends [11–14]. Furthermore, it has been noted and agreed that the consumers’ preferences for cut flowers were generally very dynamic [8, 31], and the commercial life of cut flower was concluded as short as fashion [1]. In this study, however, a pure yellow Oncidium cut flower case is presented as an example to demonstrate another aspect of the cut flower market.

As previously stated, the pure yellow Oncidium cut flower “ハニーエンジェル” cultivated in Taiwan for exporting to Japanese market, has experienced a significant in market share. From less than one-third in 2012, it has become the majority, accounting for around 85% of sales in certain regional markets in Japan from 2016 to 2020, as per TFEA data. That indicates that such cut flower has been present in Japanese market for nearly a decade.

One respondent mentioned in 2012:

“We are one of the major export channels of Oncidium cut flowers to Japan, probably one-third, and there are different names for them. We don’t understand why we need to use the term “Honey Angel” and pay the royalty fee”.

“We will pay for it after we realize what it is and when necessary”.

One respondent replied in 2021:

““Honey Angel” is the main Oncidium cut flower exported from Taiwan to Japan”.

Accordingly, it can be inferred that such pure yellow Oncidium cut flower species demonstrated a long-term popular cut flower product case in the market.

4.2. Import Trading-Related Stakeholder Matters the Recognition of Hot Selling Cut Flower Product

The academic literature has examined various aspects of the fruit and vegetable industry, including the recognition and impact of new varieties and their breeders on consumers [22, 23], the communication of plant varieties as brands to relevant stakeholders such as consumers, growers and traders [15, 16, 18, 19], and the importance of plant product differentiation for exporters [24]. However, none of these studies have specifically examined the actions and impacts of import-related stakeholders in the cut flower supply chain.

Despite ongoing concerns regarding the implementation of a royalty fee for this pure yellow Oncidium cut flower “ハニーエンジェル” since 2011, stakeholders in Taiwan’s floricultural industries still remained argued about the matter as of 2018. However, the popularity of the pure yellow Oncidium cut flower has continued to rise in Japanese regional markets, with sales increasing from less than one-third in 2012 to over 85% in 2016 – 2020, as reported by TFEA data. The voices agreeing to pay the royalty fee as a mean to compensate the related marketing investments and acknowledge maintenance efforts may explain the enduring fame of the pure yellow Oncidium cut flowers, and highlight the significant impacts of import trading-related stakeholder, HAS, to the recognition of a long-term popular cut flower product.

One respondent feedbacked in 2012:

“Even though some growers complained about the royalty fee, but I held the opposite opinion that without their efforts, how the Oncidium cut flower could have such a good price in Japan. The royalty fee is for that marketing”.

Furthermore, it should be noted that various Oncidium cut flowers bearing the identical appellation of “Honey Angel” are available in the market, and the suppliers have consented to remunerate the argued royalty fee. These arrangements have substantiated the fact that this pure yellow cut flower has been acknowledged in the market through the endeavors of HAS.

One respondent replied in 2021:

“... But, people said there are different Oncidium cut flowers named with the same “Honey Angel” in the market”.

Thus, this pure yellow *Oncidium* cut flower “ハニーエンジェル” (“Honey Angel”) case is bale to conclude the actions and impacts of import trading-related stakeholders, rather than those from the breeders or the final cut flower product company in the supply chain and to address the missing parts in the previous researches.

4.3. Business and Legal Issues in the Pure Yellow *Oncidium* Cut Flower Case

The aforementioned business and legal concerns were noted and may serve as points of reference for stakeholders within the cut flower ecosystems.

4.3.1. Inconsistent Product Names among Markets and Place of Origins Bring Troubles

The findings of the search conducted on the Japanese term “ハニーエンジェル” and the English term “Honey Angel” in the relevant IPR official databases in Japan can be succinctly summarized as follows: No patent has been granted to an *Oncidium* plant named “Honey Angel”, no plant variety right has been granted to an *Oncidium* orchid named in either the Japanese term “ハニーエンジェル” (“Honey Angel”) or the English term “Honey Angel”, no trademark has been registered for a floricultural product using the English term “Honey Angel”. However, it is worth noting that a floricultural product-related trademark using the Japanese term “ハニーエンジェル” was registered in Japan prior to our searches conducted between March and November of 2021.

Consequently, the hot seller of the pure yellow *Oncidium* cut flower in Japan should have the name “ハニーエンジェル” rather than its English translation “Honey Angel”, which is so popular among the stakeholders in Taiwan. The term “ハニーエンジェル” was mentioned in the LETTER as the trading name of the pure yellow *Oncidium* cut flower in Japan, and was translated into English as “Honey Angel” in the Chinese translation of the LETTER (“Translation of Letter to Taiwan Floriculture Exports Association”, 2009) [32] (named as TRANSLATION of LETTER hereafter). However, the relevant publications in Taiwan just mentioned English term “Honey Angel”, rather than its original Japanese “ハニーエンジェル”, and the respondents always use such English term to represent the cut flower case, we did not recognize this so popular English term was not a proper discussed object until such IPRs searches were conducted. Such findings supposed that this “Honey Angel” case demonstrated the impacts of language barrier and

communication gaps in international trading practices, and reminded the need in effective management systems for product names in international markets and place of origin.

On November 28, 2021, a Google search was conducted using the keywords “Honey Angel” and “*Oncidium*”, which revealed that this combination had gained some recognition in the Australia and Dutch markets. To investigate the IPRs associated with the English term “Honey Angel”, trademark searches were carried out in the official IP databases of Australia, The Benelux Office for Intellectual Property (BOIP) (for Netherlands), and Taiwan on the same day. The search results indicated that no trademark had been registered for “Honey Angel” in the floricultural crop category. This suggests that potential business issues related to the IPRs of the “Honey Angel” *Oncidium* may arise in the future, as some marketers had recognized the connection between the English term “Honey Angel” and the pure yellow *Oncidium*, but no relevant trademark rights have been established in these markets yet.

Furthermore, it is noteworthy that the Japanese trademark “ハニーエンジェル” (Regis. No. 5364339) has been extended to October, 2030, by its proprietors, OAA and TON. It is worth mentioning that English equivalent “Honey Angel” has been associated with the pure yellow *Oncidium* in certain markets outside of Japan. Given this circumstance, OAA and TON should reassess the feasibility of registering trademarks for the aforementioned English term in international markets, including but not limited to the Australia, Netherlands, Taiwan, and other countries.

4.3.2. Potential Legal Issues

First, it is important to note that the patent search in question was conducted after our interviews in March 2021. However, as no relevant patent was found, we refrained from involving the interviewees in further deliberations on this patent search result. The chronological sequence of relevant intellectual property rights for *Oncidium* cut flowers in Japan is summarized in Fig. 1.

The subsequent passages comprise the feedbacks by the respondents in relation to the outcomes of the investigations on the trademarks and plant variety rights.

One respondent replied in 2021:

“I heard people discussing a trademark might be the foundation for the royalty fee, but no one confirmed that”.

Another respondent said in 2021:

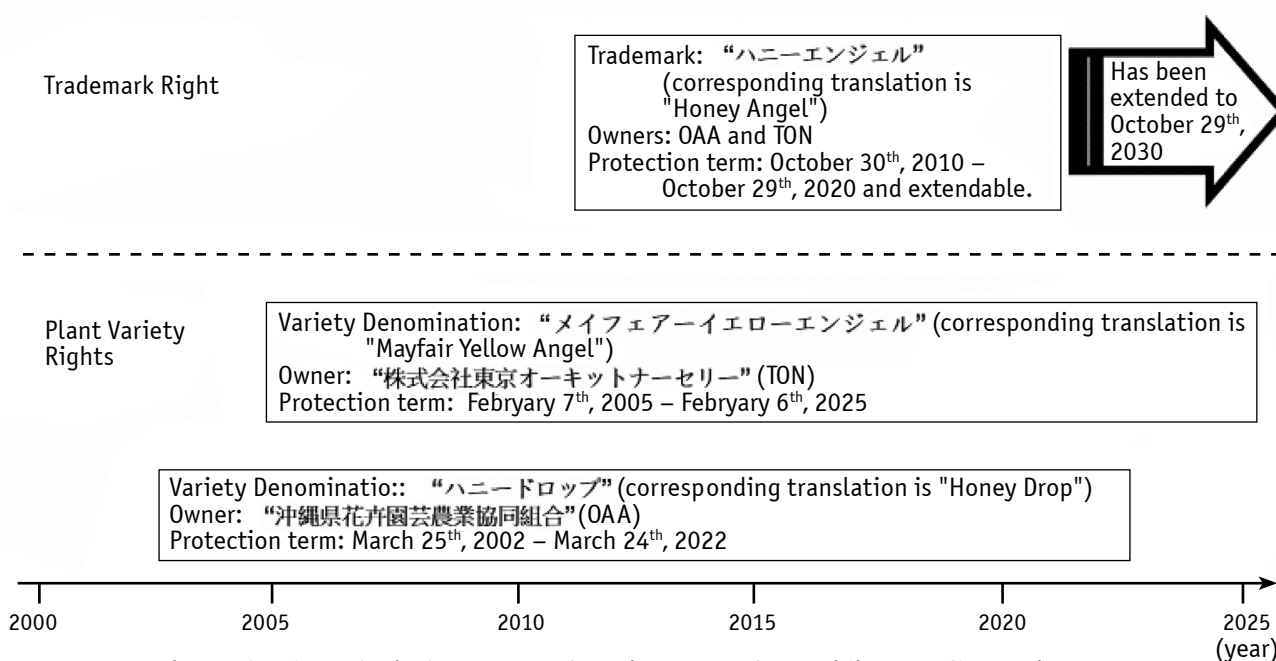


Fig. 1. The chronological sequence of pertinent IPRs for *Oncidium* cut flowers in Japan

“They told me the royalty fee will not be charged after the rights expire in 2022, but I don’t know what the rights are”.

Since one of the respondents referred to the expiration of certain rights in 2022, we concluded that the topic of discussion should be the plant variety right bearing registration number 10159 and Japanese denomination “ハニードロップ” (“Honey Drop”). However, this feedback raised concerns as there is no plant variety right was granted in Japan under the name “ハニーエンジェル” (“Honey Angel”) or its English equivalent. Consequently, any royalty in the relevant agreements based thereon may be deemed invalid.

Furthermore, it should be noted that the registered trademark for floricultural products in Japan is denoted by the Japanese “ハニーエンジェル” rather than its English equivalent “Honey Angel”. Consequently, if the relevant agreements for the royalties only reference English term “Honey Angel” and do not include the Japanese term “ハニーエンジェル”, then it provides the space to discuss the validity of these agreements.

Although the registered Japanese trademark “ハニーエンジェル” could serve as the foundation for the royalty fee stipulated in the relevant agreement, certain concerns remain due to the absence of any explicit disclosure regarding the trademark matter. Instead, the LETTER and TRANSLATION of LETTER only mention the names of two plant variety rights’ owners, OAA and TON, as well as a potential fine amount based on the Plant Variety Protection and Seed Act in Japan. Ad-

ditionally, the registered date of the Japanese trademark “ハニーエンジェル” (October 29th, 2010) is later than the LETTER (November 11th 2009), which raises the possibility of disputing the royalty fee based on the Japanese trademark.

Furthermore, apart from the contentions presented as the foundation for the royalty fee, the respondents raised some other concerns that may be present in the matter.

One respondent replied in 2021:

*“... But, people said there are different *Oncidium* cut flowers named with the same “Honey Angel” in the market”.*

“They complained the total received royalty amount was below the expected numbers calculated from the wholesaling amounts of the cut flowers”.

Another respondent said in 2021:

*“If no plant variety right was ever granted to an *Oncidium* orchid named “Honey Angel”, what was we paying for and why they told me the rights will be expired in 2022?”.*

Furthermore, we presented additional perspectives to the matter from the unfair competition and the statute of limitations as illustrative examples of the potential issues that may raise in the future hereafter.

4.3.2.1. Unfair Competition

Unfair competition is the common law tort of passing off one’s goods as another’s, and broadly refers to any of several torts (such as disparagement) that interfere with a competitor’s business prospects or injure consumers (Merriam-Webster.com Dictionary, 2021)

[33]. The aim of unfair competition law is to protect the fairness of the established and functioning market by preventing certain behaviour that is considered to be contrary to the honest usages of trade. The scope of unfair competition extends beyond national legislation to include international law, with different perspectives being maintained in different countries [34, 35].

Unfair competition is a term commonly used to ensure that consumers are not misled or confused. In certain cases, concerns about unfair competition arise from intentional deception, although such deception is not necessarily a prerequisite for unfair competition [36]. The issue of unfair competition has been discussed not only at the consumer level [34, 36, 37], but also among business stakeholders and at the national level [34, 35, 38, 39]. The literature has addressed concerns about unfair competition in the area of intellectual property rights, including trademarks, copyrights and patents [40–42]. It has also been pointed out that in Japan, damages have been assessed in terms of lost profits, ill-gotten profits or lost royalties of the owner, and that trademark and unfair competition damages can be successfully claimed under the infringer's profits theory as well as the lost royalties theory [42].

In the LETTER under consideration, there was no explicit reference to any trademark. However, the document mentioned the holders of plant variety rights and the potential amount of the fine under the Plant Variety Protection and Seed Act in Japan. In addition, the respondent's feedback indicated that the relevant right would expire in 2022. Accordingly, we considered all of these to be references to the discussion areas for potential unfair competition issues for relevant stakeholders, such as growers and distributors in Taiwan.

A trademark is a sign or mark that enables consumers to identify the origin and quality of goods or services. Any inconsistency in quality would devalue the brand for both producers and consumers. In the case of marketers using the Japanese name “ハニーエンジェル” for *Oncidium* cut flowers of different varieties, if companies such as HAS, OAA, TON or ST were aware of this and still charged royalties, this could potentially lead to unfair competition issues within the supply chain. This could also result in harm to Japanese consumers, as the Unfair Competition Law protects them from deceptive, fraudulent or unethical practices in commerce. If HAS, OAA, TON or ST

were unaware of this and still charged royalties, these marketers should be held responsible for unfair competition. Accordingly, it is important to pay more attention to potential unfair competition issues in the future.

4.3.2.2. Statute of Limitations

A statute of limitations is a law that fixes a certain period of time after which rights cannot be enforced by legal action or offences cannot be punished, and the first known use seems to be in 1641 (Merriam-Webster.com Dictionary, 2021) [43]. Statute of limitations refers not only to national law but also to international law [44–46]. The statute of limitations has been discussed in various fields and countries, including the United States, the EU, Africa and Asia [45, 47–51].

The statute of limitations generally contains two kinds of limitation periods, one is that an action, suit or proceeding should be brought within a certain period after the infringement has occurred, and the other is that the action, suit or proceeding should be brought within a certain period after the relevant facts of an infringement have been discovered or reasonably should have been discovered, and whichever of the mentioned periods provides the later date shall serve as the limitation period [48, 52]. However, taking Taiwan's Patent Act (as amended on 1 May 2019) and Trademark Act (as amended on 30 November 2016) as examples, the right to claim expires if it is not exercised within two years after the owner becomes aware of the damage and the person liable to pay damages, and the right also expires if it is not exercised within ten years from the commencement of the infringement. Although the statute of limitations has a long history of development and has been discussed in various fields, the international company may still lose a case due to the lack of a statute of limitations [41].

Irrespective of the parties in Taiwan or Japan who may seek to recover damages for unfair competition or other related matters, their efforts may prove futile due to the operation of the general statute of limitations, which bars claims that are not commenced within a period of ten years from the occurrence of the relevant act.

5. Conclusion

This article presents a case study of *Oncidium* cut flowers in the Japanese market to illustrate the potential to turn green (plants) into green (dollars) with a commercial life of more than 10 years. The study highlights the

importance of effective communication with marketers and consumers, as well as the impact and risks of IPR strategies, business models, value propositions and the trading company's actions on breeders, growers and consumers in the floriculture industry. These findings challenged the commonly held belief that the commercial life of cut flowers is short-lived, and echoed the opinions agreed in the literature for other horticultural crops, such as fruits, vegetables and medicinal herbs [15–21]. This study also reminded that in the competitive cut flower industry, investment in stakeholder and consumer recognition would lead to higher returns than in woody trees, shrubs and other plants with a longer lifespan. Consumers are more likely to pay attention to the differences in these products, making stakeholder and consumer recognition a critical factor in determining profitability [53].

In addition, this particular case has highlighted the importance of designing and promoting the recognition of a long-standing cut flower, including its language and the terminology used in licensing agreements and notification letters, which can result in corresponding business and legal risks. In addition, this case has shown that a well-established exclusive recognition of a cut flower variety in the market can determine the relevant business practices in its supply chain for over a decade, an aspect that has not been thoroughly explored in the existing literature. While each plant category has its own marketing challenges, this article can serve as a reference for individuals and organisations with an interest in the cut flower industry. For floricultural plant breeders, this case highlights the critical factors involved in commercialising a new cut flower variety. For commercial companies, this case highlights the importance of managing trademarks, termination letters and contracts. Finally, for consumers, this case is a reminder of the right to claim damages in response to unfair commercial practices.

The present study has certain limitations that need to be acknowledged. Firstly, the findings are derived from interviews and some secondary data, but not all relevant documents, including signed agreements, were taken into account. In addition, the scope of the study was limited by the absence of searches in Japanese markets using the Japanese term “ハニーエンジェル” instead of its English equivalent “Honey Angel”. Future research efforts could address these incomplete aspects.

References

- Corredor, D. (1999). Integrated pest management in cut flower crops grown in plastic houses at the Bogota plateau. *Acta Horticulturae*, 482, 241–246. doi: 10.17660/ActaHortic.1999.482.35
- Beckmann-Cavalcante, M. Z. (2021). Floriculture and Covid-19. *Ornamental Horticulture*, 27(1), 6–7. doi: 10.1590/2447-536X.v27i1.2284
- Darras, A. (2021). Overview of the dynamic role of specialty cut flowers in the international cut flower market. *Horticulturae*, 7(3), Article 51. doi: 10.3390/horticulturae7030051
- Faust, J. E., & Dole, J. M. (2021). The global cut flower and foliage marketplace. In J. E. Faust, J. M. Dole (Eds.), *Cut Flowers and Foliages* (pp. 1–47). Boston: CABI. doi: 10.1079/9781789247602.0001
- Worldwide Cut Flowers Market Industry to 2027 – Increase in the demand of cut flowers for decorative purposes. (2020, October 29). *Yahoo News*. Retrieved June 17, 2023 from <https://uk.news.yahoo.com/worldwide-cut-flowers-market-industry-132800233.html>
- Ahmed, J., Linda, I., & Majid, M. (2018). Royal Floraholland: Strategic supply chain of cut flowers business. In *SAGE Business Cases*. SAGE Publications. doi: 10.4135/9781526461919
- Giovannini, A., Laura, M., Nesi, B., & Cardi, T. (2021). Genes and genome editing tools for breeding desirable phenotypes in ornamentals. *Plant Cell Reports*, 40(3), 461–478. doi: 10.1007/s00299-020-02632-x
- Schreiner, M., Korn, M., Stenger, M., Holzgreve, L., & Altmann, M. (2013). Current understanding and use of quality characteristics of horticulture products. *Scientia Horticulturae*, 163, 63–69. doi: 10.1016/j.scienta.2013.09.027
- Huang, L. (2007). Behavioral differences in prepurchase processes between purchasers of flowers for self use and for gift use. *HortTechnology*, 17(2), 183–190. doi: 10.21273/HORTTECH.17.2.183
- Rombach, M, Dean, D. L., Olynk Widmar, N. J., & Bitsch, V. (2021). “Oh, you shouldn't have!” Understanding key factors impacting cut flowers gifting preferences in Germany. *Horticulturae*, 7(10), Article 368. doi: 10.3390/horticulturae7100368
- Yue, C., & Hall, C. (2010). Traditional or specialty cut flowers? Estimating U.S. consumers' choice of cut flowers at noncalendar occasions. *HortScience horts*, 45(3), 382–386. doi: 10.21273/HORTSCI.45.3.382
- Darras, A. I., & Kargakou, V. (2019). Postharvest physiology and handling of cut *Spartium junceum* inflorescences. *Scientia Horticulturae*, 252, 130–137. doi: 10.1016/j.scienta.2019.03.048
- Hughes, A. (2000). Retailers, knowledges and changing commodity networks: the case of the cut flower trade. *Geoforum*, 31(2), 175–190. doi: 10.1016/S0016-7185(99)00034-2
- Xia, Y., Deng, X., Zhou, P., Shima, K., & Teixeira da Silva, J. A. (2006). The world floriculture industry: dynamics of production and markets. In J. A. Teixeira da Silva (Ed.), *Floriculture, Ornamental and Plant Biotechnology* (Vol. 4, pp. 336–347). Global Science Books.
- Aguirre, P. (2006). Protection: Plant patents, utility patents, plant breeders' rights, trademarks, branding, royalties. In N. O. Anderson (Ed.), *Flower Breeding and Genetics* (pp. 81–112). Dordrecht: Springer.
- Clark, J. R., & Jondle, R. J. (2008). Intellectual property rights for fruit crops. In J. F. Hancock (Ed.), *Temperate Fruit Crop Breeding* (pp. 439–455). Dordrecht: Springer. doi: 10.1007/978-1-4020-6907-9_14
- De Beer, J., & Gaffen, A. (2017). Intellectual property rights in the recreational cannabis market: Craft or commodity. *U.B.C. Law Review*, 50(3), 621–656.
- Jondle, R. J., Hill, K. K., & Sanny, T. (2015). Current legal issues in intellectual property rights and protection for crop plants. *Crop Science*, 55(6), 2496–2503. doi: 10.2135/cropsci2014.10.0693

18. Luby, J. J., & Bedford, D. S. (2015). Cultivars as consumer brands: Trends in protecting and commercializing apple cultivars via intellectual property rights. *Crop Science*, 55(6), 2504–2510. doi: 10.2135/cropsci2014.10.0684
19. Mixon, J. (2020). Commercializing cannabis: Confronting the challenges and uncertainty of trademark and trade secret protection for cannabis-related businesses. *Washington Journal of Law, Technology & Arts*, 16(1), 1–28.
20. Moffat, V., Kamin, S., & Maffett, T. (2021). Cannabis, consumers, and the trademark laundering trap. *William & Mary Law Review*, Forthcoming, *U Denver Legal Studies Research Paper No. 21–25*, Available at SSRN 3908790.
21. Canavari, M. (2018). Marketing research on fruit branding: The case of the pear club variety “Angelys”. In A. Cavicchi, & C. Santini (Eds.), *Case Studies in the Traditional Food Sector* (pp. 239–254). Cambridge, MA: Woodhead Publishing. doi: 10.1016/B978-0-08-101007-5.00009-9
22. Uribe, R., Infante, R., Kusch, C., Contador, L., Pacheco, I., & Mesa, K. (2020). Do consumers evaluate new and existing fruit varieties in the same way? Modeling the role of search and experience intrinsic attributes. *Journal of Food Products Marketing*, 26(8), 521–534. doi: 10.1080/10454446.2020.1821419
23. Benson-Rea, M., & Stringer, C. E. (2015). Small firm Specialisation in global value chains: Evidence from the cut flower industry. *International Journal of Business and Economics*, 14(1), 43–62.
24. Chang, C. F. (2010). Taiwan’s flower industry: Putting down roots, branching out. Retrieved June 17, 2023 from <https://www.taiwanpanorama.com.tw/Articles/Details?Guid=2deb504e-9136-49bb-a1cd-06e07f8e2377&langId=3&CatId=9>
25. Chung, C. H., & Chu, C. C. (2018). The observation on Japan cut flower market tendency. In *Proceedings of the Symposium on Agricultural Science and Technology Researches for Strengthening the Competitiveness of Flower Industry in Taiwan* (pp. 98–108). Retrieved June 17, 2023 from <https://scholars.tari.gov.tw/handle/123456789/14933> [In Chinese]
26. Agricultural Statistics Database of Taiwan. Retrieved June 17, 2023 from <https://agrstat.coa.gov.tw/sdweb/public/inquiry/InquireAdvance.aspx>.
27. Chung, I. P., Tseng, M. C., Tsai, Y. C., & Li, S. (2012). Oncidium Cut Flower Variety Royalty Case - Summary of the Special Lecture on “Enhancing the Operational Capabilities of Seedling Enterprises”. *Seed Science and Technique*, 77, 16–19. [In Chinese]
28. Suikoh Topine and Honey Angel Secretariat. (2009 November 11). [Letter to Taiwan Floriculture Exports Association]. 契約のお願い [Request for a Contract]. Retrieved March 11, 2021 from http://www.tfea.org.tw/ezcatfiles/tfea/download/attdown/0/%E7%BF%A0%E5%85%89-%E6%97%A5%E6%96%87%E5%8E%9F%E7%A8%BF.pdf_.pdf. [In Japanese]
29. Rashid, Y., Rashid, A., Warraich, M. A., Sabir, S. S., & Waseem, A. (2019). Case study method: A step-by-step guide for business researchers. *International Journal of Qualitative Methods*, 18, Article 160940691986242. doi: 10.1177/1609406919862424
30. Darras, A. (2021). Overview of the dynamic role of specialty cut flowers in the international cut flower market. *Horticulturae*, 7(3), Article 51. doi: 10.3390/horticulturae7030051
31. Translation of Letter to Taiwan Floriculture Exports Association. (2009 November 11). 訂定契約の請求 [Request for a Contract] Retrieved March 11, 2021 from <https://www.tfea.org.tw/front/bin/download.phtml?Part=News-981120&Nbr=22&Category=2>. [In Chinese]
32. “Unfair competition.” *Merriam-Webster.com Dictionary*, Merriam-Webster. Retrieved June 17, 2023 from <https://www.merriam-webster.com/legal/unfair%20competition>
33. MacGregor Pelikónová, R., Čhsa-ovb, J., & Veněľ, M. (2017). The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact on the Czech Republic. *The Lawyer Quarterly*, 3(7), 145–161.
34. Thunken, A. (2002). Multi-state advertising over the internet and the private international law of unfair competition. *International and Comparative Law Quarterly*, 51(4), 909–942.
35. Bone, R. G. (2020). Rights and remedies in trademark law: The curious distinction between trademark infringement and unfair competition. *Texas Law Review*, 98(7), 1187–1218.
36. Eckel, P. (2015). A common approach to collective redress in antitrust and unfair Competition—A comparison of the EU, Germany and the United Kingdom. *International Review of Intellectual Property and Competition Law*, 46(8), 920–939. doi: 10.1007/s40319-015-0408-y
37. Arnold, R. (2013). English unfair competition law. *International Review of Intellectual Property and Competition Law*, 44(1), 63–78. doi: 10.1007/s40319-012-0010-5
38. Davis, J. (2015). Drive at your own risk: Uber violates unfair competition laws by misleading UberX drivers about their insurance coverage. *Boston College Law Review*, 56(3), 1097–1142.
39. Bykova, O., Garnov, A., Milonova, M., Trokhova, E., Progunova, L., Prikладova, A., & Ivanov, O. (2019). Methods for combating unfair competition in the intellectual property market in Russia and abroad. *Journal of Advanced Research in Law and Economics*, 10(2), 477–487.
40. Li, S. (2019). *Belmora LLC v. Bayer Consumer Care Ag: Unfair competition as an alternative approach to penetrate the territorial principle in U.S. Trademark Law*. *Berkeley Technology Law Journal*, 34(4), 1145–1176.
41. Osaki, M. (1999). Look at damage awards under Japan’s Trademark Law and Unfair Competition Prevention Law. *Pacific Rim Law & Policy Journal*, 8(2), 489–514.
42. “Statute of limitations”. *Merriam-Webster.com Dictionary*, Merriam-Webster. Retrieved June 17, 2023 from <https://www.merriam-webster.com/dictionary/statute%20of%20limitations>
43. Chavez Tafur, G. (2008). Using international law to by-pass domestic legal hurdles: On the applicability of the statute of limitations in the Menéndez et al. Case. *Journal of International Criminal Justice*, 6(5), 1061–1075.
44. Zhong, H. (2017). Can Chinese individuals request the restitution of Chinese cultural relics in Japan: Revisit under international law. *Journal of East Asia and International Law*, 10(1), 179–196. doi: 10.14330/jeail.2017.10.1.09
45. Martinez-Fraga, P. J., & Pampin, J. (2018). Reconceptualizing the statute of limitations doctrine in the international law of foreign investment protection: Reform beyond historical legacies. *New York University Journal of International Law and Politics*, 50(3), 789–884.
46. Amucheazi, C. O. (2019). A critical review of the jurisprudence of laws on rape in Nigeria and the impact of statute of limitations on prompt reporting of rape incidents. *Commonwealth Law Bulletin*, 45(2), 277–295. doi: 10.1080/03050718.2019.1711433
47. Hesch, J. D. (2020). Comprehensive analysis of The False Claims Act’s unique statute of limitations: The Supreme Court’s ruling in Cochise Consultancy, Inc. was good start but left much to do. *Syracuse Law Review*, 70(3), 773–816.
48. Klamberg, M. (2020). The evolution of Swedish legislation on international crimes. *Faculty of Law, Stockholm University Research Paper 83, Scandinavian Studies in Law*, 66. Retrieved from <https://ssrn.com/abstract=3705487>
49. Safonchyk, O., Hlyniana, K., & Ennan, R. (2020). Current issues of recodification of civil legislation of Ukraine in the context of European integration processes. *Amazonia Investiga*, 9(28), 303–310.
50. Watanabe, Y., & Miyazaki, M. (2018). Sex-related violence and the protection of women’s health in Japan. *Medicine and Law*, 37(2), 353–362.
51. Velikonja, U. (2019). Public enforcement after *Kokesh*: Evidence from sec actions. *Georgetown Law Journal*, 108(2), 389–448.
52. Drew, J., Yue, C., Anderson, N. O., & Pardey, P. G. (2015). Premiums and discounts for plant patents and trademarks used on ornamental plant cultivars: A hedonic price analysis. *HortScience*, 50(6), 879–887. doi: 10.21273/HORTSCI.50.6.879

УДК 658:339.1

Feng C.-F. *, Huang L.-C., Chiu Y.-C. Розроблення та потенційні проблеми управління у разі гарячого продажу багаторічних зрізаних квітів. *Plant Varieties Studying and Protection*. 2023. Т. 19, № 2. С. 93–103. <https://doi.org/10.21498/2518-1017.19.2.2023.277613>

*Національний тайванський університет, Китайська Республіка (Тайвань), No. 1, Sec. 4, Roosevelt Rd., Taipei 10617, Taiwan (R.O.C.), *e-mail: d06630003@ntu.edu.tw*

Мета. Сорти квітів на зріз зазвичай вважають такими, що мають коротке комерційне життя. Однак у процесі досліджень проаналізовано багаторічний популярний сорт, який дає змогу інакше поглянути на ринок зрізаних квітів.

Методи. Напівструктуроване інтерв'ю та якісний аналіз документів. **Результати.** У статті простежено еволюцію вирощування та продажу популярного виду зрізаних квітів, проаналізовано вплив торговельної компанії на різних учасників ланцюга постачання, а також розглянуто відповідні бізнес- та юридичні аспекти. **Висновки.** Підкреслено важливість ефективного управління листами-повідомленнями, пов'язаними з ними угодами та правами

інтелектуальної власності з огляду на потенційні юридичні та комерційні наслідки, що випливають з відповідних транзакцій і строків позовної давності. Крім того, надано цінну інформацію для селекціонерів і всіх зацікавлених у встановленні ідентичності нових сортів рослин на ринках. Підкреслено, що успіхові в бізнесі сприяє розуміння ланцюга постачання та впровадження відповідних стратегій, а також таких портфоліо інтелектуальної власності, як торговельні марки і права на сорти рослин.

Ключові слова: зрізана квітка; право на сорт рослин; позовна давність; торговельна марка; недобросовісна конкуренція.

Надійшла / Received 21.04.2023

Погоджено до друку / Accepted 24.06.2023