New Funds for Plant Breeding

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The Conard-Pyle Co. was incorporated in 1897 and is located in southern Chester County, Pa. Since our inception, roses have been the specialty, using the Star Rose trademark that dates from 1907. For the first 80 years, the business was primarily mail order to home gardeners. In 1978, all retail operations were discontinued and it became wholesale trade only. For the 1989 fiscal year, our gross income was just under $10 million, of which almost 15% was royalties generated by the licensing of plant patents. Just over 38% of those royalties was paid to the originators of the patented plants since Conard-Pyle Co. has no plant breeding program of its own. My objective in this paper is to illustrate how this arrangement works to the benefit of our company, the originators of the new varieties, the horticultural industry, and the public.

Before the U.S. Plant Patent law was enacted by Congress and signed in 1930 by President Hoover, a plant breeder had no "rights" in his breeding results. At best, a breeder had 1 to 3 years of exclusivity on propagating a new cultivar before the competition would have plants to sell. To try to pay for his efforts, the breeder would have to charge exorbitant prices during the first years, which would limit sales, so only a few buyers would enjoy the new cultivar. In patenting his "inventions", the breeder could license them and collect royalties to finance his breeding work. The breeder also could promote and advertise the new plants.

Plant patents stimulate commercial and other plant breeding. Those who buy, use, and enjoy a product pay for its design and development, as well as its making and marketing. Although specializing in roses, The Conard-Pyle Co. is very much involved with other ornamental plants. We produce >700,000 container-grown ornamental for sale each year, primarily hollies, juniper, euonymus, leucothoe, azaleas and rhododendron, and 40 other genera and species of ornamental hardy in U.S. Dept. of Agriculture hardiness Zones 4 through 8. The introduction of new cultivars has always been an important adjunct of our business.

We encourage creators of new kinds of plants to contact us and inform us how their new plant differs from other plants of the same species. If the new plant is of interest, we request propagating material, or one or a few plants for evaluation. We assign to the new plant a code number for identification purposes and then sign a testing agreement with the originator. This agreement identifies the originator as owner of any and all plants that were derived from the new plant and assigns the originator the rights to these plants. Should we determine the cultivar is new and different and has commercial value, we will reach an agreement with the originator for purchasing the rights to the cultivar and for obtaining the plant patent.

We assume all costs and responsibilities associated with the new and distinct cultivar. These include the preparation and filing of the plant patent application, propagating and growing all stock plants, and the marketing and promotional costs. Since the plant patent is applied for in the name of the originator, we ask the originator to assign the patent to The Conard-Pyle Co. This makes us responsible for any policing and enforcement of the plant patent.

Our payment to the originator is a percentage of the royalties we receive for each plant sold by The Conard-Pyle Co. or any of our licensees who grow and sell the variety. In 1989, we paid in excess of $150,000 to each of two breeders.

Currently, we own ≈100 U.S. Plant Patents from 15 breeders to whom we pay royalties. Not all of these patents are commercially successful, however. About 20% of the patents represent ≈80% of sales and royalties.

One of the patents we own was assigned to us by the Iowa State Univ. Research Foundation covering a rose developed at the university. The patent was Plant Patent #4225 for the cultivar 'Bucbi' whose trademark is Carefree Beauty™, a ruggedly hardy, disease-tolerant shrub rose.

The Conard-Pyle Co. owns the trademark "Star® Roses" that was first used in our 1907 catalog and officially registered about 1916. It is one of the oldest horticultural trademarks still in active use. It is a mark used on rose plants sold and delivered by us to this day. Even now, the gardening public recognizes Star® roses more readily than The Conard-Pyle Co.

A trademark may be a word or words, a symbol or design that identifies the goods or services of one party as distinct from those of others and indicates the origin of the goods or services. When a trademark is a word, it is an adjective modifying a noun. Star® roses indicates roses coming from The Conard-Pyle Co. The word "Star" can be used as a trademark on other classes of goods such as automobiles, clothing, paints, and other nonagricultural products. Other "family type" trademarks we own and use include Meidiland® for a family of hybrid flowering shrubs, and Sunblaze® for a family of pot-forcing miniature roses.

Many trademarks of this type are used by the nursery industry including: *Bear CreekGardens* - Jackson & Perkins® roses, Armstrong® roses, Florascape® roses; *Princeton Nurseries* - Shademaster® trees; and *Stark Bro's Nurseries* – Starking® apples, Starkspur® apples and cherries. Less well-known trademarks owned by individuals include: Mini-Flora® for small roses and Holly-By-Golly® for holly plants.

In recent years, trademarks have been used in association with cultivars. It is the same principal as Dacron® for polyester fiber, Coke® and Pepsi® for cola drinks, Benlate® for benomyl, or Roundup® for glyphosate, and the myriad of trademarks for goods and services we buy and use every day. I feel there is a place for trademarks when properly applied. At The Conard-Pyle Co., we have used them with patented plants, especially with some new hollies created by Kathleen Meserve. A few years ago, the Patent and Trademark Office asked for a cultivar name to be included as a part of the plant patent. We have done this for the plants covered by the following patents:

	Cultivar	Trademark
Plant Patent #4685 variety	'Mesid'	Blue Maid®
Plant Patent #4804 variety	'Mesan'	Blue Stallion®
Plant Patent #4803 variety	'Mesdob'	China Boy®
Plant Patent #4878 variety	'Mesog'	China Girl®
Plant Patent #4996 variety	'Meschick'	Dragon Lady®

Just as a patent gives certain rights to the owner, so does a trademark carry certain rights, especially when it is accepted on the Register of the Patent and Trademark Office. There is one major difference between a patent and a trademark. A patent is effective for 17 years and may not be renewed. A properly issued and ad-

ministered trademark, however, can continue as long as the Patent and Trademark Office exists and the mark is in active use by the owner. Where we have applied a trademark to a patented plant we include the licensed use of the trademark with the patent. To date we have not licensed any of our trademarks without the patent.

We want trademarks on cultivars primarily as a marketing tool. In the case of the Meserve hollies we have spent time and money establishing the plants and trademarks in the marketplace. When the plant patents expire after 17 years, we will have no control over who may grow, use, or sell the plants covered by the expired plant patents. However, we can control the use of the trademarks. There is a cultivar name that goes with each of those plant patents and the public will have every right to those names. Anyone is free to grow 'Mesam' but they may not use Blue Maid® for financial gain without our permission. No one can sell 'Mesan' holly as Blue Maid® holly any more than they can sell roses they grow as Star® Roses or polyester fiber they make as Dacron® unless licensed by the trademark owner.

Trademarks as they are being applied to cultivars are causing some confusion. When trademarks were first applied to pharmaceuticals, there was confusion in that academic and commercial field, but now trademarks are accepted without problems.

To the best of my knowledge, there has been no court decision regarding the validity of a trademark associated with a plant cultivar. Such a decision would be the final test of legal validity, and it would greatly facilitate eventual use and acceptance by the horticultural world.

In addition to economic gain, the use of trademarks aids in national advertising and promotion. Through patenting and appropriate licensing, a new plant can be made widely available and benefits accrue to all who are involved in producing and distributing the new product.

As with any new product, the final proof and acceptance of a plant patent or trademark is in the marketplace. No amount of promotion, patented or not, will make even the most beautiful white floribunda rose, which is prone to blackspot and winterkill, an economic success. Neither we nor any other nurseryman would knowingly patent and promote such a plant. But if you give us a broadleaved evergreen that looks reasonably nice, is hardy to Zone 2, and will withstand the desiccating summer and winter winds of the great plains, we will. make you famous and rich through a plant patent and trademark. Put a showy flower on that plant and we will make you even richer and more famous.