

Fruit piracy in Chile: protecting local IP

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Whether through a lack of understanding or a relaxed approach to the law, the intellectual property (IP) of 'Made in Chile' has not been respected in the fruit industry. This ethical and legal issue is tough to control and calls for legislation, yet it remains low on the political agenda.

Chile's Agricultural and Livestock Service (SAG) has recorded a total of 396 fruit varieties in the country of which just 17 are of domestic origin.

To try and raise this low percentage the government has encouraged studies into new varieties with several successful examples, yet the serious disincentive of fruit piracy has not been adequately addressed.

At www.freshfruitportal.com we speak to several experts who give the message that IP protection needs improvement in Chile, especially for locally-developed produce varieties.

"The industry should know that the Premium Gala apple is a protected variety. I'd like to give a warning to the industry," says Viverosur general manager Alejandro Navarro, who is also director of the Professional Association of Nursery Fruit (AGVF).

"The Chilean fruit export industry, directly or indirectly, may be complicit in a crime if we have farmers who have not declared they have this variety on their plantations.

Major industry players are very concerned about the issue, and what would happen to their image if some local competitors didn't play by the rules.

Viveros Requinoa general manager José Antonio Poblete says it would be very serious if Chile became famous for selling pirated varieties. His thoughts are echoed by AGVF manager Maritrini Lapuente.

"Piracy seriously discourages the generation of native varieties in Chile, which is what we need most to reduce dependency on foreign varieties," she says.

However, iQonsulting executive director Isabel Quiroz says local producers have become very aware of foreign intellectual property and what it implies.

"Today it is something very normal for farmers to pay a royalty for a foreign variety, which will sustain the breeder who made the investment," she says.

“Today it is becoming increasingly easy to control the material that enters from abroad because it is known, and there are many people involved in these businesses. Also, there are techniques to identify genetic varieties as molecular markers.

But when asked how intellectual property is protected in Chile, Quiroz’s response is not encouraging.

“There are breeders who have spent a large part of the last 20 years making crosses, and trying to make varieties that are adapted to our climate and aspects like exportation to distant markets,” she says.

“The owners of these varieties are less protected than foreigners with their creations in Chile.”

She says it is difficult to distinguish between protected varieties and pirated copies.

“Most of the varieties (Chilean) obtained come from mutations of already-known varieties, and that mutation is difficult – although not impossible – to detect with genetic techniques.”

How is the crime of fruit piracy carried out?

Poblete says unscrupulous farmers often get a hold of varieties and sell them with codes to nurseries, which do not always know how the varieties have been obtained.

“That is, the nursery acts in good faith but openly commits an unlawful act,” he says.

“The other thing that can happen is the nursery is committing the crime directly, offering protected varieties to its clients. The problem goes to the producer, who initially thinks they have done good business.

But if such a case goes to a judicial review the producer could face the requisitioning of fruit, crop loss or pay a premium if they want to legalize the orchard.

“All these problems must be resolved by the farmer – the nursery who sold the illegal plant can opt out of everything.

Alejandro Navarro explains some producers start to share once they have a protected variety, and a failure to control the spread has generated a mess.

“They started to sell their protected plants and concurrently started commercialization on an illegal level, such as with an improved Gala,” he says.

“All this carries the consequence of Chile losing its competitiveness as an exporter of fruit,” says Poblete.

An ethical matter of respect

For Quiroz, the main issue of piracy has nothing to do with auditing or genetic identification techniques, but ethical education in respecting IP.

“The call is to an industry that wants to be mature but has to take not just a responsibility that is legal, but also moral if it wants to be a food power,” she says.

To confront the situation the AGVF has published a list on its website of known protected varieties, including their trade names and patent details.

Lapuente adds the union is engaged in round table talks with SAG, with the aim of creating a protocol for producers to declare new plantings, re-attachments and crops they remove.

“In this way we kill several birds with one stone, as firstly we have traceability of materials that are used for planting or re-attachment, and as a consequence we limit illegal trade of illegal or ‘pirated’ varieties,” she says.

“(It) also discourages the existence of clandestine nurseries that are not registered with SAG and therefore fail to be audited. We would also collect important statistical information about what has been planted and finally, this would facilitate the work of monitoring for SAG.

UPOV 91

Chile’s nursery union is strongly advocating the case for accession to UPOV 91, which is a Geneva-based intergovernmental body that governs intellectual creations involving plant varieties.

“Chile is adhering to the protocol of 78 and now should approve that of 91, which includes new restrictions for intellectual property,” says Quiroz.

Lapuente says the law is ‘the last priority for parliamentarians, sleeping in the congress’, while Chile is currently on the U.S. watch list.

Both Lapuente and Quiroz add there is little specialization in IP law in either the public or private sectors, especially in relation to the horticultural industry.

“Having the mapping of where the illegal orchards are is a tremendous job, but still if you tell people they are doing something illegal, they are slow to acknowledge,” says Quiroz.

“Many of them do and are open to regularize and pay the corresponding royalty, but not all. Piracy in the case of Chilean varieties is still very widespread.”

Another solution to the problem could be the creation of clubs where businesses across the supply chain are identified to minimize risks, but Quiroz says not all varieties are suited to this form.

“There has to be a strong media campaign about the importance of respecting the intellectual property of plants, to raise awareness at all levels. The same is done with books, CDs and software,” says Poblete.

Jaime Ibieta from SAG’s seed division says the fight against piracy comes down to educating the public about how important the issue is for the country.

“In addition to educating farmers about the issue, it is necessary to get the judiciary to know the importance it has for the development of the country with respect to intellectual property law.”

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