PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86098613
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
ARGUMENT(S)	

I. INTRODUCTION

In the Office action mailed on June 22, 2014, the Examining Attorney refused registration of Applicant's "LIVIN' EASY" mark under 15 U.S.C. §§ 1051-1052, 1127 asserting that Applicant's mark does not function as a trademark.

Specifically, the Examining Attorney has alleged that LIVIN' EASY is the varietal/cultivar name for a rose.

In view of the arguments, explanations, and evidence submitted with this Request for Reconsideration, Applicant requests acceptance of Applicant's arguments that the "LIVIN' EASY" mark does indeed function as a trademark for a product line of live plants distributed by the Applicant.

II. APPLICANT'S "LIVIN' EASY" TRADEMARK FUNCTIONS AS A TRADEMARK AND IS NOT A VARIETAL/CULTIVAR NAME FOR A ROSE

Applicant submits that the Examining Attorney has erroneously concluded that Applicant's "LIVIN' EASY" trademark for live plants is a varietal/cultivar name for those same live plants, when in fact LIVIN' EASY is the trademark for a product line of roses distributed by the Applicant, and where HARwelcome is the varietal/cultivar name of the rose in question.

Applicant has submitted five different Declarations from individuals familiar with the rose industry in support of Applicant's registration effort for LIVIN' EASY. Each of these Declarations are from individuals well versed in the differences between a trademark for a product line of roses and the varietal/cultivar name for a rose.

Specifically, the following individuals have all stated that they are familiar with the rose product line distributed by Applicant under the LIVIN' EASY trademark, and that the actual varietal/cultivar name for this rose is "HARwelcome":

1. David H. Byrne: Professor and Basye Endowed Chair in Rose Genetics in the Department of Horticultural at Texas A&M University, College Station, Texas 77843-

2133, engaged in the research of rose breeding and genetics, among other types of research.

2. Keith Zary: Director of Ornamental Research and Development at Gardens Alive, Inc. located at 110 West Elm Street, Tipp City, Ohio 45371, a facility engaged in research activities related to breeding, trialing and protecting ornamental plants.

3. Bent Petersen: Green Goods Buyer for Armstrong Garden Centers, with offices at 2200 E. Route 66, Suite 200, Glendora, California 91740, a high volume distributor of live plants.

4. Harry Landers: Curator (and Botanic Specialist II) at the Portland International Rose Test Garden, located at 400 S.W. Kingston Avenue, Portland, Oregon 97205, a facility serving as a testing ground for new rose varieties.

5. Christian Bedard: Research Director and Licensing Manager for Applicant.

The Examining Attorney has located two different references to LIVIN' EASY on the Internet and has used these two references as the basis for refusing registration of the LIVIN' EASY trademark.

The first reference is a website that allegedly and erroneously identifies Applicant's LIVIN' EASY trademark as a varietal/cultivar name. In response to becoming aware of this website, Applicant sent a Cease and Desist Letter to the operator of the detected website asking for the operator to stop referring to Applicant's LIVIN' EASY trademark as a varietal/cultivar name for a rose. See Declaration of Christian Bedard in support of "LIVIN' EASY" trademark application ("Bedard Decl."), Exhibit G.

The second reference identified by the Examining Attorney was an article published in February 2007 and co-authored by Tammy Estabrooks, Robin Browne, and Zhongmin Dong. In response to becoming aware of this published article, Applicant sent a Cease and Desist Letter to all three of these authors asking for them to refrain from referring to Applicant's LIVIN' EASY trademark as a varietal/cultivar name in the future. Applicant also informed each of these authors that LIVIN' EASY was the trademark under which Applicant sells and distributes a specific rose product line. See Bedard Decl., Exhibit H.

Applicant is also the owner of United States Plant Patent No. 9,161. See Bedard Decl., Exhibit A. The name of the patent is clearly identified as "FLORIBUNDA ROSE PLANT NAMED HARWELCOME." This patent covers the rose distributed by Applicant under the LIVIN' EASY trademark, and clearly identifies the subject matter of the plant patent as a rose with the varietal/cultivar name HARWELCOME. See Bedard Decl., ¶11, Exhibit A.

Also, Applicant has been using the LIVIN' EASY trademark for a rose based product line for over fifteen years. See Bedard Decl., ¶9.

As shown by the above-identified evidence, in addition to the arguments and evidence submitted in response to the Office action dated April 17, 2014, which is already part of the evidentiary record for this matter, the “LIVIN' EASY” trademark is functioning as a trademark in the United States, is not a varietal/cultivar name for a rose, and serves as a source identifier for the Applicant. Accordingly, Applicant respectfully requests that the refusal under 15 U.S.C. §§ 1051-1052, 1127 be withdrawn and that the mark be passed to publication.

III. CONCLUSION

In view of the above arguments, reconsideration of the refusal to register is respectfully requested. The mark should be passed to publication.

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DESCRIPTION OF EVIDENCE FILE	Declartaions and Exhibits
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	In an Office action issued on June 22, 2014, the Trademark Examiner issued a FINAL refusal based on an allegation that the LIVIN' EASY trademark was not functioning as a trademark. This was the only remaining objection. A Notice of Appeal has been filed contemporaneously with this Request For Reconsideration, along with a request that the appeal be automatically suspended to allow the Trademark Examiner to respond to the Request for Reconsideration.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Gary J. Nelson/
SIGNATORY'S NAME	Gary J. Nelson
SIGNATORY'S POSITION	Attorney of Record, California Bar Member
SIGNATORY'S PHONE	626 795-9900

NUMBER	
DATE SIGNED	12/17/2014
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Dec 17 14:56:10 EST 2014
TEAS STAMP	USPTO/RFR-209.203.70.34-20141217145610460294-86098613-500d6d81a7e3cf04786ca5d489d9d7221c0d0be1f6cfbb826b6a653327043f2ca93-N/A-N/A-20141216232526585651

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86098613** has been amended as follows:

ARGUMENT(S)
In response to the substantive refusal(s), please note the following:

I. INTRODUCTION

In the Office action mailed on June 22, 2014, the Examining Attorney refused registration of Applicant's "LIVIN' EASY" mark under 15 U.S.C. §§ 1051-1052, 1127 asserting that Applicant's mark does not function as a trademark.

Specifically, the Examining Attorney has alleged that LIVIN' EASY is the varietal/cultivar name for a rose.

In view of the arguments, explanations, and evidence submitted with this Request for Reconsideration, Applicant requests acceptance of Applicant's arguments that the "LIVIN' EASY" mark does indeed function as a trademark for a product line of live plants distributed by the Applicant.

II. APPLICANT'S "LIVIN' EASY" TRADEMARK FUNCTIONS AS A TRADEMARK AND IS NOT A VARIETAL/CULTIVAR NAME FOR A ROSE

Applicant submits that the Examining Attorney has erroneously concluded that Applicant's "LIVIN' EASY" trademark for live plants is a varietal/cultivar name for those same live plants, when in fact LIVIN' EASY is the trademark for a product line of roses distributed by the Applicant, and where HARwelcome is the varietal/cultivar name of the rose in question.

Applicant has submitted five different Declarations from individuals familiar with the rose industry in support of Applicant's registration effort for LIVIN' EASY. Each of these Declarations are from individuals well versed in the differences between a trademark for a product line of roses and the varietal/cultivar name for a rose.

Specifically, the following individuals have all stated that they are familiar with the rose product line distributed by Applicant under the LIVIN' EASY trademark, and that the actual varietal/cultivar name for this rose is "HARwelcome":

1. David H. Byrne: Professor and Basye Endowed Chair in Rose Genetics in the Department of Horticultural at Texas A&M University, College Station, Texas 77843-2133, engaged in the research of rose breeding and genetics, among other types of research.

2. Keith Zary: Director of Ornamental Research and Development at Gardens Alive, Inc. located at 110 West Elm Street, Tipp City, Ohio 45371, a facility engaged in research activities related to breeding, trialing and protecting ornamental plants.

3. Bent Petersen: Green Goods Buyer for Armstrong Garden Centers, with offices at 2200 E. Route 66, Suite 200, Glendora, California 91740, a high volume distributor of live plants.

4. Harry Landers: Curator (and Botanic Specialist II) at the Portland International Rose Test Garden, located at 400 S.W. Kingston Avenue, Portland, Oregon 97205, a facility serving as a testing ground for new rose varieties.

5. Christian Bedard: Research Director and Licensing Manager for Applicant.

The Examining Attorney has located two different references to LIVIN' EASY on the Internet and has used these two references as the basis for refusing registration of the LIVIN' EASY trademark.

The first reference is a website that allegedly and erroneously identifies Applicant's LIVIN' EASY trademark as a varietal/cultivar name. In response to becoming aware of this website, Applicant sent a Cease and Desist Letter to the operator of the detected website asking for the operator to stop referring to Applicant's LIVIN' EASY trademark as a varietal/cultivar name for a rose. See Declaration of Christian Bedard in support of "LIVIN' EASY" trademark application ("Bedard Decl."), Exhibit G.

The second reference identified by the Examining Attorney was an article published in February 2007 and co-authored by Tammy Estabrooks, Robin Browne, and Zhongmin Dong. In response to becoming aware of this published article, Applicant sent a Cease and Desist Letter to all three of these authors asking for them to refrain from referring to Applicant's LIVIN' EASY trademark as a varietal/cultivar name in the future. Applicant also informed each of these authors that LIVIN' EASY was the trademark under which Applicant sells and distributes a specific rose product line. See Bedard Decl., Exhibit H.

Applicant is also the owner of United States Plant Patent No. 9,161. See Bedard Decl., Exhibit A. The

name of the patent is clearly identified as "FLORIBUNDA ROSE PLANT NAMED HARWELCOME." This patent covers the rose distributed by Applicant under the LIVIN' EASY trademark, and clearly identifies the subject matter of the plant patent as a rose with the varietal/cultivar name HARWELCOME. See Bedard Decl., ¶11, Exhibit A.

Also, Applicant has been using the LIVIN' EASY trademark for a rose based product line for over fifteen years. See Bedard Decl., ¶9.

As shown by the above-identified evidence, in addition to the arguments and evidence submitted in response to the Office action dated April 17, 2014, which is already part of the evidentiary record for this matter, the “LIVIN' EASY” trademark is functioning as a trademark in the United States, is not a varietal/cultivar name for a rose, and serves as a source identifier for the Applicant. Accordingly, Applicant respectfully requests that the refusal under 15 U.S.C. §§ 1051-1052, 1127 be withdrawn and that the mark be passed to publication.

III. CONCLUSION

In view of the above arguments, reconsideration of the refusal to register is respectfully requested. The mark should be passed to publication.

EVIDENCE

Evidence in the nature of Declartaions and Exhibits has been attached.

Original PDF file:

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Converted PDF file(s) (7 pages)

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Evidence-6
Evidence-7

ADDITIONAL STATEMENTS
Miscellaneous Statement
In an Office action issued on June 22, 2014, the Trademark Examiner issued a FINAL refusal based on an allegation that the LIVIN' EASY trademark was not functioning as a trademark. This was the only remaining objection. A Notice of Appeal has been filed contemporaneously with this Request For Reconsideration, along with a request that the appeal be automatically suspended to allow the Trademark Examiner to respond to the Request for Reconsideration.

SIGNATURE(S)
Request for Reconsideration Signature
Signature: /Gary J. Nelson/ Date: 12/17/2014
Signatory's Name: Gary J. Nelson
Signatory's Position: Attorney of Record, California Bar Member

Signatory's Phone Number: 626 795-9900

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86098613
Internet Transmission Date: Wed Dec 17 14:56:10 EST 2014
TEAS Stamp: USPTO/RFR-209.203.70.34-20141217145610460294-86098613-500d6d81a7e3cf04786ca5d489d9d7221c0d0be1f6cfbb826b6a653327043f2ca93-N/A-N/A-20141216232526585651

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : LIVIN' EASY
Serial No. : 86098613
Filed : October 22, 2013
Applicant : Early Morning LLC dba Weeks Roses

Law Office : 102
Examiner : Cimmerian Coleman

Docket No. : 73780/W255

Declaration of David H. Byrne in support of "LIVIN' EASY" trademark application

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Post Office Box 29001
Glendale, CA 91209-9001

Commissioner:

I, David H. Byrne, hereby declare as follows:

1. I am a Professor and the Basye Endowed Chair in Rose Genetics in the Department of Horticultural Sciences at Texas A&M University, College Station, Texas, 77843-2133.

2. I received my B.S. in Plant Science from Rutgers University in 1975 and my Ph.D. in Plant Breeding in 1980 from Cornell University. Currently, I am a Member of the Graduate Faculty of Texas A&M University and am eligible to serve as the Chair, Co-Chair and am a Member of Graduate Student Advising Committees. I became a Member of the Graduate Faculty in August 1984.

3. My research areas include stone fruit and rose breeding and genetics.

4. The fruit breeding research involves peach, plum and apricot cultivar development for medium and low-chill regions, development of *in vitro* embryo rescue and

regeneration techniques as aids in practical breeding, development of rootstocks tolerant to calcareous soils, characterization and comparison of cultivated and wild Prunus germplasm with isozyme, RAPD, and morphological characters and the use of these markers in breeding programs.

5. The rose breeding research involves the development of blackspot resistant rose germplasm, utilization of traits from diploid rose species by creating artificial amphidiploids, genetics of commercially important traits and marker loci in families derived from interspecific hybrids, and the use of genetic markers as an aid in the selection of commercially important traits and for the characterization and comparison of wild and cultivated rose germplasm.

6. Attached as Exhibit A to this Declaration is a list of my Research Publications: (i) Referred Journal Articles; (ii) Popular Articles; (iii) Review Articles; and (iv) Abstracts.

7. I am making this declaration in support of Early Morning LLC dba Weeks Roses ("Weeks Roses") attempt to register its LIVIN' EASY trademark (Application Ser. No. 86098613) in the United States.

8. I have been aware of Weeks Roses for over 15 years and am familiar with many of its plant products. Weeks Roses is well known throughout the rose industry and has become synonymous with the distribution and sales of top quality roses throughout the United States. Weeks Roses has had this stellar reputation in the rose industry for decades.

9. As part of my duties in the Department of Horticultural Sciences at Texas A&M, I routinely and regularly encounter products and brands used by Weeks Roses. In this regard, I am intimately aware of Weeks Roses and its use of the LIVIN' EASY trademark with respect to one of its rose product offerings. I have been aware of Weeks Roses LIVIN' EASY trademark being used for roses for over 15 years and I readily identify Weeks Roses as the source associated with the LIVIN' EASY trademark for one line of its rose products. To the best of my knowledge, Applicant Weeks Roses is the only company using the LIVIN' EASY trademark for roses.

10. Furthermore, the cultivar name for the generic rose varietal that Applicant Weeks Roses sells under its LIVIN' EASY trademark is "HARwelcome." It is my understanding that the United States Patent and Trademark Office ("USPTO") has formed an erroneous belief that the cultivar name for this plant product is "Livin' Easy." I am offering this Declaration in an effort to inform the USPTO of the erroneous conclusion it has made. LIVIN' EASY is the trademark. "HARwelcome" is the cultivar name.

11. Based on my experience in the live plant field, it is my understanding Applicant Weeks Roses is well-known in the industry and persons in the industry associate the LIVIN' EASY trademark with Applicant Weeks Roses with respect to roses, and that persons in the industry are aware that the cultivar name for this generic living plant is "HARwelcome."

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issued thereon.

Date 12/2/2014

By _____
David H. Byrne

EXHIBIT A

Research Publications

Referred Journal Articles

Byrne, D.H., W. Black, Y. Ma and H.B. Pemberton. 1995. The use of amphidiploidy in the development of blackspot resistant rose germplasm. Acta Hort. 424: 269-272
Ballard, R., S. Rajapakse, A. Abbot, and D.H. Byrne. 1996. DNA markers in rose and their use for cultivar identification and genome mapping. Acta Hort. 424:265-268.
Ma, Y. and D.H. Byrne and J. Chen. 1996. Propagation of rose species in vitro. IVCDB-Plant 32:103-108.
Ma, Y., M. Nurul Islam-Faridi, C. F. Crane, D. M. Stelly, H. J. Price, and D. H. Byrne. 1996. A new procedure to prepare slides of metaphase chromosomes of roses. HortScience 31(5):855-857.
Kim, Y. and D. H. Byrne. 1996. Interspecific hybrid verification of Rosa with isozymes. HortScience 31(7):1207-1209.
Ma, Y., C. F. Crane, and D.H. Byrne. 1996. Meiotic behavior of hybrids involving Rosa laevigata. Cytologia 61:457-463.
Ma, Y., N. Islam-Faridi, C.F. Crane, Y. Ji, D. Stelly, J. Price, and D.H. Byrne. 1997. In situ hybridization of ribosomal DNA to rose chromosomes. J. Hered. 88(2):158-161.
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Ma, Y., C.F. Crane, and D.H. Byrne. 1997. Karyotypic relationships among some Rosa species. Caryologia 50(3-4):317-326.
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Anderson, N. D.H. Byrne, J. Sinclair, and A. M. Burrell. 2002. Cooler temperatures during germination improves survival of embryo cultured peach seed. HortScience 37:402-403.
Ma, Y. and D. H. Byrne. 2003. Rose caryologia. Rose Encyclopedia. Elsevier.
Byrne, D. H. and Y. Ma. 2003. Meiosis in Roses. Rose Encyclopedia. Elsevier.
Byrne, D. H. and Y. Ma. 2003. Amphidiploidy in Roses. Rose Encyclopedia. Elsevier.
Byrne, D. H. 2003. Marker-assisted Selection in Roses. Rose Encyclopedia. Elsevier.
Byrne, D.H., W. Black, Y. Ma and H.B. Pemberton. 1995. The use of amphidiploidy in the development of blackspot resistant rose germplasm. Acta Hort. 424: 269-272.
Ballard, R., S. Rajapakse, A. Abbot, and D.H. Byrne. DNA markers in rose and their use for cultivar identification and genome mapping. Acta Hort. 424:265-268.

Popular Articles

Byrne, D.H. 1993. Robert E. Basye chair in rose genetics. The Rose, Spring. p. 50-51.
Black, W.A., D.H. Byrne and H.B. Pemberton. 1994. Field study of black spot resistance in rose. Handout for rose groups.
Byrne, D.H. 1994. The Basye Chair in Rose Genetics: Rose research at Texas A&M University. Summary of talk given at the Tenth Huntington Symposium of Old Roses. Given to rose organizations and individuals that are interested in the ongoing work.

Byrne, D.H. 1995. The Basye Chair in rose genetics and breeding. Heirloom Old Garden Roses. 1995:41.
Byrne, D. H. 1996. Towards blackspot free roses. Victorian Rose News. Summer, 1995-96:16-19.
Byrne, D. H. 1996. Rose research at Texas A&M University. The Basye Chair in Rose Genetics. Australian Rose Annual. 1996:91-96.
Byrne, D. H. 1996. Amphidiploidy and rose breeding for disease resistance. Potpourri of Roses. July newsletter.
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Byrne, D.H., Y. Ma, and H.B. Pemberton. 1997. Rose breeding at Texas A&M University. Landscape Plant Newsletter, Fall.
Byrne, D.H. 1997. The Basye Chair in Rose breeding and genetics at Texas A&M University. NMPro Magazine, Oct: 55-56.
Rajapaske, S., R. Ballard, and D. H. Byrne. 1998. Genetic mapping of blackspot resistance in roses. American Rose Magazine July: 20-21.
Davidson, C. G., D. Byrne, P. Lim, Y. Ma, K. Zuzek, and M. Shoup. 1998. Rose germplasm collection trip to China. Landscape Plant Newsletter, Spring issue.
Rajapakse, S. and D.H. Byrne. 2001. Gene map speeds selection of commercial traits. FlowerTECH 4(4): 24-27.
Phillips, K. and D. H. Byrne. 2002. Rose Breeding Blooms from Backyard to Genetics Lab. http://agnews.tamu.edu/dailynews/stories/HORT/Jun1102a.htm

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Ma, Y. and D. H. Byrne. 2003. Rose caryologia. Rose Encyclopedia. Elsevier.
Byrne, D. H. and Y. Ma. 2003. Meiosis, p. 273-279. Rose Encyclopedia. Elsevier.
Byrne, D. H. and Y. Ma. 2003. Amphidiploidy, p. 11-15. Rose Encyclopedia. Elsevier.
Byrne, D. H. 2003. Marker-Assisted Selection, p. 350-357. Rose Encyclopedia. Elsevier.

Abstracts

Ma, Y., D.H. Byrne, J. Chen and A. Byrne. 1994. Multiplication of rose species in vitro. HortScience 29(5):431.
Black, W.A., D.H. Byrne and H.B. Pemberton. 1994. Field study of black spot resistance in rose. HortScience 29(5):525.
Kim, Y. and D.H. Byrne. 1994. Biosystematic classification of genus Rosa using isozyme polymorphisms. HortScience 29(5):483.
Ma, Y., D.H. Byrne and D.M. Stelly. 1995. Karyotypic relationships among some Rosa species. HortScience 30(4):860.
Byrne, D.H., Y. Ma, W. Black and H.B. Pemberton. 1995. Amphidiploids as a source of blackspot resistance in rose germplasm development. HortScience 30(4):778.
Black, W.A., D.H. Byrne and H.B. Pemberton. 1995. Protected/unprotected study of blackspot resistance in rose. HortScience 30(4):778.
Ma, Y., D.H. Byrne and J. Chen. 1995. Colchicine-induced amphidiploids of rose interspecific hybrids. HortScience 30(4):778.
Byrne, D.H., W. Black, Y. Ma and H.B. Pemberton. 1995. The use of amphidiploidy in the development of blackspot resistant rose germplasm. 2nd International Rose Symposium. Feb. 1995. INRA/ISHS.
Ballard, R., S. Rajapakse, A. Abbott, and D.H. Byrne. 1995. DNA markers for mapping the rose genome. 2nd International Rose Symposium. Feb. 1995. INRA/ISHS.

Ma, Y., M. Islam-Faridi, C.F. Crane, Y. Ji, D.M. Stelly, H.J. Price, and D.H. Byrne. 1996. In situ hybridization of ribosomal DNA to rose. Plant Genome IV. San Diego, CA. Jan., 1996.
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Rajapakse, S., R. E. Ballard, and D. H. Byrne. 1999. Towards a gene map of rose. Final Program and abstracts guide: International Plant and Animal Genome VII Conference, p. 52.
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Zhang, L., R. E. Ballard, A. G. Abbott, D. H. Byrne, and S. Rajapakse. 2000. Integrating microsatellite markers into rose genetic map. International Plant and Animal Genome VIII.
Pemberton, H. B. and D. H. Byrne. 2000. Field resistance of rose hybrids, species, and species hybrids as part of a rose improvement program. International Rose Symposium, Israel, May, 2000.
Anderson, N., and D. H. Byrne. 2000. The effects of leaching and stratification media on Rosa spp. HortScience 35:401.
Kim, C-K, D. H. Byrne, J. Ou, and J. Chung. 2002. Somatic embryogenesis from in vitro derived explants of rose. International Horticultural Congress, Toronto, Aug. 2002.
Kim, C-K., D. H. Byrne, and J. Chung. 2002. Agrobacterium tumefaciens-mediated transformation and transgenic plant regeneration of rose. International Horticultural Congress, Toronto, Aug. 2002.
Burrell, M. A. and D. H. Byrne. 2003. Study in the embryogenic callus potential of Rosa hybrida L. cvs. Tournament of Roses x Baby Love progeny. HortScience 38(5):861.

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : LIVIN' EASY
Serial No. : 86098613
Filed : October 22, 2013
Applicant : Early Morning LLC dba Weeks Roses

Law Office : 102
Examiner : Cimmerian Coleman

Docket No. : 73780/W255

Declaration of Bent Petersen in support of "LIVIN' EASY" trademark application

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Post Office Box 29001
Glendale, CA 91209-9001

Commissioner:

I, Bent Petersen, hereby declare as follows:

1. I am the Green Goods Buyer for Armstrong Garden Centers ("AGC") with offices at 2200 E. Route 66, Suite 200, Glendora, CA 91740. Part of my responsibilities at AGC include buying plants from a large number of plant vendors, each capable of supplying AGC with the volume and quality of products required. I have held this position since for 14 years, and have been with AGC since 1984 (30 years).

2. AGC has been selling roses since the early 1920s, and has been operating a research and development department since the 1930s and was responsible for breeding the world-famous rose varietals "Chrysler Imperial" and "Charlotte Armstrong."

3. Throughout the 1940s and 1950s, AGC's leadership in the rose industry and its attention to excellence led to hundreds of new rose varieties, and a wide range of other types of plants. AGC commercial successes include the Boysenberry, the Babcock Peach, the Seedless

Valencia Orange, Robertson Navel Orange, the Snow Queen Nectarine, the Red Baron Peach, and the first genetic dwarf peach known as the Bonanza.

4. In the 1980s, AGC became a fully employee-owned company in an ongoing effort to maintain high horticultural standards and allowing for full control of plant quality from the start to finish of the development process.

5. AGC currently has 29 locations in Southern California and 2 locations in the San Francisco Bay area. I routinely purchase large volumes of roses and other plants for the network of AGC retail stores.

6. I am making this declaration in support of Early Morning LLC dba Weeks Roses ("Weeks Roses") attempt to register its LIVIN' EASY trademark (Application Ser. No. 86098613).

7. I have been aware of Weeks Roses for over 32 years and am familiar with many of its plant products. Weeks Roses is one of many suppliers I use for purchasing rose products. Weeks Roses is well known throughout the rose industry and has become synonymous with the distribution and sales of top quality roses throughout the United States. Weeks Roses has had this stellar reputation in the rose industry for decades.

8. As part of my duties at AGC, I routinely and regularly encounter branded products used by numerous rose and plant suppliers. Indeed, I am exposed to hundreds of trademarks adopted by AGC's numerous suppliers of roses. In this regard, I am intimately aware of Weeks Roses and its use of the LIVIN' EASY trademark with respect to one of its rose product offerings. I have been aware of Weeks Roses LIVIN' EASY trademark being used for roses for over 15 years and I readily identify Weeks Roses as the source associated with the LIVIN' EASY trademark for one line of its rose products. To the best of my knowledge, Applicant Weeks Roses is the only company using the LIVIN' EASY trademark for roses.

9. As part of my duties at AGC, I am well aware of the difference between the generic cultivar/varietal name for roses and other plants, on the one hand, and the commercial trademarks used to market these same roses and other plants, on the other hand.

10. In regard to the particular brand of roses sold and marketed by Weeks Roses under the trademark LIVIN' EASY, I am aware that the cultivar name for this rose is "HARwelcome." It is my understanding that the United States Patent and Trademark Office ("USPTO") has formed an erroneous belief that the cultivar name for this plant product is "livin' easy." I am offering this Declaration in an effort to inform the USPTO of the erroneous conclusion it has made. LIVIN' EASY is the trademark. "HARwelcome" is the cultivar name.

11. Based on my experience in the live plant field, it is my understanding Applicant Weeks Roses is well-known in the industry and persons in the industry associate the LIVIN' EASY trademark with Applicant Weeks Roses with respect to roses, and that persons in the industry are aware that cultivar name for this generic living plant is "HARwelcome."

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issued thereon.

Date 11-26-2014 By Bent Petersen
Bent Petersen

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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : LIVIN' EASY
Serial No. : 86098613
Filed : October 22, 2013
Applicant : Early Morning LLC dba Weeks Roses

Law Office : 102
Examiner : Cimmerian Coleman

Docket No. : 73780/W255

Declaration of Harry Landers in support of "LIVIN' EASY" trademark application

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Post Office Box 29001
Glendale, CA 91209-9001

Commissioner:

I, Harry Landers, hereby declare as follows:

1. I am the Curator (and Botanic Specialist II) at the Portland International Rose Test Garden located at 400 S.W. Kingston Avenue, Portland, Oregon 97205 ("the Garden").

2. The primary purpose of the Garden is to serve as a testing ground for new rose varieties. The rose testing program at the Garden is the oldest of its kind in the United States.

3. Many roses are tested in the Garden in an effort to find a variety of different characteristics which we believe consumers will desire in a garden plant including plant habit, vigor, disease resistance, color, flower, production, form, foliage, and fragrance. On average, hundreds of rose cultivars are tested each year.

4. The Garden is also one of only six testing grounds for the American Rose Society miniature rose test program; one of the top ten urban gardens in the world; and one of the top ten public gardens in the United States.

5. More than 10,000 roses representing 650 varietals can be found in the 4.5-acre Garden which draws more than 500,000 TO 650,000 visitors each year.

6. My responsibilities include overseeing the testing of the roses in the Garden and maintaining the general upkeep of the Garden and ensuring that the roses in the Garden remain vibrant.

7. I have been with the Garden since approximately 1989. I am making this declaration in support of Early Morning LLC dba Weeks Roses ("Weeks Roses") attempt to register its LIVIN' EASY trademark (Application Ser. No. 86098613).

8. I have been aware of Weeks Roses for over 25 years and am familiar with many of its plant products. Weeks Roses is well known throughout the rose industry and has become synonymous with the distribution and sales of top quality roses throughout the United States. Weeks Roses has had this stellar reputation in the rose industry for decades.

9. As a result of my responsibilities at the Garden, I am well versed in the difference between a cultivar name for a generic type of rose, and a commercial trademark under which a particular generic type of rose is sold and distributed.

10. As part of my duties at the Garden, I routinely and regularly encounter products and brands used by Weeks Roses. In this regard, I am intimately aware of Weeks Roses and its use of the LIVIN' EASY trademark with respect to one of its rose product offerings. I have been aware of Weeks Roses LIVIN' EASY trademark being used for roses for over 15 years and I readily identify Weeks Roses as the source associated with the LIVIN' EASY trademark for one line of its rose products. To the best of my knowledge, Applicant Weeks Roses is the only company using the LIVIN' EASY trademark for roses.

11. Furthermore, the cultivar name for the generic rose varietal that Applicant Weeks Roses sells under its LIVIN' EASY trademark is "HARwelcome." It is my understanding that the United States Patent and Trademark Office ("USPTO") has formed an erroneous belief that the cultivar name for this plant product is "livin' easy." I am offering this Declaration in an effort

to inform the USPTO of the erroneous conclusion it has made. LIVIN' EASY is the trademark. "HARwelcome" is the cultivar name.

12. Based on my experience in the live plant field, it is my understanding Applicant Weeks Roses is well-known in the industry and persons in the industry associate the LIVIN' EASY trademark with Applicant Weeks Roses with respect to roses, and that persons in the industry are aware that cultivar name for this generic living plant is "HARwelcome."

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issued thereon.

Date Nov. 27, 2014

By Harry Landers
Harry Landers

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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark	: LIVIN' EASY
Serial No.	: 86098613
Filed	: October 22, 2013
Applicant	: Early Morning LLC dba Weeks Roses
Law Office	: 102
Examiner	: Cimmerian Coleman
Docket No.	: 73780/W255

Declaration of Keith Zary in support of "LIVIN' EASY" trademark application

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Post Office Box 29001
Glendale, CA 91209-9001

Commissioner:

I, Keith Zary, hereby declare as follows:

1. I am the Director of Ornamental Research and Development at Gardens Alive, Inc. ("Gardens Alive") with offices at 110 West Elm Street, Tipp City, Ohio 45371. My responsibilities include directing all research activities including breeding, trialing and protecting all ornamental plants introduced by the Gardens Alive! brands. I have held this position since October, 2010, and have been with Gardens Alive since October, 2010. I am making this declaration in support of Early Morning LLC dba Weeks Roses ("Weeks Roses") attempt to register its LIVIN' EASY trademark (Application Ser. No. 86098613).

2. I have been aware of Weeks Roses for over 30 years and am familiar with many of its plant products. Weeks Roses is well known throughout the rose industry and has become synonymous with the distribution and sales of top quality roses throughout the United States. Weeks Roses has had this stellar reputation in the rose industry for decades.

3. As part of my duties at Gardens Alive, I routinely and regularly encounter products and brands used by Weeks Roses. In this regard, I am intimately aware of Weeks Roses and its use of the LIVIN' EASY trademark with respect to one of its rose product offerings. I have been aware of Weeks Roses LIVIN' EASY trademark being used for roses for over 15 years and I readily identify Weeks Roses as the source associated with the LIVIN' EASY trademark for one line of its rose products. To the best of my knowledge, Applicant Weeks Roses is the only company using the LIVIN' EASY trademark for roses.

4. Furthermore, the cultivar name for the generic rose varietal that Applicant Weeks Roses sells under its LIVIN' EASY trademark is "HARwelcome." It is my understanding that the United States Patent and Trademark Office ("USPTO") has formed an erroneous belief that the cultivar name for this plant product is "livin' easy." I am offering this Declaration in an effort to inform the USPTO of the erroneous conclusion it has made. LIVIN' EASY is the trademark. "HARwelcome" is the cultivar name.

5. Based on my experience in the live plant field, it is my understanding Applicant Weeks Roses is well-known in the industry and persons in the industry associate the LIVIN' EASY trademark with Applicant Weeks Roses with respect to roses, and that persons in the industry are aware that cultivar name for this generic living plant is "HARwelcome."

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issued thereon.

Date November 26, 2014 By Keith Zary
Keith Zary

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark : LIVIN' EASY
Serial No. : 86098613
Filed : October 22, 2013
Applicant : Early Morning LLC dba Weeks Roses

Law Office : 102
Examiner : Cimmerian Coleman

Docket No. : 73780/W255

Declaration of Christian Bedard in support of "LIVIN' EASY" trademark application

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Post Office Box 29001
Glendale, CA 91209-9001

Commissioner:

I, Christian Bedard, hereby declare as follows:

1. I am the Research Director and Licensing Manager for Applicant Early Morning LLC dba Weeks Roses ("Weeks Roses").

2. I have a B.S. in Biology and a Master's Degree in Biological Sciences (Plant Genetics) from the University of Montreal, and am proficient in English, French and Spanish. During my graduate studies at the University of Montreal, I worked on the protocol for the utilization of gamma rays to induce mutation in rose seeds, rose *in vitro* plants and rose plants. I also specialized in *in vitro* culture of rose plants and rose embryos from which I worked on acclimatization and *in vivo* rooting methods for rose plantlets. I also explored the molecular characteristics of the rose world using the technique of Random Amplified Polymorphic DNA (RAPD) to fingerprint rose plants, select genes and analyze the phylogenetic origin of the plants.

3. During my professional career, I have gained extensive experience in the improvement of winter hardy roses and have established myself as a knowledgeable speaker on

rose care and culture. I have written numerous technical and promotional informational literature in support of patenting new rose cultivars, including "William Booth," Marie-Victorin" and "De Montarville" from the Canadian Explorer rose collection. I have been interviewed on many radio and television shows on the care and cultivation of roses.

4. I began my career at Weeks Roses in 2000 as the Licensing Project Manager and Research Assistant. As indicated above, I am currently the Research Director and Licensing Manager for Weeks Roses.

5. Under my direction, at Weeks Roses, each year about 40,000 - 45,000 flowers are hand-pollinated in the research facility maintained by Weeks Roses in Pomona, California in order to produce around 250,000 seeds. Private trials are conducted in Tennessee, Washington, New York, Ohio and California where the seedlings are thoroughly tested. Based on my observations of the test results, I make methodical and careful selections to ensure Weeks Roses only sells and distributes roses worthy of the Weeks Roses name.

6. The roses and plants I have cultivated have been recognized by the industry. For example, I have produced three Award of Excellence winners sold under the following trademarks: Harm Saville™ (2005); Spirit Dance™ (2010) and Be My Baby™ (2011). My hybrid creations include roses branded as Coffee Bean™ (2008); Teeny Bopper™ (2009); Cape Diamond™ (2009); Pumpkin Patch™ (2010); White Licorice™ (2011); Smoke Rings™ (2011) and Party Hardy™ (2011). I have also been the co-creator for new hybrids branded as Ch-Ching™ (2010); Dick Clark™ (2011); and Pink Home Run™ (2011). My newest roses have been branded as Ketchup & Mustard™ (2012), Koko Loko™ (2012), All a' Twitter™ (2012) and Sugar Moon™ (2012).

7. I am making this declaration in support of Weeks Roses' attempt to register its LIVIN' EASY trademark (Application Ser. No. 86098613).

8. As a result of my work at Weeks Roses and my educational background, I am well aware of the differences between the generic cultivar name assigned to newly developed roses and the commercial trademarks under which these same roses are sold and distributed.

9. I have personal knowledge that Weeks Roses has been using LIVIN' EASY as a trademark on one of its rose product lines and that this trademark has been in continuous use for over 15 years. To the best of my knowledge, Weeks Roses is the only company using the LIVIN' EASY trademark for roses.

10. Furthermore, the cultivar name for the generic rose varietal that Weeks Roses sells under its LIVIN' EASY trademark is "HARwelcome." It is my understanding that the United States Patent and Trademark Office ("USPTO") has formed an erroneous belief that the cultivar name for this plant product is "livin' easy." I am offering this Declaration in an effort to inform the USPTO of the erroneous conclusion it has made. LIVIN' EASY is the trademark. "HARwelcome" is the cultivar name.

11. Weeks Roses is the owner of United States Plant Patent No. 9161 ("the 9161 Plant Patent"). A copy of that patent has been attached to this Declaration as Exhibit A. The 9161 Plant Patent clearly shows that the cultivar name is "HARwelcome." This is the generic name for the rose distributed by Weeks Roses under the LIVIN' EASY trademark.

12. Attached to this Declaration are Exhibits B, C, D, E and F. Each of these Exhibits contains a document referenced by the Trademark Examiner when refusing to register the LIVIN' EASY trademark. The Trademark Examiner has taken the position that unrelated third parties are using LIVIN' EASY as the cultivar name for the generic rose sold and distributed by Weeks Roses.

13. To the extent these unrelated third parties may indeed be erroneously and inappropriately using Weeks Roses' LIVIN' EASY trademark as a cultivar name, Weeks Roses wishes to thank the Trademark Examiner for bringing this erroneous and inappropriate use of the LIVIN' EASY trademark to the attention of Weeks Roses.

14. I do note however, that the documents attached as Exhibits C, D, E and F to this Declaration are the same article. Therefore, the Trademark Examiner has really only found two inappropriate third-party uses of the LIVIN' EASY trademark. In light of this revelation, attached as Exhibit G is a copy of the letter sent by Weeks Roses to the operator of the referenced website requesting that the website be immediately modified to begin using the actual cultivar name, "HARwelcome", when referring to the generic rose highlighted on the website, instead of the LIVIN' EASY trademark. Also, attached as Exhibit H is a copy of the letter sent by Weeks Roses to each of the three authors of the published article discovered by the Trademark Examiner. In that letter, each of the authors have been requested to immediately begin using the actual cultivar name, "HARwelcome", when referring to the generic name of the rose identified in their published article, rather than the LIVIN' EASY trademark.

15. Based on my experience in the live plant field, it is my understanding Weeks Roses is well-known in the industry and that most persons in the industry associate the LIVIN' EASY trademark with Weeks Roses with respect to roses, and that most persons in the industry are aware that cultivar name for this generic living plant is "HARwelcome."

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration issued thereon.

Date December 16th, 2014 By _____
Christian Bedard

CPS PAS1326021.1-*-11/17/14 11:33 AM

EXHIBIT A

US00PP09161P

United States Patent [19]

Harkness

[11] Patent Number: Plant 9,161

[45] Date of Patent: Jun. 13, 1995

[54] **FLORIBUNDA ROSE PLANT NAMED HARWELCOME**

[75] Inventor: **J. L. Harkness**, Southwold, England

[73] Assignee: **Weeks Wholesale Rose Grower, Inc.**, Upland, Calif.

[21] Appl. No.: **176,131**

[22] Filed: **Dec. 22, 1993**

[51] **Int. Cl.**[6] **A01H 5/00**

[52] **U.S. Cl.** **Plt./22**

[58] **Field of Search** ..... Plt. 22, 11, 16, 17, Plt. 25

Primary Examiner—Howard J. Locker

Attorney, Agent, or Firm—Christie, Parker & Hale

[57] **ABSTRACT**

A new variety of Floribunda rose suitable for garden decoration, having flowers of blended orange coloration.

1 Drawing Sheet

1

BACKGROUND OF THE INVENTION

This invention relates to a new and distinct variety of Floribunda Rose. The varietal denomination of the new variety is 'Harwelcome.' The plant is a bushy upright seedling cultivated for outdoor garden decoration and is moderately hardy. It was bred in Hitchin, Hertfordshire, United Kingdom, and has as its seed parent the variety known as 'Southampton' and as its pollen parent the variety known as 'Remember Me.'

SUMMARY OF THE INVENTION

Among the features which distinguish the new variety cv. Harwelcome from other presently available and known commercial rose cultivars are the following combination of characteristics: brightly colored flowers of blended apricot and orange, abundance of highly glossed bright green foliage often edged with reddish pigment and unusually high degree of resistance to blackspot. Cv. 'Harwelcome' may be propagaged by cuttings, budding, grafting, layering and tissue culture.

Asexual propagation of the new variety by budding as performed in Kern County and Upland, Calif., shows that the foregoing and other distinguishing characteristics come true to form and are established and transmitted through succeeding propagations.

COMPARISON WITH PARENT VARIETIES

The new rose may be distinguished from its seed parent, 'Southampton' by the following combination of characteristics: whereas the new cultivar bears flowers of a blended apricot and orange coloration, the seed parent bears flowers of an apricot coloration; flowers of the seed parent have significantly more fragrance than the new seedling; and whereas 'Harwelcome' has a bushy upright medium height growth habit with very full branching, 'Southampton' has a significantly taller habit with much less branching.

The new variety may be distinguished from its pollen parent, 'Remember Me' by the following combination of characteristics: whereas the new seedling bears flowers of an apricot and orange blend coloration, the pollen parent bears flowers of a significantly darker orange coloration combined with some near brown tonations; flowers of 'Remember Me' have about 20 petals, whereas 'Harwelcome' flowers have significantly higher petalation (25 to 30); and whereas the pollen parent is classified as a Hybrid Tea, the new cultivar is properly classified as a Floribunda.

2

BRIEF DESCRIPTION OF THE ILLUSTRATION

The accompanying photograph illustrates the plant in color and shows the flowering thereof from bud to full bloom depicted in color as nearly correct as it is possible to make in a color illustration of the character. Throughout this specification, names are values based upon the Colour Chart of The Royal Horticultural Society of London, England, except where common terms of color definition are employed.

DESCRIPTION OF THE NEW VARIETY

The following descriptive matter pertains to roses of the new cultivar grown outdoors in August 1993 in Upland, Calif. Phenotypic expression may vary with environmental, cultural and climatic conditions, as well as differences in conditions of light and soil.

FLOWER

The new variety bears its flowers sometimes singly, usually three to four or more per stem. Flowers are borne in regular flat to rounded clusters on strong medium to long stems for the class. Outdoors the plant blooms very abundantly and nearly continuously during the growing season. The flowers have a slight fruity fragrance. Stem length is medium to long, generally about 25 to 42 cm.

BUD

The peduncle is of short to average length for the class, of average caliper, and usually erect. It is almost entirely smooth with some stipitate glands and hairs. Peduncle color is between 138A and 144A, sometimes lightly blushed on the side facing the sun with near 178C. The peduncle length is short to average, about 3 to 5 cm. The green bud is moderately small, about 1.5 to 2 cm at the widest point and about 2.5 to 3 cm in length. The opening bud is about 2 to 2.5 cm at the widest point and about 2.5 to 3 cm in length.

Before the calyx breaks, the bud is of moderately small size for the class, medium in length, and pointed to ovoid in shape. The surface of the bud bears some stipitate glands and fine hairs, with slender foliaceous parts extending beyond the tip of the bud equal to ¼ or more of its length. Bud color is between 138A and 144A, sometimes lightly blushed on the side facing the sun with near 178C, before sepals divide.

The inner surface of the sepals is covered with fine wooly tomentum; sepal margins are lined with many stipitate glands and hairs.

As the first petal opens, the bud is somewhat small to medium size for the class, medium in length, and somewhat pointed to ovoid in form. The color of the outside of the newly opened petals is between 40B and 47C with a moderately sized basal attachment zone of between 7A and 12A. The color of the inside surfaces of the newly opened petals is between 41A and 31A with a basal attachment zone of similar size and coloration. Basal attachment zone as used herein refers to the zone at the point of petal attachment. The bud does open up well and is not prevented from opening by cold, hot, wet or dry weather.

BLOOM

When fully open, the bloom is medium sized for the class, ranging from 9 to 10.5 cm. in diameter. Petalage is double with 25 to 30 petals and 1 to 5 petaloids arranged regularly. When partially open, the bloom form is somewhat cupped and the petals are somewhat undulated. When fully open, the bloom form is somewhat more flat to cupped and the petals are moderately loosely undulated to reflexed backward.

PETALS

The petals are of moderately heavy substance and of medium thickness, with inside surfaces slightly velvety and outside slightly satiny. The outer petals are very broadly obovate in shape with a mostly rounded apex. The intermediate petals are somewhat obovate to nearly round in shape with the apex usually rounded to flat. The inner petals are more narrowly obovate in shape.

NEWLY OPENED FLOWER

The outside surface of the outer petals is between 40C and 39C with a moderately large basal attachment zone of near 12A. The majority of the inside surface of the outer petals is between 33B and 26C with a basal attachment zone of similar size and coloration. Toward the outer edges of the petals, the coloration blushes darker to between 42B and 39A.

The outside surface of the intermediate and inner petals is between 28D and 33B with a moderately large basal attachment zone of near 12B. The inside surface of the intermediate and inner petals is between 33C and 26C. There is no blushing to a darker color.

The general tonality of the newly opened flower is between 33C and 26C with darker tones around the outer petals of between 42B and 39A.

THREE DAY OLD FLOWER

The outside surface of the outer and inner petals is between 33C and 41C with a moderately large basal attachment zone of near 11A. The inside surface of the outer and inner petals is between 42C and 39B with a basal attachment zone of similar size and coloration.

The general tonality of the three day old flower is between 42C and 39B.

On the spent bloom, the petals usually drop off cleanly and are not particularly affected by cold, hot, wet or dry weather.

In August, blooms on the bush growing in the garden generally last from three to four or more days. Cut roses grown outdoors and kept at normal indoor living temperatures generally last from four to five or more days.

MALE REPRODUCTIVE ORGANS

Stamens are average to many in number and are arranged regularly about the pistil. The filaments are of irregular medium to long length, most with anthers. The anthers are moderately small for the class and all open approximately at the same times. Anther color is near 26A when immature and near 172A at maturity. Pollen is moderate to abundant and near 15C in color.

FEMALE REPRODUCTIVE ORGANS

Pistils are moderately abundant in number (approximately 90). The styles are somewhat uneven, moderately short in length, average in caliper, and moderately bunched. Stigma color is near 10D. Style color is near 42C. Ovaries are usually all enclosed in the calyx.

Hips are somewhat short in length, very globular in form, and become near 30C in color when mature. The hip surface is very smooth with somewhat thick fleshy walls. The sepals fall away soon after seed set. Seeds are moderately few in number (approximately 8 to 13), and average in size.

FOLIAGE

The compound leaves are usually comprised of three to five and sometimes seven leaflets and are borne abundantly. The leaves are of moderate size for the class, very heavy to leathery in texture, and very glossy in finish. The leaflets are shaped moderately ovate to ovoid with somewhat acute apices and somewhat round bases. Their margins are usually doubly serrate. Leaflets are about 3.5 to about 7 cm in length and about 2 to about 4.5 in width at the widest point. Leaves are about 9 to 13 cm in length and about 7 to about 9 cm in width at the widest point.

The upper surface of the very mature leaf is between 137A and 139A. The under surface of the very mature leaf is between 191B and 194A. The upper surface of a newly mature leaf is between 137B and 137C and often very finely edged with between 183A and 175A. The upper surface of the young leaf is between 146C and 137D, sometimes lightly suffused and often edged with between 183A and 175A. The under surface of the young leaf is between 146C and 137D, usually heavily suffused with between 183C and 175C.

The rachis is average in caliper and moderately rough to grooved with some hairs and stipitate glands on the edges of the upper side. The underside of the rachis is moderately rough with some stipitate glands and few prickles.

The stipules are of medium width, short to medium length, and have straight points that usually turn out at an angle of less than 90 degrees.

The plant displays a very high degree of resistance to blackspot and an above average degree of resistance to powdery mildew and rust as compared to other commercial varieties grown under comparable conditions in Upland, Calif.

GROWTH

The plant has a bushy upright medium height habit with very full branching. It displays very vigorous growth and the canes are of medium to heavy caliper for the class. The plant achieves a medium height of about 105 to 130 cm and a width of about 90 to 115 cm.

The color of the major stems are near 146B. They bear several large prickles which are moderately long for the class. The large prickles are almost straight with

a somewhat short narrow base; prickle color is near 177A. The major stem bears many small prickles of similar shape and coloration.

The color of the branches are between 144A and 138B. They bear several large prickles which are moderately long for the class. The large prickles are almost straight with a somewhat short narrow base; prickles color is near 164B. The branches bear several small prickles of similar shape and coloration and some coarse hairs.

The color of the new shoots is between 144A and 138B, sometimes leightly suffused with near 183C. They

bear several large prickles which are moderately long for the class. The large prickles are almost straight with a somewhat short narrow base; prickle color is between 183C and 175B. The shoots also bear many small prickles of similar shape and coloration and many coarse hairs.

I claim:

1. A new and distinct variety of Floribunda rose plant substantially as described and illustrated herein.

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : Plant 9,161
DATED : June 13, 1995
INVENTOR(S) : J.L. Harkness

It is certified that error appears in the above-indentified patent and that said Letters Patent is hereby corrected as shown below:

Column 3, line 39, change "39C" to -- 39A --.

Column 5, line 12, change "leightly" to -- lightly --.

Signed and Sealed this

Sixteenth Day of January, 1996

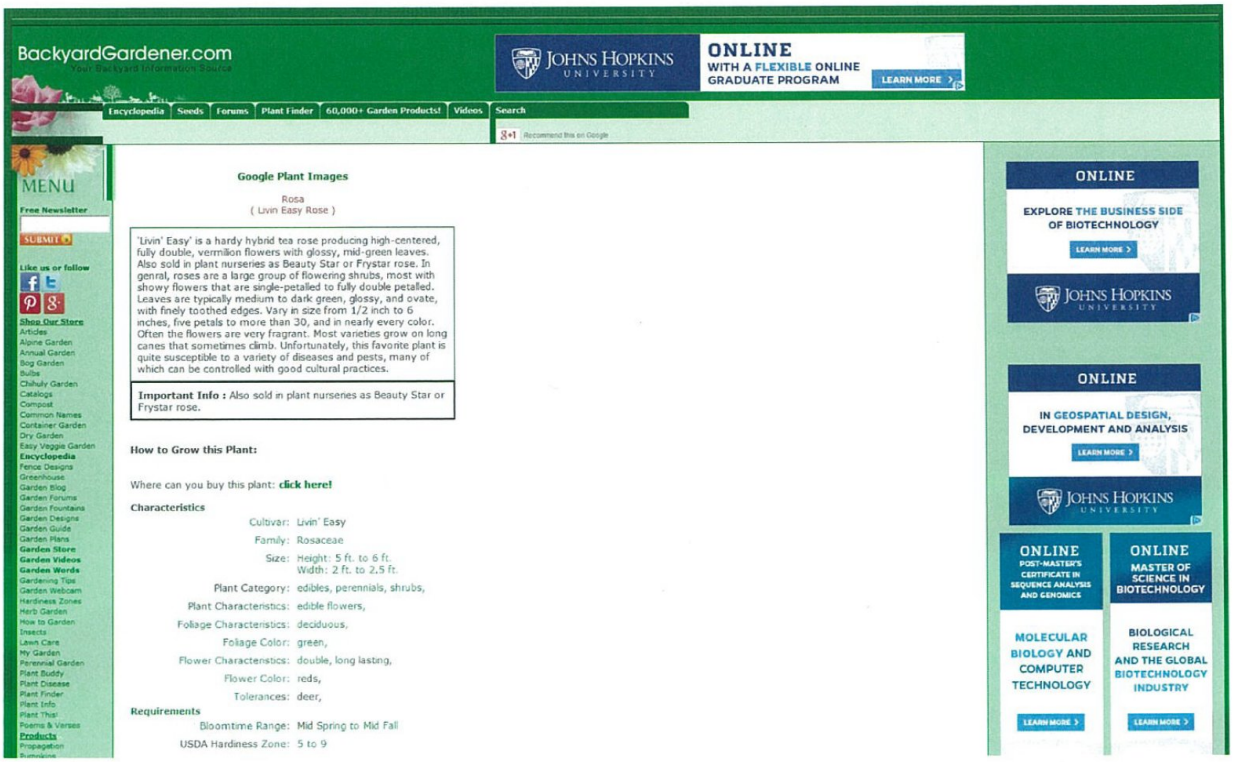
Attest:

Attesting Officer

BRUCE LEHMAN

Commissioner of Patents and Trademarks

EXHIBIT B



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Insects
Lawn Care
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Perennial Garden
Plant Buddy
Plant Disease
Plant Finder
Plant Info
Plant This!
Poems & Verses
Products
Propagation
Pumpkins

Google Plant Images

Rosa
(Livin Easy Rose)

'Livin' Easy' is a hardy hybrid tea rose producing high-centered, fully double, vermilion flowers with glossy, mid-green leaves. Also sold in plant nurseries as Beauty Star or Frystar rose. In genral, roses are a large group of flowering shrubs, most with showy flowers that are single-petalled to fully double petalled. Leaves are typically medium to dark green, glossy, and ovate, with finely toothed edges. Vary in size from 1/2 inch to 6 inches, five petals to more than 30, and in nearly every color. Often the flowers are very fragrant. Most varieties grow on long canes that sometimes climb. Unfortunately, this favorite plant is quite susceptible to a variety of diseases and pests, many of which can be controlled with good cultural practices.

Important Info : Also sold in plant nurseries as Beauty Star or Frystar rose.

How to Grow this Plant:

Where can you buy this plant: **click here!**

Characteristics

Cultivar:	Livin' Easy
Family:	Rosaceae
Size:	Height: 5 ft. to 6 ft. Width: 2 ft. to 2.5 ft.
Plant Category:	edibles, perennials, shrubs,
Plant Characteristics:	edible flowers,
Foliage Characteristics:	deciduous,
Foliage Color:	green,
Flower Charactenstics:	double, long lasting,
Flower Color:	reds,
Tolerances:	deer,

Requirements

Bloomtime Range:	Mid Spring to Mid Fall
USDA Hardiness Zone:	5 to 9

Pumpkins
Rose Garden
Potting Soil Mix
Organic Garden
Seeds
Shade Garden
Trees
Tomatoes
Vegetable Garden
Water Garden
Donations Please
Search
Reference

AHS Heat Zone: 3 to 9
Light Range: Sun to Full Sun
pH Range: 4.5 to 8
Soil Range: Sandy Loam to Clay Loam
Water Range: Normal to Moist

Plant Care

Fertilizing
How-to : Fertilization for Established Plants

Established plants can benefit from fertilization. Take a visual inventory of your landscape. Trees need to be fertilized every few years. Shrubs and other plants in the landscape can be fertilized yearly. A soil test can determine existing nutrient levels in the soil. If one or more nutrients is low, a specific instead of an all-purpose fertilizer may be required. Fertilizers that are high in N, nitrogen, will promote green leafy growth. Excess nitrogen in the soil can cause excessive vegetative growth on plants at the expense of flower bud development. It is best to avoid fertilizing late in the growing season. Applications made at that time can force lush, vegetative growth that will not have a chance to harden off before the onset of cold weather.

Light
Conditions : Full Sun

Full Sun is defined as exposure to more than 6 hours of continuous, direct sun per day.

Watering
Conditions : Moist and Well Drained

Moist and well drained means exactly what it sounds like. Soil is moist without being soggy because the texture of the soil allows excess moisture to drain away. Most plants like about 1 inch of water per week. Amending your soil with compost will help improve texture and water holding or draining capacity. A 3 inch layer of mulch will help to maintain soil moisture and studies have shown that mulched plants grow faster than non-mulched plants.

Planting
How-to : Preparing Garden Beds

Use a soil testing kit to determine the acidity or alkalinity of the soil before beginning any garden bed preparation. This will help you determine which plants are best suited for your site. Check soil drainage and correct drainage where standing water remains. Clear weeds and debris from planting areas and continue to remove weeds as soon as they come up.

A week to 10 days before planting, add 2 to 4 inches of aged manure or compost and work into the planting site to improve fertility and increase water retention and drainage. If soil composition is weak, a layer of topsoil should be considered as well. No matter if your soil is sand or clay, it can be improved by adding the same thing: organic matter. The more, the better; work deep into the soil. Prepare beds to an 18 inch deep for perennials. This will seem like a tremendous amount of work now, but will greatly pay off later. Besides, this is not something that is

but will greatly pay off later. Besides, this is not something that is easily done later, once plants have been established.

How-to : Pruning Flowering Shrubs

It is necessary to **prune your deciduous flowering shrub** for two reasons. 1. By removing old, damaged or dead wood, you increase air flow, yielding in less disease. 2. You rejuvenate new growth which increases flower production.

Pruning deciduous shrubs can be divided into 4 groups: Those that require **minimal pruning** (take out only dead, diseased, damaged, or crossed branches, can be done in early spring.); **spring pruning** (encourages vigorous, new growth which produces summer flowers - in other words, flowers appear on new wood); **summer pruning after flower** (after flowering, cut back shoots, and take out some of the old growth, down to the ground); **suckering habit pruning** (flowers appear on wood from previous year. Cut back flowered stems by 1/2, to strong growing new shoots and remove 1/2 of the flowered stems a couple of inches from the ground) Always remove dead, damaged or diseased wood first, no matter what type of pruning you are doing.

Examples: ***Minimal***: Amelanchier, Aronia, Chimonanthus, Clethra, Cornus alternifolia, Daphne, Fothergilla, Hamamelis, Poncirus, Viburnum. ***Spring***: Abelia, Buddleia, Datura, Fuchsia, Hibiscus, Hypericum, Perovskia, Spirea douglasii/japonica, Tamarix. ***Summer after flower***: Buddleia alternifolia, Calycanthus, Chaenomeles, Corylus, Cotoneaster, Deutzia, Forsythia, Magnolia x soulangeana/stellata, Philadelphus, Rhododendron sp., Ribes, Spirea x arguta/prunifolia/thunbergii, Syringa, Weigela. ***Suckering***: Kerria

How-to : Planting Shrubs

Dig a hole twice the size of the root ball and deep enough to plant at the same level the shrub was in the container. If soil is poor, dig hole even wider and fill with a mixture half original soil and half compost or soil amendment.

Carefully remove shrub from container and gently separate roots. Position in center of hole, best side facing forward. Fill in with original soil or an amended mixture if needed as described above. For larger shrubs, build a water well. Finish by mulching and watering well.

If the plant is balled-and-burlapped, remove fasteners and fold back the top of natural burlap, tucking it down into hole, after you've positioned shrub. Make sure that all burlap is buried so that it won't wick water away from rootball during hot, dry periods. If synthetic burlap, remove if possible. If not possible, cut away or make slits to allow for roots to develop into the new soil. For larger shrubs, build a water well. Finish by mulching and watering well.

If shrub is bare-root, look for a discoloration somewhere near the base; this mark is likely where the soil line was. If soil is too sandy or too clayey, add organic matter. This will help with both drainage and water holding capacity. Fill soil, firming just enough to support shrub. Finish by mulching and watering well.

How-to : Planting Roses

Plant roses where they will receive full sun (at least 6 hours) and

Plant roses where they will receive full sun (at least 6 hours) and ample moisture and nutrients. Allow adequate spacing (3 to 6 feet apart depending on the climate) as good air circulation will inhibit foliar diseases. Before planting, soak bare root plants in water for several hours to ensure they are well hydrated. Select a soil site that is well drained. For clay soils amend the soil with organic matter or prepare raised beds. Dig a planting hole big enough to spread out the roots completely, once the center of plant has been set atop a mound. Fill hole with water before planting. Remove broken canes or roots and plant the bush so that the graft union (swollen knob from which the canes grow) is just above the soil level. Fill hole with amended soil and water well. Mound rich soil over the graft union to protect it from the sun. Remove this once leaves have appeared. Container grown roses can be planted almost anytime of year and would be done just as if planting a shrub.

How-to : Planting Perennials

Determine appropriate perennials for your garden by considering sun and shade through the day, exposure, water requirements, climate, soil makeup, seasonal color desired, and position of other garden plants and trees.

The best times to plant are spring and fall, when soil is workable and out of danger of frost. Fall plantings have the advantage that roots can develop and not have to compete with developing top growth as in the spring. Spring is more desirable for perennials that dislike wet conditions or for colder areas, allowing full establishment before first winter. Planting in summer or winter is not advisable for most plants, unless planting a more established sized plant.

To plant container-grown plants: Prepare planting holes with appropriate depth and space between. Water the plant thoroughly and let the excess water drain before carefully removing from the container. Carefully loosen the root ball and place the plant in the hole, working soil around the roots as you fill. If the plant is extremely root bound, separate roots with fingers. A few slits made with a pocket knife are okay, but should be kept to a minimum. Continue filling in soil and water thoroughly, protecting from direct sun until stable.

To plant bare-root plants: Plant as soon as possible after purchase. Prepare suitable planting holes, spread roots and work soil among roots as you fill in. Water well and protect from direct sun until stable.

To plant seedlings: A number of perennials produce self-sown seedlings that can be transplanted. You may also start your own seedling bed for transplanting. Prepare suitable planting holes, spacing appropriately for plant development. Gently lift the seedling and as much surrounding soil as possible with your garden trowel, and replant it immediately, firming soil with fingertips and water well. Shade from direct sun and water regularly until stable.

Problems
Pest : Thrips

Thrips are small, winged insects that attack many types of plants and thrive in hot, dry conditions (like heated houses). They can multiply quickly as a female can lay up to 300 eggs in a life span of 45 days without mating. Most of the damage to plants is caused by the young larvae which feed on tender leaf and flower tissue.

by the young larvae which feed on tender leaf and flower tissue. This leads to distorted growth, injured flower petals and premature flower drop. Thrips also can transmit many harmful plant viruses.

Prevention and Control: keep weeds down and use screening on windows to keep them out. Remove or discard infested plants, keep them away from non-infested plants. Trap with yellow sticky cards or take advantage of natural enemies such as predatory mites. Sometimes a good steady shower of water will wash them off the plant. Consult your local garden center professional or county Cooperative extension office for legal chemical recommendations.

Pest : Spider Mites

Spider mites are small, 8 legged, spider-like creatures which thrive in hot, dry conditions (like heated houses). Spider mites feed with piercing mouth parts, which cause plants to appear yellow and stippled. Leaf drop and plant death can occur with heavy infestations. Spider mites can multiply quickly, as a female can lay up to 200 eggs in a life span of 30 days. They also produce a web which can cover infested leaves and flowers.

Prevention and Control: Keep weeds down and remove infested plants. Dry air seems to worsen the problem, so make sure plants are regularly watered, especially those preferring high humidity such as tropicals, citrus, or tomatoes. Always check new plants prior to bringing them home from the garden center or nursery. Take advantage of natural enemies such as ladybug larvae. If a miticide is recommended by your local garden center professional or county Cooperative Extension office, read and follow all label directions. Concentrate your efforts on the undersides of the leaves as that is where spider mites generally live.

Pest : Whiteflies

Whiteflies are small, winged insects that look like tiny moths, which attack many types of plants. The flying adult stage prefers the underside of leaves to feed and breed. Whiteflies can multiply quickly as a female can lay up to 500 eggs in a life span of 2 months. If a plant is infested with whiteflies, you will see a cloud of fleeing insects when the plant is disturbed. Whiteflies can weaken a plant, eventually leading to plant death if they are not checked. They can transmit many harmful plant viruses. They also produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface fungal growth called sooty mold.

Possible controls: keep weeds down; use screening in windows to keep them out; remove infested plants away from non-infested plants; use a reflective mulch (aluminum foil) under plants (this repels whiteflies); trap with yellow sticky cards, apply labeled pesticides; encourage natural enemies such as parasitic wasps in the garden; and sometimes a good steady shower of water will wash them off the plant.

Pest : Aphids

Aphids are small, soft-bodied, slow-moving insects that suck fluids from plants. **Aphids** come in many colors, ranging from green to brown to black, and they may have wings. They attack a wide range of plant species causing stunting, deformed leaves and buds. They can transmit harmful plant viruses with their piercing/sucking mouthparts. Aphids, generally, are merely a nuisance, since it

takes many of them to cause serious plant damage. However aphids do produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface growth called sooty mold.

Aphids can increase quickly in numbers and each female can produce up to 250 live nymphs in the course of a month without mating. Aphids often appear when the environment changes - spring & fall. They're often massed at the tips of branches feeding on succulent tissue. Aphids are attracted to the color yellow and will often hitchhike on yellow clothing.

Prevention and Control: Keep weeds to an absolute minimum, especially around desirable plants. On edibles, wash off infected area of plant. Lady bugs and lacewings will feed on aphids in the garden. There are various products - organic and inorganic - that can be used to control aphids. Seek the recommendation of a professional and follow all label procedures to a tee.

Fungi : Powdery Mildew

Powdery Mildew is usually found on plants that do not have enough air circulation or adequate light. Problems are worse where nights are cool and days are warm and humid. The powdery white or gray fungus is usually found on the upper surface of leaves or fruit. Leaves will often turn yellow or brown, curl up, and drop off. New foliage emerges crinkled and distorted. Fruit will be dwarfed and often drops early.

Prevention and Control: Plant resistant varieties and space plants properly so they receive adequate light and air circulation. Always water from below, keeping water off the foliage. This is paramount for roses. Go easy on the nitrogen fertilizer. Apply fungicides according to label directions before problem becomes severe and follow directions exactly, not missing any required treatments. Sanitation is a must - clean up and remove all leaves, flowers, or debris in the fall and destroy.

Pest : Caterpillars

Caterpillars are the immature form of moths and butterflies. They are voracious feeders attacking a wide variety of plants. They can be highly destructive and are characterized as leaf feeders, stem borers, leaf rollers, cutworms and tent-formers.

Prevention and Control: keep weeds down, scout individual plants and remove caterpillars, apply labeled insecticides such as soaps and oils, take advantage of natural enemies such as parasitic wasps in the garden and use Bacillus thuringiensis (biological warfare) for some caterpillar species.

Fungi : Black Spot

A known rose disease, **Black Spot** appears on young leaves as irregular black circles, often having a yellow halo. Circles or spore colonies may grow to 1/2 inch in diameter. Leaves will turn yellow and drop off, only to produce more leaves that will follow the same pattern. Roses may not make it through the winter if black spot is severe. The fungus will also affect the size and quality of flowers.

Prevention and Control: Plant resistant varieties for your area. Always water from the ground, never overhead. Practice good

sanitation - clean up and destroy debris, especially around plants that have had a problem. When pruning roses, even deadheading, dip pruners in a bleach / water solution after each cut. If a plant seems to have chronic black spot, remove it. A 2-3 inch thick layer of mulch at the base of plant reduces splashing. Do not wait until black spot is a huge problem to control! Start early. Spray with a fungicide labeled for black spot on roses.

Pest : Scale Insects

Scales are insects, related to mealy bugs, that can be a problem on a wide variety of plants - indoor and outdoor. Young scales crawl until they find a good feeding site. The adult females then lose their legs and remain on a spot protected by its hard shell layer. They appear as bumps, often on the lower sides of leaves. They have piercing mouth parts that suck the sap out of plant tissue. Scales can weaken a plant leading to yellow foliage and leaf drop. They also produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface fungal growth called sooty mold.

Prevention and Control: Once established they are hard to control. Isolate infested plants away from those that are not infested. Consult your local garden center professional or Cooperative Extension office in your county for a legal recommendation regarding their control. Encourage natural enemies such as parasitic wasps in the garden.

Diseases : Blight

Blights are cause by fungi or bacteria that kill plant tissue. Symptoms often show up as the rapid spotting or wilting of foliage. There are many different blights, specific to various plants, each requiring a varied method of control.

Miscellaneous
Conditions : Deer Tolerant

There are no plants that are **100% deer resistant,** but many that are deer tolerant. There are plants that deer prefer over others. You will find that what deer will or will not eat varies in different parts of the country. A lot of it has to do with how hungry they are. Most deer will sample everything at least once, decide if they like it or not and return if favorable. A fence is the good deer barrier. You may go for a really tall one (7 to 8 feet), or try 2 parallel fences, (4 to 5 feet apart). Use a wire mesh fence rather than board, since deer are capable of wiggling through a 12 inch space.

How-to : Cut Flowers

Flowers suitable for cutting maintain their form for several days when properly conditioned and placed in water or soaked oasis. A cut flower should have a fairly strong, long stem, making it easy to work with in arrangements. There are many short stem flowers that make good cut flowers too, but they look best when floated in a bowl or clustered and placed in a juice glass size vase.

For best results, always cut flowers early in the morning, preferably before dew has had a chance to dry. Always make cuts with a sharp knife or pruners and plunge flowers or foliage into a bucket of water. Store in a cool place until you are ready to work with them, this will keep flowers from opening. Always re-cut stems and change water frequently. Washing vases or containers

to rid of existing bacteria helps increase their life, as well.

Edibles : Edible Flowers

Some flowers are **edible** or have edible portions that are not only beautiful, but nutritious and tasty. Buds, flowers, leaves, stems, and roots are selected from designated edible varieties. Plant as you would a regular flower, but use only organic practices. If you are not a total organic gardener, separate growing areas should be used for the growing of edible flowers.

When portions of edible flowers are desired, pull petals or edible portions from fresh flowers and snip off the petals from the base of the flower. Remember to always wash flowers thoroughly making certain any residue or dirt has been removed. Give them a gentle bath in water and then dip the petals in ice water to perk them up. Drain on paper towels. Petals and whole flowers may be stored for a short time in plastic bags in refrigeration. Freeze whole small flowers in ice rings or cubes. Make sure you know what the flower is **before** you eat it; have an accurate identification done.

Glossary : Mass Planting

Mass is one of the elements of design and relates directly to balance. Mass planting is defined as the grouping of three or more of the same type of plants in one area. When massing plants, keep in mind what visual effect they will have. Small properties require smaller masses where larger properties can handle larger masses or sweeps of plants.

Glossary : Deciduous

Deciduous refers to those plants that lose their leaves or needles at the end of the growing season.

Glossary : Perennial

Perennial: traditionally a non-woody plant that lives for two or more growing seasons.

Glossary : Shrub

Shrub: is a deciduous or evergreen woody perennial that has multiple branches that form near its base.

Glossary : Fragrant

Fragrant: having fragrance.

Glossary : Plant Characteristics

Plant characteristics define the plant, enabling a search that finds specific types of plants such as bulbs, trees, shrubs, grass, perennials, etc.

Glossary : Flower Characteristics

Flower characteristics can vary greatly and may help you decide on a ""look or feel"" for your garden. If you're looking for fragrance or large, showy flowers, click these boxes and possibilities that fit your cultural conditions will be shown. If you have no preference, leave boxes unchecked to return a greater number of possibilities.

Glossary : Edibles

An edible is a plant that has a part or all of it that can be safely consumed in some way.

How-to : Getting the Most Out of Cut Flowers

Cut flowers bring the garden into your home. While some cut flowers have a long vase life, most are highly perishable. How cut flowers are treated when you first bring them home can significantly increase how long they last.

The most important thing to consider is getting sufficient water taken up into the cut stem. Insufficient water can result in wilting and short-lived flowers. Bent neck of roses, where the flower head droops, is the result of poor water uptake. To maximize water uptake, first re-cut the stems at an angle so that the vascular system (the "plumbing" of the stem) is clear. Next immerse the cut stems in warm water.

Remember when the flower is cut, it is cut off from its food supply. Once water is taken care of, food is the resource that will run out next. The plants stems naturally feed the flowers with sugars. If you add a bit of sugar (1 tsp.) to the vase water, this will help feed the flower stems and extend their vase life.

Bacteria will build up in vase water and eventually clog up the stem so the flower cannot take up water. To prevent this, change the vase water frequently and make a new cut in the stems every few days.

Floral preservatives, available from florists, contain sugars, acids and bactenacides that can extend cut flower life. These come in small packets and are generally available where cut flowers are sold. If used properly, these can extend the vase life of some cut flowers 2 to 3 times when compared with just plain water in the vase.

How-to : Winter Protection for Roses

F. Start off by keeping your plants healthy and vigorous going into the winter - continue to water them properly until the ground freezes. Stop feeding at least 6 weeks before the first frost date as this is the time to start hardening off the plants for the winter. In really cold climates, after a couple of hard freezes, mound soil or heavy mulch 1 foot over the base of plant to protect the graft union. Cut back long canes to 4 foot lengths and bind them together to prevent injury in the winter. Remove soil mounds after all danger of hard frost has passed in the spring.

In milder climates, this process is not necessary, but a good layer of mulch and contained watering up to frost and periodically through winter is a good idea. The best time to prune no matter where you live is at the end of the dormant season, when buds are beginning to swell.

Glossary : Viruses

Viruses, which are smaller than bacteria, are not living and do not replicate on their own. They must rely on the cellular mechanisms of their hosts to replicate. Because this greatly disrupts the cell's functionality, outward signs of a viral infection result in a plant disease with symptoms such as abnormal or stunted growth, damaged fruit, discolorations or spots.

Prevention and Control: Keep virus carriers such as aphids, leafhoppers, and thrips under control. These plant feeding insects spread viruses. Viruses can also be introduced by infected pollen or through plant openings (as when pruning). Begin by **keeping the pathogen out** of your garden. New plants should be checked, as well as tools and existing plants. Use only certified seed that is deemed disease-free. **Plant only resistant varieties** and **create a discouraging environment** by rotating crops, not planting closely related plants in the same area every year.

Glossary : Growth Buds

Plant stems contain numerous buds that will grow and renew a plant when stimulated by pruning. There are three basic types of buds: terminal, lateral and dormant. Terminal buds are at the tips of twigs or branches. They grow to make the branch or twig longer. In some cases they may give rise to a flower. If you cut the tip of a branch and remove the terminal bud, this will encourage the lateral buds to grow into side branches resulting in a thicker, bushier plant. Lateral buds are lower down on the twig and are often at the point of leaf attachment. Pruning them encourages the terminal bud, resulting in a long, thin branch. Dormant buds may remain inactive in the bark or stem and will only grow after the plant is cut back.

Glossary : Fertilize

Fertilize just before new growth begins with a complete fertilizer.

Glossary : Pruning

Now is the preferred time to prune this plant.

Plant Images

EXHIBIT C

Plant Cell Reports
February 2007, Volume 26, Issue 2, pp 153-160

2,4,5-Trichlorophenoxyacetic acid promotes somatic embryogenesis in the rose cultivar 'Livin' Easy' (*Rosa* sp.)

Tammy Estabrooks, Robin Browne, Zhongmin Dong

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Somatic embryogenesis (SE) offers vast potential for the clonal propagation of high-value roses. However, some recalcitrant cultivars unresponsive to commonly employed SE-inducing agents and low induction rates currently hinder the commercialization of SE technology in rose. Rose SE technology requires improvement before it can be implemented as a production system on a commercial scale. In the present work, we assessed 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), a synthetic auxin not previously tested in rose, for its effectiveness to induce SE in the rose cultivar 'Livin' Easy' (*Rosa*

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• *Communicated by J. Zou*

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Supplementary Material (0)

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Title
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Journal
» Plant Cell Reports
» Volume 26, Issue 2 , pp 153-160

Topics
» Plant Biochemistry
» Biotechnology
» Plant Sciences
» Cell Biology

Keywords
Rosa
Somatic embryogenesis

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Cover Date
2007-02-01

DOI
10.1007/s00299-006-0231-5

Print ISSN
0721-7714

Online ISSN
1432-203X

Publisher
Springer-Verlag

Plant growth regulator
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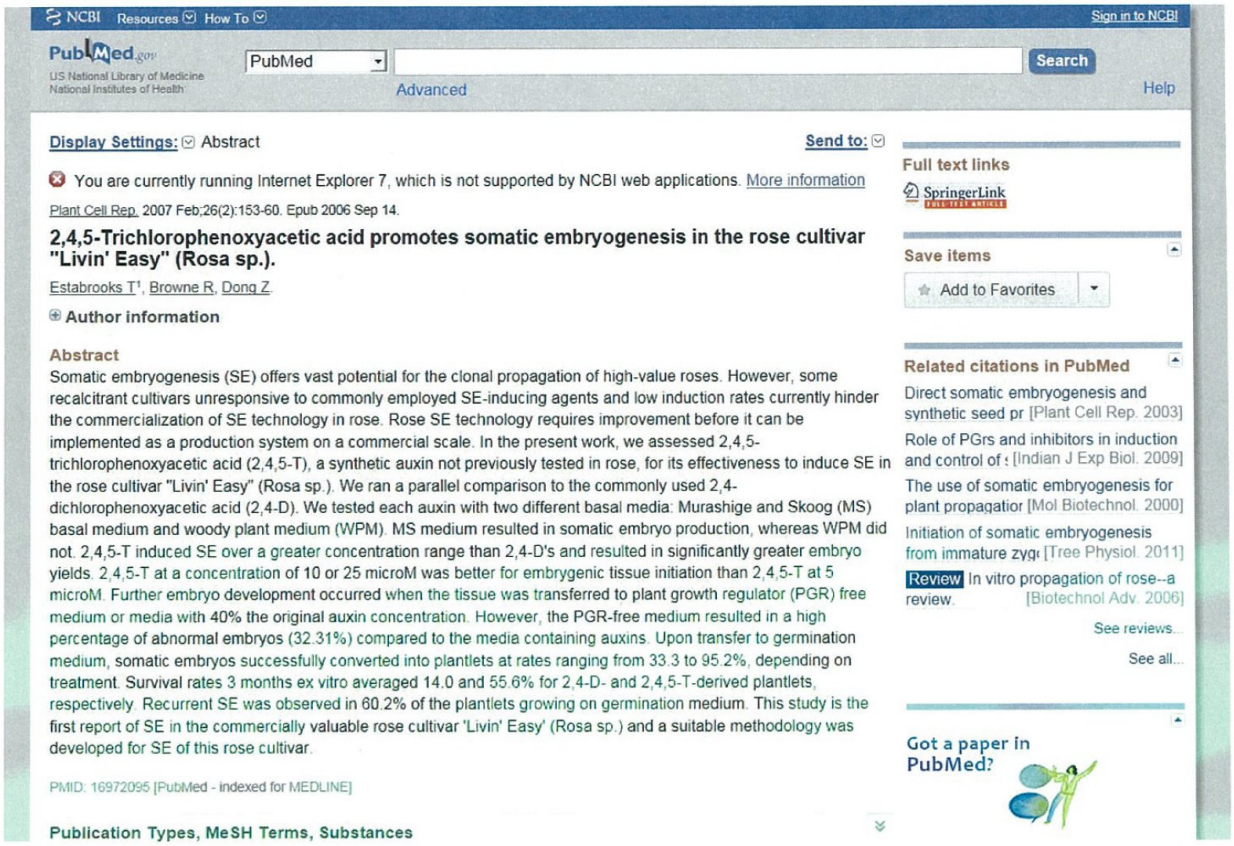
EXHIBIT D



Plant Cell Rep. 2007 Feb;26(2):153-60. Epub 2006 Sep 14.

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Author information

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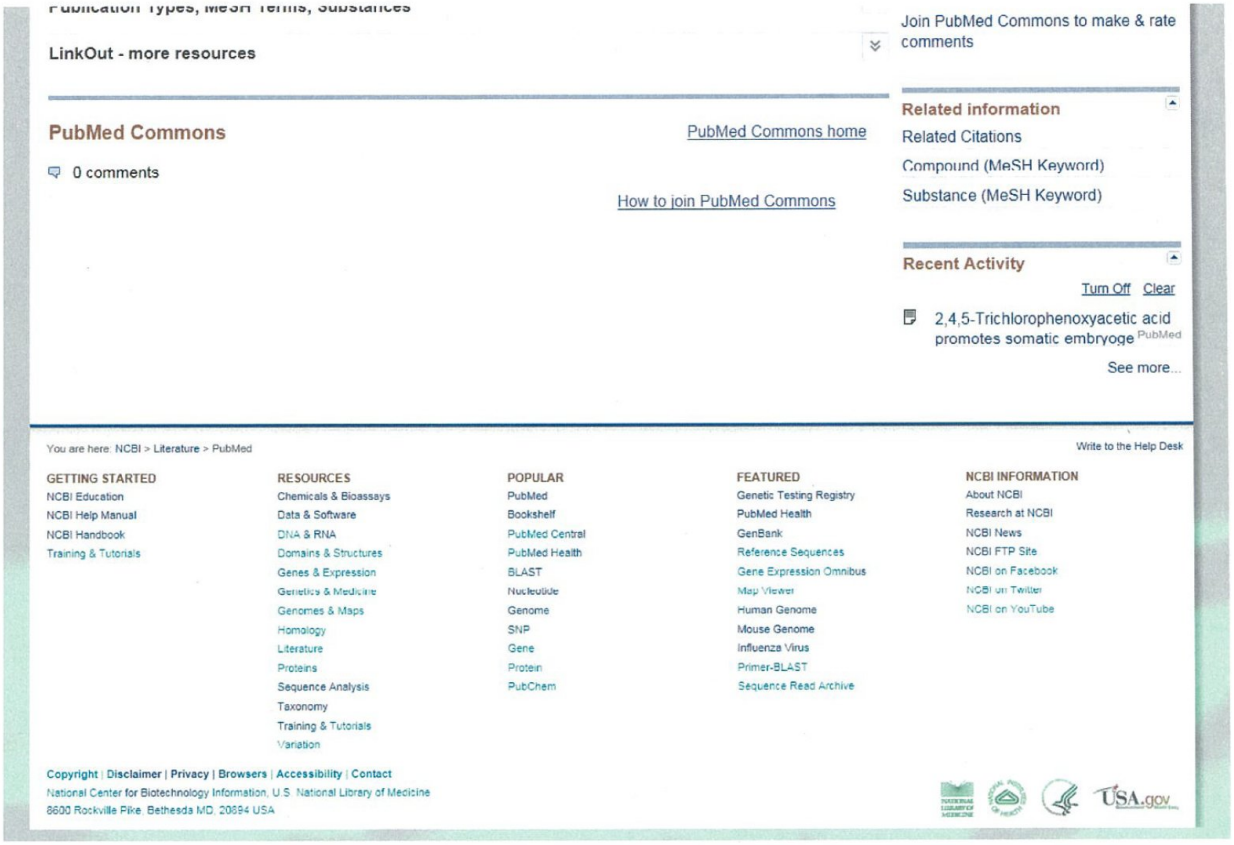
PMID: 16972095 [PubMed - indexed for MEDLINE]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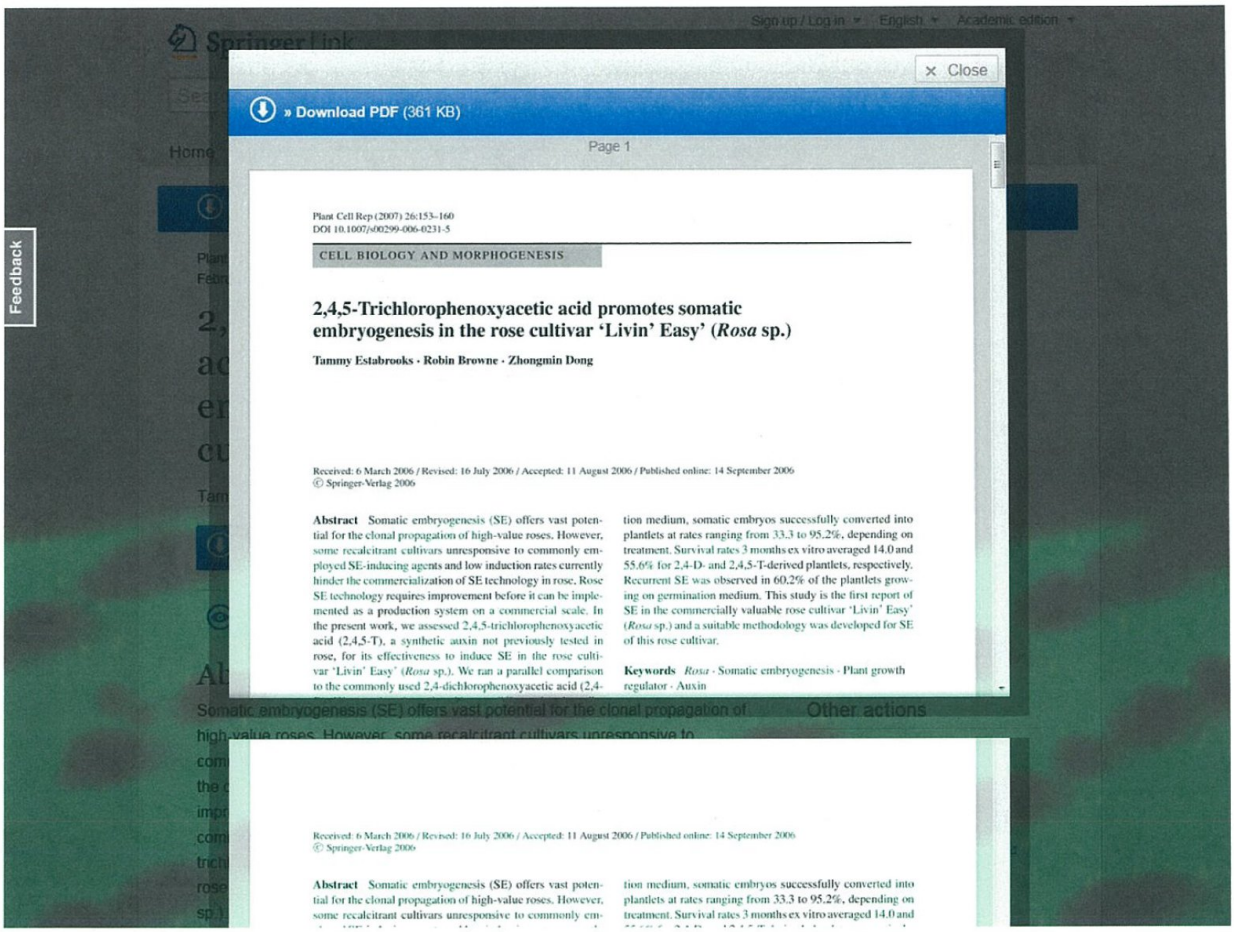
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Plant Cell Rep (2007) 26:153–160
DOI 10.1007/s00299-006-0231-5
CELL BIOLOGY AND MORPHOGENESIS
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Tammy Estabrooks · Robin Browne · Zhongmin Dong
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Keywords Rosa · Somatic embryogenesis · Plant growth regulator · Auxin
Other actions
Feedback

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EXHIBIT F

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Estabrooks, Tammy; Browne, Robin; Dong, Zhongmin, 2007: 2,4,5-Trichlorophenoxyacetic acid promotes somatic embryogenesis in the rose cultivar 'Livin' Easy' Rosa sp.. Plant Cell Reports 26(2): 153-160

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Other Research

Cross presentation of antigen on MHC class II via the draining lymph node after corneal transplantation in mice: We investigated Ag trafficking from the cornea and T effector cell activation in secondary lymphoid tissue after corneal transplantation. In preliminary experiments, the central cornea was shown to contain a population of CD45(+), CD11b(+), CD11c-...

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Formation of natural thiophene derivatives from acetylenes by tagetes patula

Lipopolysaccharide increases A2A and A2B adenosine receptor transcripts in microglial cultures

Demonstration of linezolid efficacy in a murine, anthrax-spore inhalation challenge model

Crop residue management for sustaining the soil fertility and productivity of potato based cropping systems in Punjab

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The effects of plant polysaccharides and buffer additives on PCR

Plasma albumins of reptiles

Oxygen-independent temperature regulation of the microsomal oleate desaturase FAD2 activity in developing sunflower Heli...

Treatment of iron deficiency anaemia with iron in children

rss available

human peripheral blood mononuclear cell...

Polarization studies of 50D steel in cultures of marine algae
Marine fouling on platforms

Value and limits of computed tomography for assessment of bypass graft patency

The ribonucleic acid of tomato spotted wilt virus: TSWV nucleic acid, extracted from purified virus with phenol-SDS, was noninfectious. Following electrophoresis of the extracted nucleic acid in 2% polyacrylamide gels containing 0.5% agarose, 3 major and 2 minor bands were observed. The amount of...

Pre imaginal flight motor pattern in locusta: In a wind stream, larval stages of Locusta usually show a tonic muscle activity but they can also exhibit a rhythmic motor output. With aging such a pattern can be released sooner, the trains become longer. The basic rhythm of 10 Hz does not chang...

Immunological and enzymatic studies of erythrocytic delta aminolevulinate dehydratase comparison of results obtained in normal and lead exposed subjects: The .delta.-aminolevulinate dehydratase (ALA.D) quantitative assay on a centrifugal fast analyzer showed that subjects whose blood Pb level varied between 30-75 .mu.g/100 ml (1.5-3.75 .mu.M/l) reacted to blood intoxication by synthesizing de novo...

Partitioning of rare earth elements between calcite and seawater solutions; preliminary results

The peppermint angelfish Centropyge boylei, n sp Pyle and Randall

Comparison of changes in facial skin temperature caused by ethyl chloride spraying, ice block rubbing and cold gel packing in healthy subjects: The aim of this study was to compare the effects of three cryotherapeutic modalities (ethyl chloride spraying, ice block rubbing and cold gel packing) on facial skin temperature. Thirty healthy volunteers (15 men, 15 women; mean age, 29 4 3 2 yea...

Identification of pipits of the genus Anthus - part 1

Residue and fate of herbicides in soil: [249.54.028] Factors affecting herbicide residues in soils are discussed. 17 references.

Mating interactions between Schistosoma haematobium and S. mansoni

EXHIBIT G

CHRISTIE PARKER HALE LLP
Intellectual Property Law

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December 16, 2014

Mr. Duncan McAlpine
BackyardGardener.com
1825 56th Street North East
Tacoma, Washington 98422

Re: Inappropriate Use of LIVIN' EASY Trademark
CPH Ref. W225:73780 B

Dear Mr. McAlpine:

We represent Early Morning LLC dba Weeks Roses ("Weeks Roses") with respect to intellectual property matters, including the protection of its trademark rights. Weeks Roses is a world leader in the cultivation and distribution of live plants, including roses. Since at least as early as 1996, Weeks Roses has been selling a specific type of rose prominently bearing the trademark LIVIN' EASY. As a result of the substantially exclusive and continuous use of its LIVIN' EASY trademark for the last eighteen years, Weeks Roses is the sole owner of trademark rights in LIVIN' EASY for any use related to the sale and distribution of roses.

Weeks Roses is the owner of United States Trademark Application Serial No. 86098613 for LIVIN' EASY for "live plants." Weeks Roses is also the owner of United States Plant Patent No. 9,161, which issued in 1995 and covers the generic rose sold by Weeks Roses under its LIVIN' EASY trademark. The cultivar and/or varietal name for the rose branded with the LIVIN' EASY trademark is "HARwelcome."

We have recently become aware of your inappropriate use of the LIVIN' EASY trademark. A copy of the relevant webpages have been enclosed for your review and reference. It appears that you may have mistakenly interchanged the LIVIN' EASY trademark under which Weeks Roses sells a specific rose product, with the generic cultivar and/or varietal name for this rose.

Accordingly, Weeks Roses requests that you terminate all use of the LIVIN' EASY trademark when referring to the corresponding cultivar and/or varietal name for this rose. As indicated above, the proper generic reference to this rose is "HARwelcome." Weeks Roses requests that you amend your website accordingly. Your anticipated cooperation on this matter is greatly appreciated.

Within two weeks of the date of this letter, Weeks Roses requests written assurance that your website has been modified as requested, that no advertisements or statements will be made by you regarding this generic rose and the LIVIN' EASY trademark. Weeks Roses also requests that all reference to the LIVIN' ESAY trademark be removed from all other promotional material and literature you may distribute. "HARwelcome" is the proper cultivar and/or varietal name to use when referring to this specific type of rose.

Nothing in this letter shall be deemed a waiver of any rights, remedies or defenses of Weeks Roses, all of which are hereby expressly reserved.

We look forward to your prompt assurances in this matter.

Very truly yours,

Gary J. Nelson

Gary J. Nelson

GJN/ct
Attachment

cc: Weeks Roses

MAC PAS1327378.1-*-12/16/14 1:11 PM

Attachment


BackyardGardener.com
Your Backyard Information Source
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WITH A FLEXIBLE ONLINE GRADUATE PROGRAM
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Bulbs
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Catalogs
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Common Names
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Dry Garden
Easy Veggie Garden
Encyclopedia
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Garden Forums
Garden Fountains
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Garden Guide
Garden Plans
Garden Store
Garden Videos
Garden Words
Gardening Tips
Garden Webcam
Hardiness Zones
Herb Garden
How to Garden
Insects
Lawn Care
My Garden
Perennial Garden
Plant Buddy
Plant Disease
Plant Finder
Plant Info
Plant Trial
Poems & Verses
Products
Propagation
Google Plant Images
Rosa
(Livin Easy Rose)
'Livin' Easy' is a hardy hybrid tea rose producing high-centered, fully double, vermilion flowers with glossy, mid-green leaves. Also sold in plant nurseries as Beauty Star or Fryster rose. In genral, roses are a large group of flowering shrubs, most with showy flowers that are single-petalled to fully double petalled. Leaves are typically medium to dark green, glossy, and ovate, with finely toothed edges. Vary in size from 1/2 inch to 6 inches, five petals to more than 30, and in nearly every color. Often the flowers are very fragrant. Most varieties grow on long canes that sometimes climb. Unfortunately, this favorite plant is quite susceptible to a variety of diseases and pests, many of which can be controlled with good cultural practices.
Important Info : Also sold in plant nurseries as Beauty Star or Fryster rose.
How to Grow this Plant:
Where can you buy this plant: click here!
Characteristics
Cultivar: Livin' Easy
Family: Rosaceae
Size: Height: 5 ft. to 6 ft.
Width: 2 ft. to 2.5 ft.
Plant Category: edibles, perennials, shrubs,
Plant Characteristics: edible flowers,
Foliage Characteristics: deciduous,
Foliage Color: green,
Flower Characteristics: double, long lasting,
Flower Color: reds,
Tolerances: deer,
Requirements
Bloomtime Range: Mid Spring to Mid Fall
USDA Hardiness Zone: 5 to 9
ONLINE
EXPLORE THE BUSINESS SIDE OF BIOTECHNOLOGY
LEARN MORE
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IN GEOSPATIAL DESIGN, DEVELOPMENT AND ANALYSIS
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Pumpkins
Rose Garden
Potting Soil Mix
Organic Garden
Seeds
Shade Garden
Trees
Tomatoes
Vegetable Garden
Water Garden
Donations Please
Search
Reference

AHS Heat Zone: 3 to 9
Light Range: Sun to Full Sun
pH Range: 4.5 to 8
Soil Range: Sandy Loam to Clay Loam
Water Range: Normal to Moist

Plant Care

Fertilizing
How-to : Fertilization for Established Plants

Established plants can benefit from fertilization. Take a visual inventory of your landscape. Trees need to be fertilized every few years. Shrubs and other plants in the landscape can be fertilized yearly. A soil test can determine existing nutrient levels in the soil. If one or more nutrients is low, a specific instead of an all-purpose fertilizer may be required. Fertilizers that are high in N, nitrogen, will promote green leafy growth. Excess nitrogen in the soil can cause excessive vegetative growth on plants at the expense of flower bud development. It is best to avoid fertilizing late in the growing season. Applications made at that time can force lush, vegetative growth that will not have a chance to harden off before the onset of cold weather.

Light
Conditions : Full Sun

Full Sun is defined as exposure to more than 6 hours of continuous, direct sun per day.

Watering
Conditions : Moist and Well Drained

Moist and well drained means exactly what it sounds like. Soil is moist without being soggy because the texture of the soil allows excess moisture to drain away. Most plants like about 1 inch of water per week. Amending your soil with compost will help improve texture and water holding or draining capacity. A 3 inch layer of mulch will help to maintain soil moisture and studies have shown that mulched plants grow faster than non-mulched plants.

Planting
How-to : Preparing Garden Beds

Use a soil testing kit to determine the acidity or alkalinity of the soil before beginning any garden bed preparation. This will help you determine which plants are best suited for your site. Check soil drainage and correct drainage where standing water remains. Clear weeds and debris from planting areas and continue to remove weeds as soon as they come up.

A week to 10 days before planting, add 2 to 4 inches of aged manure or compost and work into the planting site to improve fertility and increase water retention and drainage. If soil composition is weak, a layer of topsoil should be considered as well. No matter if your soil is sand or clay, it can be improved by adding the same thing: organic matter. The more, the better; work deep into the soil. Prepare beds to an 18 inch deep for perennials. This will seem like a tremendous amount of work now, but will [illegible]

but will greatly pay off later. Besides, this is not something that is easily done later, once plants have been established.

How-to : Pruning Flowering Shrubs

It is necessary to **prune your deciduous flowering shrub** for two reasons. 1. By removing old, damaged or dead wood, you increase air flow, yielding in less disease. 2. You rejuvenate new growth which increases flower production.

Pruning deciduous shrubs can be divided into 4 groups: Those that require **minimal pruning** (take out only dead, diseased, damaged, or crossed branches, can be done in early spring.); **spring pruning** (encourages vigorous, new growth which produces summer flowers - in other words, flowers appear on new wood); **summer pruning after flower** (after flowering, cut back shoots, and take out some of the old growth, down to the ground); **suckering habit pruning** (flowers appear on wood from previous year. Cut back flowered stems by 1/2, to strong growing new shoots and remove 1/2 of the flowered stems a couple of inches from the ground) Always remove dead, damaged or diseased wood first, no matter what type of pruning you are doing.

Examples: ***Minimal***: Amelanchier, Aronia, Chimonanthus, Clethra, Cornus alternifolia, Daphne, Fothergilla, Hamamelis, Poncirus, Viburnum. ***Spring***. Abelia, Buddleia, Deutzia, Fuchsia, Hibiscus, Hypericum, Perovskia, Spirea douglasii/japonica, Tamarix. ***Summer after flower***: Buddleia alternifolia, Calycanthus, Chaenomeles, Corylus, Cotonesster, Deutzia, Forsythia, Magnolia x soulangeana/stellata, Philadelphus, Rhododendron sp., Ribes, Spirea x arguta/prunifolia/thunbergii, Syringa, Weigela. ***Suckering***: Kerria

How-to : Planting Shrubs

Dig a hole twice the size of the root ball and deep enough to plant at the same level the shrub was in the container. If soil is poor, dig hole even wider and fill with a mixture half original soil and half compost or soil amendment.

Carefully remove shrub from container and gently separate roots Position in center of hole, best side facing forward. Fill in with original soil or an amended mixture if needed as described above. For larger shrubs, build a water well. Finish by mulching and watering well.

If the plant is balled-and-burlapped, remove fasteners and fold back the top of natural burlap, tucking it down into hole, after you've positioned shrub. Make sure that all burlap is buried so that it won't wick water away from rootball during hot, dry periods. If synthetic burlap, remove if possible. If not possible, cut away or make slits to allow for roots to develop into the new soil. For larger shrubs, build a water well. Finish by mulching and watering well.

If shrub is bare-root, look for a discoloration somewhere near the base; this mark is likely where the soil line was. If soil is too sandy or too clayey, add organic matter. This will help with both drainage and water holding capacity. Fill soil, firming just enough to support shrub. Finish by mulching and watering well.

How-to : Planting Roses

Plant roses where they will receive full sun (at least 6 hours) and

Plant roses where they will receive full sun (at least 6 hours) and ample moisture and nutrients. Allow adequate spacing (3 to 6 feet apart depending on the climate) as good air circulation will inhibit foliar diseases. Before planting, soak bare root plants in water for several hours to ensure they are well hydrated. Select a soil site that is well drained. For clay soils amend the soil with organic matter or prepare raised beds. Dig a planting hole big enough to spread out the roots completely, once the center of plant has been set atop a mound. Fill hole with water before planting. Remove broken canes or roots and plant the bush so that the graft union (swollen knob from which the canes grow) is just above the soil level. Fill hole with amended soil and water well. Mound rich soil over the graft union to protect it from the sun. Remove this once leaves have appeared. Container grown roses can be planted almost anytime of year and would be done just as if planting a shrub.

How-to : Planting Perennials

Determine appropriate perennials for your garden by considering sun and shade through the day, exposure, water requirements, climate, soil makeup, seasonal color desired, and position of other garden plants and trees.

The best times to plant are spring and fall, when soil is workable and out of danger of frost. Fall plantings have the advantage that roots can develop and not have to compete with developing top growth as in the spring. Spring is more desirable for perennials that dislike wet conditions or for colder areas, allowing full establishment before first winter. Planting in summer or winter is not advisable for most plants, unless planting a more established sized plant.

To plant container-grown plants: Prepare planting holes with appropriate depth and space between. Water the plant thoroughly and let the excess water drain before carefully removing from the container. Carefully loosen the root ball and place the plant in the hole, working soil around the roots as you fill. If the plant is extremely root bound, separate roots with fingers. A few slits made with a pocket knife are okay, but should be kept to a minimum. Continue filling in soil and water thoroughly, protecting from direct sun until stable.

To plant bare-root plants: Plant as soon as possible after purchase. Prepare suitable planting holes, spread roots and work soil among roots as you fill in. Water well and protect from direct sun until stable.

To plant seedlings: A number of perennials produce self-sown seedlings that can be transplanted. You may also start your own seedling bed for transplanting. Prepare suitable planting holes, spacing appropriately for plant development. Gently lift the seedling and as much surrounding soil as possible with your garden trowel, and replant it immediately, firming soil with fingertips and water well. Shade from direct sun and water regularly until stable.

Problems
Pest : Thrips

Thrips are small, winged insects that attack many types of plants and thrive in hot, dry conditions (like heated houses). They can multiply quickly as a female can lay up to 300 eggs in a life span of 45 days without mating. Most of the damage to plants is caused by the young larvae which feed on tender leaf and flower tissue.

by the young larvae which feed on tender leaf and flower tissue. This leads to distorted growth, injured flower petals and premature flower drop. Thrips also can transmit many harmful plant viruses.

Prevention and Control: keep weeds down and use screening on windows to keep them out. Remove or discard infested plants, keep them away from non-infested plants. Trap with yellow sticky cards or take advantage of natural enemies such as predatory mites. Sometimes a good steady shower of water will wash them off the plant. Consult your local garden center professional or county Cooperative extension office for legal chemical recommendations.

Pest : Spider Mites

Spider mites are small, 8 legged, spider-like creatures which thrive in hot, dry conditions (like heated houses). Spider mites feed with piercing mouth parts, which cause plants to appear yellow and stippled. Leaf drop and plant death can occur with heavy infestations. Spider mites can multiply quickly, as a female can lay up to 200 eggs in a life span of 30 days. They also produce a web which can cover infested leaves and flowers.

Prevention and Control: Keep weeds down and remove infested plants. Dry air seems to worsen the problem, so make sure plants are regularly watered, especially those preferring high humidity such as tropicals, citrus, or tomatoes. Always check new plants prior to bringing them home from the garden center or nursery. Take advantage of natural enemies such as ladybug larvae. If a miticide is recommended by your local garden center professional or county Cooperative Extension office, read and follow all label directions. Concentrate your efforts on the undersides of the leaves as that is where spider mites generally live.

Pest : Whiteflies

Whiteflies are small, winged insects that look like tiny moths, which attack many types of plants. The flying adult stage prefers the underside of leaves to feed and breed. Whiteflies can multiply quickly as a female can lay up to 500 eggs in a life span of 2 months. If a plant is infested with whiteflies, you will see a cloud of fleeing insects when the plant is disturbed. Whiteflies can weaken a plant, eventually leading to plant death if they are not checked. They can transmit many harmful plant viruses. They also produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface fungal growth called sooty mold.

Possible controls: keep weeds down; use screening in windows to keep them out; remove infested plants away from non-infested plants; use a reflective mulch (aluminum foil) under plants (this repels whiteflies), trap with yellow sticky cards, apply labeled pesticides; encourage natural enemies such as parasitic wasps in the garden; and sometimes a good steady shower of water will wash them off the plant.

Pest : Aphids

Aphids are small, soft-bodied, slow-moving insects that suck fluids from plants. **Aphids** come in many colors, ranging from green to brown to black, and they may have wings. They attack a wide range of plant species causing stunting, deformed leaves and buds. They can transmit harmful plant viruses with their piercing/sucking mouthparts. Aphids, generally, are merely a nuisance, since it

takes many of them to cause serious plant damage. However aphids do produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface growth called sooty mold.

Aphids can increase quickly in numbers and each female can produce up to 250 live nymphs in the course of a month without mating. Aphids often appear when the environment changes - spring & fall. They're often massed at the tips of branches feeding on succulent tissue. Aphids are attracted to the color yellow and will often hitchhike on yellow clothing.

Prevention and Control: Keep weeds to an absolute minimum, especially around desirable plants. On edibles, wash off infected area of plant. Lady bugs and lacewings will feed on aphids in the garden. There are various products - organic and inorganic - that can be used to control aphids. Seek the recommendation of a professional and follow all label procedures to a tee.

Fungi : Powdery Mildew

Powdery Mildew is usually found on plants that do not have enough air circulation or adequate light. Problems are worse where nights are cool and days are warm and humid. The powdery white or gray fungus is usually found on the upper surface of leaves or fruit. Leaves will often turn yellow or brown, curl up, and drop off. New foliage emerges crinkled and distorted. Fruit will be dwarfed and often drops early.

Prevention and Control: Plant resistant varieties and space plants properly so they receive adequate light and air circulation. Always water from below, keeping water off the foliage. This is paramount for roses. Go easy on the nitrogen fertilizer. Apply fungicides according to label directions before problem becomes severe and follow directions exactly, not missing any required treatments. Sanitation is a must - clean up and remove all leaves, flowers, or debris in the fall and destroy.

Pest : Caterpillars

Caterpillars are the immature form of moths and butterflies. They are voracious feeders attacking a wide variety of plants. They can be highly destructive and are characterized as leaf feeders, stem borers, leaf rollers, cutworms and tent-formers.

Prevention and Control: keep weeds down, scout individual plants and remove caterpillars, apply labeled insecticides such as soaps and oils, take advantage of natural enemies such as parasitic wasps in the garden and use Bacillus thuringiensis (biological warfare) for some caterpillar species.

Fungi : Black Spot

A known rose disease, **Black Spot** appears on young leaves as irregular black circles, often having a yellow halo. Circles or spore colonies may grow to 1/2 inch in diameter. Leaves will turn yellow and drop off, only to produce more leaves that will follow the same pattern. Roses may not make it through the winter if black spot is severe. The fungus will also affect the size and quality of flowers.

Prevention and Control: Plant resistant varieties for your area. Always water from the ground, never overhead. Practice good

sanitation - clean up and destroy debris, especially around plants that have had a problem. When pruning roses, even deadheading, dip pruners in a bleach / water solution after each cut. If a plant seems to have chronic black spot, remove it. A 2-3 inch thick layer of mulch at the base of plant reduces splashing. Do not wait until black spot is a huge problem to controll Start early. Spray with a fungicide labeled for black spot on roses.

Pest : Scale Insects

Scales are insects, related to mealy bugs, that can be a problem on a wide variety of plants - indoor and outdoor. Young scales crawl until they find a good feeding site. The adult females then lose their legs and remain on a spot protected by its hard shell layer. They appear as bumps, often on the lower sides of leaves. They have piercing mouth parts that suck the sap out of plant tissue. Scales can weaken a plant leading to yellow foliage and leaf drop. They also produce a sweet substance called honeydew (coveted by ants) which can lead to an unattractive black surface fungal growth called sooty mold.

Prevention and Control: Once established they are hard to control. Isolate infested plants away from those that are not infested. Consult your local garden center professional or Cooperative Extension office in your county for a legal recommendation regarding their control. Encourage natural enemies such as parasitic wasps in the garden.

Diseases : Blight

Blights are cause by fungi or bactena that kill plant tissue. Symptoms often show up as the rapid spotting or wilting of foliage. There are many different blights, specific to various plants, each requiring a varied method of control.

Miscellaneous
Conditions : Deer Tolerant

There are no plants that are 100% **deer resistant,** but many that are deer tolerant. There are plants that deer prefer over others. You will find that what deer will or will not eat varies in different parts of the country. A lot of it has to do with how hungry they are. Most deer will sample everything at least once, decide if they like it or not and return if favorable. A fence is the good deer barrier. You may go for a really tall one (7 to 8 feet), or try 2 parallel fences, (4 to 5 feet apart). Use a wire mesh fence rather than board, since deer are capable of wiggling through a 12 inch space.

How-to : Cut Flowers

Flowers suitable for cutting maintain their form for several days when properly conditioned and placed in water or soaked oasis. A cut flower should have a fairly strong, long stem, making it easy to work with in arrangements. There are many short stem flowers that make good cut flowers too, but they look best when floated in a bowl or clustered and placed in a juice glass size vase.

For best results, always cut flowers early in the morning, preferably before dew has had a chance to dry. Always make cuts with a sharp knife or pruners and plunge flowers or foliage into a bucket of water. Store in a cool place until you are ready to work with them, this will keep flowers from opening. Always re-cut stems and change water frequently. Washing vases or containers

to rid of existing bacteria helps increase their life, as well.

Edibles : Edible Flowers

Some flowers are **edible** or have edible portions that are not only beautiful, but nutritious and tasty. Buds, flowers, leaves, stems, and roots are selected from designated edible varieties. Plant as you would a regular flower, but use only organic practices. If you are not a total organic gardener, separate growing areas should be used for the growing of edible flowers.

When portions of edible flowers are desired, pull petals or edible portions from fresh flowers and snip off the petals from the base of the flower. Remember to always wash flowers thoroughly making certain any residue or dirt has been removed. Give them a gentle bath in water and then dip the petals in ice water to perk them up. Drain on paper towels. Petals and whole flowers may be stored for a short time in plastic bags in refrigeration. Freeze whole small flowers in ice rings or cubes. Make sure you know what the flower is **before** you eat it; have an accurate identification done.

Glossary : Mass Planting

Mass is one of the elements of design and relates directly to balance. Mass planting is defined as the grouping of three or more of the same type of plants in one area. When massing plants, keep in mind what visual effect they will have. Small properties require smaller masses where larger properties can handle larger masses or sweeps of plants.

Glossary : Deciduous

Deciduous refers to those plants that lose their leaves or needles at the end of the growing season.

Glossary : Perennial

Perennial: traditionally a non-woody plant that lives for two or more growing seasons.

Glossary : Shrub

Shrub: is a deciduous or evergreen woody perennial that has multiple branches that form near its base.

Glossary : Fragrant

Fragrant: having fragrance.

Glossary : Plant Characteristics

Plant characteristics define the plant, enabling a search that finds specific types of plants such as bulbs, trees, shrubs, grass, perennials, etc.

Glossary : Flower Characteristics

Flower characteristics can vary greatly and may help you decide on a ""look or feel"" for your garden. If you're looking for fragrance or large, showy flowers, click these boxes and possibilities that fit your cultural conditions will be shown. If you have no preference, leave boxes unchecked to return a greater number of possibilities.

Glossary : Edibles

An edible is a plant that has a part or all of it that can be safely consumed in some way.

How-to : Getting the Most Out of Cut Flowers

Cut flowers bring the garden into your home. While some cut flowers have a long vase life, most are highly perishable. How cut flowers are treated when you first bring them home can significantly increase how long they last.

The most important thing to consider is getting sufficient water taken up into the cut stem. Insufficient water can result in wilting and short-lived flowers. Bent neck of roses, where the flower head droops, is the result of poor water uptake. To maximize water uptake, first re-cut the stems at an angle so that the vascular system (the ""plumbing"" of the stem) is clear. Next immerse the cut stems in warm water.

Remember when the flower is cut, it is cut off from its food supply. Once water is taken care of, food is the resource that will run out next. The plants stems naturally feed the flowers with sugars. If you add a bit of sugar (1 tsp.) to the vase water, this will help feed the flower stems and extend their vase life.

Bacteria will build up in vase water and eventually clog up the stem so the flower cannot take up water. To prevent this, change the vase water frequently and make a new cut in the stems every few days.

Floral preservatives, available from florists, contain sugars, acids and bactericides that can extend cut flower life. These come in small packets and are generally available where cut flowers are sold. If used properly, these can extend the vase life of some cut flowers 2 to 3 times when compared with just plain water in the vase.

How-to : Winter Protection for Roses

F. Start off by keeping your plants healthy and vigorous going into the winter - continue to water them properly until the ground freezes. Stop feeding at least 6 weeks before the first frost date as this is the time to start hardening off the plants for the winter. In really cold climates, after a couple of hard freezes, mound soil or heavy mulch 1 foot over the base of plant to protect the graft union. Cut back long canes to 4 foot lengths and bind them together to prevent injury in the winter. Remove soil mounds after all danger of hard frost has passed in the spring.

In milder climates, this process is not necessary, but a good layer of mulch and continued watering up to frost and periodically through winter is a good idea. The best time to prune no matter where you live is at the end of the dormant season, when buds are beginning to swell.

Glossary : Viruses

Viruses, which are smaller than bacteria, are not living and do not replicate on their own. They must rely on the cellular mechanisms of their hosts to replicate. Because this greatly disrupts the cell's functionality, outward signs of a viral infection result in a plant disease with symptoms such as abnormal or stunted growth, damaged fruit, discolorations or spots.

Prevention and Control: Keep virus carriers such as aphids, leafhoppers, and thrips under control. These plant feeding insects spread viruses. Viruses can also be introduced by infected pollen or through plant openings (as when pruning). Begin by **keeping the pathogen out** of your garden. New plants should be checked, as well as tools and existing plants. Use only certified seed that is deemed disease-free. **Plant only resistant varieties** and **create a discouraging environment** by rotating crops, not planting closely related plants in the same area every year.

Glossary : Growth Buds

Plant stems contain numerous buds that will grow and renew a plant when stimulated by pruning. There are three basic types of buds: terminal, lateral and dormant. Terminal buds are at the tips of twigs or branches. They grow to make the branch or twig longer. In some cases they may give rise to a flower. If you cut the tip of a branch and remove the terminal bud, this will encourage the lateral buds to grow into side branches resulting in a thicker, bushier plant. Lateral buds are lower down on the twig and are often at the point of leaf attachment. Pruning them encourages the terminal bud, resulting in a long, thin branch. Dormant buds may remain inactive in the bark or stem and will only grow after the plant is cut back

Glossary : Fertilize

Fertilize just before new growth begins with a complete fertilizer.

Glossary : Pruning

Now is the preferred time to prune this plant.

Plant Images

EXHIBIT H

CHRISTIE PARKER HALE LLP
Intellectual Property Law

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December 16, 2014

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Zhongmin Dong, Professor
SAINT MARY'S UNIVERSITY
923 Robie Street
Halifax, Nova Scotia
Canada B3H 3C3

Re: Inappropriate Use of LIVIN' EASY Trademark
CPH Ref. W225:73780

Dear Ms. Estabrooks, Ms. Browne and Mr. Dong:

We represent Early Morning LLC dba Weeks Roses ("Weeks Roses") with respect to intellectual property matters, including the protection of its trademark rights. Weeks Roses is a world leader in the cultivation and distribution of live plants, including roses. Since at least as early as 1996, Weeks Roses has been selling a specific type of rose prominently bearing the trademark LIVIN' EASY. As a result of the substantially exclusive and continuous use of its LIVIN' EASY trademark for the last eighteen years, Weeks Roses is the sole owner of trademark rights in LIVIN' EASY for any use related to the sale and distribution of roses.

Weeks Roses is the owner of United States Trademark Application Serial No. 86098613 for LIVIN' EASY for "live plants." Weeks Roses is also the owner of United States Plant Patent No. 9,161, which issued in 1995 and covers the generic rose sold by Weeks Roses under its LIVIN' ESAY trademark. The cultivar

and/or varietal name for the rose branded with the LIVIN' EASY trademark is "HARwelcome."

We have recently become aware of the inappropriate use of the LIVIN' EASY trademark in a published article wherein the three of you are identified as co-authors . A copy of that article has been enclosed for your review and reference. It appears that you may have mistakenly interchanged the LIVIN' EASY trademark under which Weeks Roses sells a specific rose product, with the generic cultivar and/or varietal name for this rose.

Accordingly, in the future, Weeks Roses requests that you immediately terminate all use of its LIVIN' EASY trademark when referring to the corresponding cultivar and/or varietal name for this rose. As indicated above, the proper generic reference to this rose is "HARwelcome" and Weeks Roses requests that you immediately begin using the "HARwelcome" cultivar name when referring to this specific type of rose in a generic sense. Your anticipated cooperation on this matter is greatly appreciated.

Within two weeks of the date of this letter, Weeks Roses requests written assurance that you have agreed to this request. Weeks Roses also requests that all reference to the LIVIN' ESAY trademark be removed from all other promotional material and literature you may distribute, or have in your possession. Again, "HARwelcome" is the proper cultivar and/or varietal name to use when referring to this specific type of rose.

Nothing in this letter shall be deemed a waiver of any rights, remedies or defenses of Weeks Roses, all of which are hereby expressly reserved.

We look forward to your prompt assurances in this matter.

Very truly yours,

Gary J. Nelson

Gary J. Nelson

GJN/ct
Attachment

cc: Weeks Roses

MAC PAS1327379.1-*-12/16/14 1:08 PM

Attachment

Plant Cell Reports
February 2007, Volume 26, Issue 2, pp 159-160

2,4,5-Trichlorophenoxyacetic acid promotes somatic embryogenesis in the rose cultivar 'Livin' Easy' (*Rosa* sp.)

Tammy Estabrooks, Robin Browne, Zhongmin Dong

Abstract

Somatic embryogenesis (SE) offers vast potential for the clonal propagation of high-value roses. However, some recalcitrant cultivars unresponsive to commonly employed SE-inducing agents and low induction rates currently hinder the commercialization of SE technology in rose. Rose SE technology requires improvement before it can be implemented as a production system on a commercial scale. In the present work, we assessed 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), a synthetic auxin not previously tested in rose, for its effectiveness to induce SE in the rose cultivar 'Livin' Easy' (*Rosa*

rose, for its effectiveness to induce SE in the rose cultivar 'Livin' Easy' (*Rosa* sp.). We ran a parallel comparison to the commonly used 2,4-dichlorophenoxyacetic acid (2,4-D). We tested each auxin with two different basal media: Murashige and Skoog (MS) basal medium and woody plant medium (WPM). MS medium resulted in somatic embryo production, whereas WPM did not. 2,4,5-T induced SE over a greater concentration range than 2,4-D's and resulted in significantly greater embryo yields. 2,4,5-T at a concentration of 10 or 25 μM was better for embryogenic tissue initiation than 2,4,5-T at 5 μM. Further embryo development occurred when the tissue was transferred to plant growth regulator (PGR) free medium or media with 40% the original auxin concentration. However, the PGR-free medium resulted in a high percentage of abnormal embryos (32.31%) compared to the media containing auxins. Upon transfer to germination medium, somatic embryos successfully converted into plantlets at rates ranging from 33.3 to 95.2%, depending on treatment. Survival rates 3 months ex vitro averaged 14.0 and 56.6% for 2,4-D- and 2,4,5-T-derived plantlets, respectively. Recurrent SE was observed in 60.2% of the plantlets growing on germination medium. This study is the first report of SE in the commercially valuable rose cultivar 'Livin' Easy' (*Rosa* sp.) and a suitable methodology was developed for SE of this rose cultivar.

• Communicated by J. Zou

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Title
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Topics
» Plant Biochemistry
» Biotechnology
» Plant Sciences
» Cell Biology

Journal
» Plant Cell Reports
» Volume 26, Issue 2 , pp 153-160

Keywords
Rosa
Somatic embryogenesis

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Cover Date
2007-02-01

DOI
10.1007/s00299-006-0231-5

Print ISSN
0721-7714

Online ISSN
1432-203X

Publisher
Springer-Verlag

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