

**BEFORE THE PLANT VARIETIES REGISTRY  
AT NEW DELHI**

**IN THE MATTER OF: - Opposition filed by SIFA  
(Opponent) against registration of rose variety  
Meiflemingue filed by Moerheim Roses (Applicant)**

**IN THE MATTER OF: -**

**M/s Moerheim Roses & Trading India Pvt., Ltd.,**

**..... APPLICANT**

**-Versus-**

**M/s. South India Floriculture Association**

**.... OPPONENT**

**For the Applicant: - Ms. Anushree Gupta, Patent Agent,  
M/s. Anushree Associates**

**For the Opponent: Mr. Sharngan, Advocate, M/s. Khaitan &  
Co.,**

**ORDER**

By this order I shall dispose of the opposition filed by the Opponent against the registration of applicant's rose variety Meiflemingue.

The applicant filed on 3.4.2012 the application for registration of their rose variety of Rosa spp. with the denomination Meiflemingue under the category of extant variety about which there is common knowledge. The applicant was advertised in the Plant Variety Journal of India Vol. No.10 No.1 15<sup>th</sup> January, 2016.

The opponent filed the opposition within the time limit. The applicant filed their counter statement. The opponent filed the final opposition but not their evidence and accordingly even the applicant were never able to file

their evidence as under Rule 33(2) of PPV&FR Rules, 2003 the applicant can file evidence within 30 days from the date of receipt of opponent's evidence. The matter was heard finally on 7.10.2016. The counsel for opponent stated that he was not ready to argue on merits seeking adjournment as he has no instructions. The counsel for applicant argued and filed their written submission.

**Contention of the Opponent:-**

The opponent's contention is that the variety is not registerable under PPV&FR Act because the variety does not conform to distinctiveness criteria and accordingly the opposition is filed under Section 21(3)(b) and the grant of certificate of registration is not in public interest under section 21(3)(c). The name of the parental material of the meiflemingue is KEIDARGO X TANKALGIC and the reference variety is First Red. The distinctive character of the variety recognized by the applicant lies in the length of the petal of the flower which according to the applicant is long over the reference variety first red. The other variety of roses such as top secret, gladiator etc have been in existence in common knowledge in India and grown by Indian farmer community. The characteristics of the plant namely plant: Growth Type, Flower: Type, Flower: Colour group, Flower: Diameter, Petal: number of colours on inner side and Petal: Main Colour, as enumerated under specific DUS test guidelines for nine crop species of Rose published in the PVJ Vol. 3 No.11. dated 3<sup>rd</sup> November, 2009 of the variety are same to that of the existing variety of some rose species

extensively grown in India. Accordingly registration of the variety will confer a monopoly right and the variety ought to be in public domain other will jeopardize the interest of the farmers and the impugned application must not be registered. The applicant has made vague statements in support of their application without producing a shred of evidence in support of the same. The length of the petal is barely distinguishable as between the variety as against any other variety. The applicant's failure to suitably describe and provide proper indicators of distinctiveness of the variety is indeed a ground of rejection. The opponent is unaware of whether the variety in question is being sold under the trade names Taj Mahal or Top secret. The applicant has in no way proved the distinctiveness.

**Case of the applicant:-**

The applicant's distinctiveness of applicant's variety has been duly established after DUS testing. The applicant has proved the distinctiveness of the variety not only within India but in many other territories as well. The applicant has proved the distinctiveness of the variety even in UPOV and long petals are one of the distinct character and has qualified for registration in India and in UPOV. The grant of certificate of registration does not affect the interest of the public. The arguments for the opposition that it should be an alleged variety and falling under the category of floricultural products is not correct as meiflemingue is a rose variety and not a floricultural product.

**Reasoning:-**

The counsel for Respondent after the matter was reserved for order submitted a letter dated 13.10.2016 stated that the request for adjournment on 07.10.2016 was made on the grounds of personal difficulty of the arguing counsel. It was also stated the applicant has not filed effective evidence and with holding of information is not proper. The said letter has not been served to the other side. Accordingly the same is treated as representation and disposed of with a direction that the same cannot be taken on record as it has been filed after the judgment has been reserved and copy of the same has not been served to the other side.

At the outset the opposition is pertaining to the distinctiveness of the variety with regard to length of the petal of the flower. As under Section 15(3)(b) of PPV&FR Act, 2001 a variety is eligible for registration if it is distinct from any other variety of common knowledge by one essential characteristic. The length of the petal of the flower is a distinctive essential character and it qualifies for registration as per the DUS test guidelines of Rose (*Rosa spp.*). It is admitted that the opponent never filed any evidence. The Opponent has not filed any evidence contradicting or rebutting the claim of the applicant with regard to the length of the petal of the flower. The onus or the burden of the proof is on the opponent to establish his case of non-distinctiveness of the applicant's variety with regard to length of the petal of the flower. On the other hand the applicant's variety has qualified the DUS testing and the distinctiveness of the essential character namely length of the

petal of the flower has been confirmed with regard to the reference variety First Red. Consequently, the DUS testing report of the variety which has been accepted and analysed by this registry corroborates the claim of the applicant with regard to the essential character namely length of the petal of the flower. Accordingly, the distinctiveness of the essential character No.39 of the applicant's variety has been duly proved by DUS testing as per DUS test guidelines of Rose. The same stands unchallenged by opponent. Consequently, the variety has to proceed for registration in accordance with law. There is no legal bar in withholding the registration of the variety.

Accordingly, I hereby reject the opposition filed by the opponent and hereby direct the registry to issue forthwith the certificate of registration to the applicant provided other conditions laid down under the law are satisfied.

There shall be no order as to costs.

Given under my hand and seal on 21<sup>st</sup> day of October, 2016.

Sd/-  
(R.C.AGRAWAL)  
REGISTRAR-GENERAL