



The three point IP update from Stephenson Harwood

## BITTERSWEET ENDING FOR NADORCOTT - UK HIGH COURT RULES ON PBRs

In this update, we cover the recent High Court decision from the Hon. Mr Justice Mellor in *Nador Cott Protections S.A.S. v (1) Asda Stores Limited (2) International Procurement and Logistics Limited [2026] EWHC 553 (Pat)* concerning the scope of plant breeders' rights in the UK.

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### FACTS

Nador Cott Protection (“NCP”) sued Asda and IPL for the alleged infringement of its plant breeders’ right (“PBR”) in the Nadorcott mandarin (UK PBR no. 28016) arising from the importation and sale of “Tang Gold” mandarins.

NCP’s claim was heard under the Shorter Trial Scheme in the Patents Court. In the spirit of that scheme, many facts, matters and issues were agreed during the proceedings, leaving only two matters of statutory interpretation for trial, which were heard over two days in November 2025:

- (1) The ‘dependent variety’ issue – which turned on the correct interpretation of s.7(3) Plant Varieties Act 1997 (“PVA”). This issue concerned the scope of the Nadorcott PBR and whether Tang Gold is an essentially derived variety (“EDV”) of Nadorcott.
- (2) The ‘reasonable opportunity’ issue – which concerned the correct interpretation of certain wording in s.6(3) PVA and whether NCP had lost any right of action because “he had a reasonable opportunity before the harvested material was obtained to exercise his rights in relation to the unauthorised use of the propagating material”.

### DECISION

Judgment was handed down on 12 March 2026.

Dependent variety – The court held that Tang Gold is not essentially derived from Nadorcott and is therefore not a dependent variety. Drawing on the UPOV Explanatory Notes, the judge explained how to identify a variety’s “essential” characteristics. On the facts, two essential characteristics of Nadorcott sought by growers— ‘seediness’ (under cross-pollination) and ‘pollen viability’—were not retained in Tang Gold. Section 7(3)(a) PVA was therefore not met.

Reasonable opportunity – The court held that the references to “rights” and “plant breeders’ rights” in s.6(3) are to the UK national right only; they do not extend to corresponding rights in other jurisdictions.

Asda sources fruit from, among others, Peru, Chile and Egypt, where NCP holds no PBR in Nadorcott. Tang Gold mandarins obtained from those countries therefore fell outside the scope of s.6(3). On the facts (and for additional reasons set out in the judgment), NCP had not had a reasonable opportunity to exercise its UK PBR in relation to the unauthorised use of propagating material before the harvested material was obtained.

### IMPACT

This decision is bittersweet for NCP. The Judge acknowledged in his judgment that had he reached the opposite finding on the ‘dependent variety’ issue – namely that Tang Gold is an EDV of Nadorcott, then –given his approach to s.6(3)—NCP would not have been prevented from exercising its rights under that provision and could likely have obtained an injunction against further UK imports and monetary relief for prior imports/sales.

Mellor J observed in his judgment, that against the background of more familiar Intellectual Property Rights which are more frequently litigated before the courts – namely patents, trade marks, copyright, design rights, etc – “PBRs are unusual”.

This judgment accordingly represents a significant event in UK jurisprudence and the first substantive decision on EDV under S7(3) PVA. It is the first time ever that the UK court has ruled on the interpretation of these aspects of plant variety legislation. Few other courts worldwide can say the same. In doing so, the UK has positioned itself as a forum capable of adjudicating PBR issues.