



star fruits

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To the attention of everyone to whom it may concern

Authorisation of Cripps Pink apple trees and declaration of Rosy Glow apples trees in Chile.

Cripps Pink

The variety Cripps Pink has been planted in Chile since the mid 1990's. The original grant of PVR was annulled, this was also in the 1990's, and it has been known as a 'free' variety in Chile ever since. This 'free' status does not apply to any fruit that is exported from Chile into a Territory where Cripps Pink is a protected variety and this protection is under the 1991 convention of the International Union for the Protection of New Varieties of Plants (UPOV). The 1991 UPOV convention applies in the European Union

The right to authorise Cripps Pink apple trees in Chile is derived from the Plant Variety Rights (PVR) granted in the European Union (CPVR 1640) (including the UK after the Brexit will operate) that is owned by the Western Australian Agriculture Authority (WAAA). In accordance with and subject to European Union (EU) regulations (Council Regulation (EC) No 2100/94), the holder of the CPVR 1640 for Cripps Pink, WAAA, shall be entitled to (a) authorise the importing of Cripps Pink Fruit into the EU and (b) to prevent any person importing Cripps Pink Fruit into the EU where the Grower has not received an Authorisation from WAAA.

The EU CPVR rights are exclusively licenced by WAAA to the French company Star Fruits (SF). Therefore, SF has the exclusive rights to authorise any commercial act within the EU and the United Kingdom in relation to the Cripps Pink variety, including importation of Cripps Pink apples into the EU and the United Kingdom. The CPVR for Cripps Pink in the EU and the United Kingdom extends to harvested material from the trees (i.e. fruits). SF pursuant to its exclusive licence with WAAA is empowered to enforce the Cripps Pink plant variety rights on fruits imported into the EU where WAAA hasn't had a reasonable opportunity to enjoy its rights at source in regard to the variety. In these circumstances SF has organised a process for authorisation of Cripps Pink trees in Chile to provide to growers an opportunity for exporting of their fruits to the EU and the United Kingdom.

Star Fruits Chile SpA (SFC) was established as a Chilean entity on August 29, 2018, fully owned by Star Fruits (SF), whom on that same date has granted a license to the same in order to exercise its rights in relation to the Chilean growers.

Cripps Pink tree authorisation process has been completed in Chile since 1995, this has been on behalf of WAAA by the Chilean company Viveros Requinoa (VR).

WAAA in conjunction with SF have resolved that the process for authorising Cripps Pink trees in Chile will end at the 30st of November 2018. After this date no further Cripps Pink trees would be authorised by WAAA for production of fruit that could be shipped to the EU and / or the United Kingdom.

To complete the process of Authorisation of Cripps Pink trees in Chile all growers will have the opportunity to have their plantings recorded with WAAA. This requirement applies to all growers even if they have had their trees recorded by VR or the agent of VR the Global Licensing Association (GLA) in the period May 2008 until August 2013.

Process for completion of Authorisation/Declaration

Growers are to contact Decofrut (contact details below) by 30st of November 2018.

When being contacted by Decofrut, or when contacting Decofrut, growers will receive:

- a) declaration form to declare all their Cripps Pink and Rosy Glow trees to Decofrut; and
- b) for Cripps Pink growers, a Tree Authorisation and Non Propagation Agreement (TANPA), which establishes the obligations for both parties

The form that they will need to complete requires:

- their contact details,
- orchard(s) location,
- Block identification numbers as well as the corresponding SAG Number
- exact tree numbers of Cripps Pink
- evidence of prior authorisation by VR or its agent GLA or;
- indicate if the trees have not previously been authorised and

The key elements of the Tree Authorisation and Non Propagation Agreement (TANPA) authorised by SFC are:

- The grower commits to no further propagation of Cripps Pink trees or sourcing of Cripps Pink trees other than from nurseries authorised by SF. (It is important to note that this only applies to trees that are for production of fruit for export to the EU)
- No fees will be applied to trees that have been previously declared to Viveros Requinoa (VR) or Global Licensing Association (GLA).
- The royalty for Cripps Pinks trees that have not been declared to VR or GLA will be:
 - US\$0.50 plus VAT per tree
- The tree Authorisation fees are to be paid in two instalments, 50% by 30 April 2019 and the balance by 30 October 2019.
- Star Fruit and / or ANA or any of their representatives will have the faculty to visit the orchards in order to verify the Cripps Pink trees' declaration.
- A false declaration by a grower, be it either in the number of plants or in the variety that is declared (Cripps Pink / Rosy Glow) will result in the authorisation of trees being voided.

The form and TANPA must be completed and signed by the legal representative and returned by 30th of November 2018.

In the period, December 2018 to March 2019, and after control of declaration by Star Fruits, growers who have completed a declaration and a TANPA for Cripps Pink trees will receive from Star Fruits Chile,

- a) The TANPA signed by Star Fruits Chile; and
- b) A Tree Authorisation Notice (TAN) for the Cripps Pink trees.

The TAN is the document that the growers will provide to their exporters to prove that their trees are authorized.

The validity of the CPVR for *Cripps Pink* has been unsuccessfully challenged and disputed on several occasions in the past and is currently valid and in force and effect. Notably, the Community Plant Variety Office (CPVO) and the Board of Appeal of the CPVO have held the CPVR valid by decisions of 19 September 2016 and 14 September 2017, an appeal against this last decision being still pending. The *Cripps Pink* CPVR that was granted 21 years ago by the Community Plant Variety Office is currently fully valid and in force.

Rosy Glow

Rosy Glow is a naturally occurring mutation of the Cripps Pink variety, and therefore, considered as an 'essentially derived variety' from the same. This variety is protected in Chile by plant variety rights (Res. SAG No: 60/06) and in Europe, under CPVR 18127 granted in July 2006, both in the name of Fleming's Nursery Pty. Ltd.

Star Fruits is also the exclusive licensee of the CPVR rights on the Rosy Glow variety in the EU and Viveros Asociados de Chile Ltda., known as Andes New Varieties Administration (ANA) is the exclusive licensee of the PVR rights on the Rosy Glow variety in Chile. Same provisions are applying in the EU regarding importation of Rosy Glow apples, i.e., all fruits must come from trees whose cultivation has been authorized in Chile by the variety owner or its exclusive representative in Chile, the company Andes New Varieties Administration (ANA).

Taking the opportunity of the declaration and authorization process initiated by Star Fruits in relation to the variety Cripps Pink, Andes New Varieties Administration (ANA) and SF invite the growers of Rosy Glow to also declare the plants of this variety in their possession through the same Declaration form already described for Cripps Pink and that must be delivered to Decofrut within the mentioned time periods.

For those growers who have planted Rosy Glow in Chile without any authorization, ANA and SF are willing to offer the opportunity, for this one time, to legalize their illegal production without additional costs to the payment of royalties.

Thus, all trees of Rosy Glow that have been planted in Chile, and have not be acquired through an agreement with an ANA's sublicensed nursery, must obtain a license by ANA both:

- i) To cultivate and produce legally the variety in Chile in respect with the plant variety protection Res. SAG No: 60/06, and
- ii) To export fruits in territories where the variety is also protected, and notably to the European Union.

The complete licensing process of Rosy Glow trees, will be taken directly ANA from the information received from Decofrut based on the declarations. The key elements of this licensing authorization are:

- The grower commits to no further propagation of Rosy Glow trees or obtaining Rosy Glow trees other than from nurseries authorised by ANA.
- The royalty for Rosy Glow trees that have not been declared to ANA will be:
 - US\$1.60 plus VAT per tree
- The tree Authorisation fees are to be paid directly and immediately to ANA.
- ANA and or S/f or any of their representatives will have the faculty to visit the properties where the orchards are in order to verify the Rosy Glow plant declaration.
- A false declaration by a grower will result in the authorisation of trees being voided.

Although this process is voluntary, Rosy Glow growers who have purchased their plants through nurseries licensed by ANA, paid the respective royalties, and whose final destination is the EU fruit, are strongly suggested, in order to facilitate the commercialization process, to make the declaration and obtain without any cost the corresponding TAN (Tree Authorization Notice) described below and its benefits.

Tree Authorisation Notice (TAN)

Once the TANPA has been completed for Cripps Pink and / or a licence agreement is in place with ANA for Rosy Glow trees, a Tree Authorisation Notice (TAN) will be issued and sent to the growers. The TAN will be the document that shows to exporters and importers of Cripps Pink and Rosy Glow apples to the EU and / or the United Kingdom, that the fruit comes from authorized trees.

Their fruits will be also authorized to be packed and exported, to any destination, in association with the Pink Lady® trademark, subject the terms and conditions of trading and export licenses granted to Chilean packers and exporters by the Australian company, Apple & Pear Australia Limited (APAL), the owner of the Pink Lady® trademark in more than 90 countries in the world.

Growers who don't participate need to be aware that product from their Cripps Pink trees will not be permitted entry into the EU and / or United Kingdom from May 2019 and/or to be packed by Pink Lady® licensed packers / exporters to all destinations where APAL owns the Pink Lady® trademark.

The TAN will also be required to be supplied to nurseries in Chile that are licenced to sell Cripps Pink and mutations of Cripps Pink such as Rosy Glow, for those growers that want to acquire new plants of these varieties. If growers have never planted any Cripps Pink or Rosy Glow and would do so they will need to hand over a declaration to this effect to the licenced nursery.

The information in the TAN's will be stored in a database that can be accessed by ANA, SF on behalf of WAAA and by agreement, exporters and importers of Cripps Pink and their mutations into the EU. Cripps Pink fruit that is exported without a TAN being in place will not be permitted entry into the EU.

Growers should be very aware that when they make a declaration it must include all of their Cripps Pink and Rosy Glow trees. Discovery of a partial declaration of the number of trees that the grower has, for whatever reason, or the detection of any false declaration will result in the TANPA agreement and the TAN certificate being voided.

Cripps Pink growers must also be aware that pursuant to the Cripps Pink TANPA, Star Fruits will authorize ANA to enter the Cripps Pink location(s) declared by growers for the purpose of inspecting the trees and their location in order to verify the accuracy of the declaration, and notably to make sure the trees are not of the Rosy Glow variety.

Cripps Pink and Rosy Glow growers and exporters must also be aware that Star Fruits will reserve its rights to operate any appropriate control, at the export and the import level, to make sure that both Cripps Pink and Rosy Glow apples imported in the EU and the UK have been obtained from the authorized cultivation of trees of both varieties.

In such circumstances, growers, exporters and/or importers will have the burden of proof of to provide the detailed evidences of the exact origin of the fruits exported / imported to / into the EU & the UK.

If those evidences cannot be provided, then Star Fruits Diffusion in France will reserve its rights to enforce the regulation in relation to the importation into the EU and the UK of fruits obtained from the unauthorized cultivation of trees of Cripps Pink or Rosy Glow varieties. Star Fruits also reserves it's right to inform Apple and Pear Australia Limited (APAL), so that the same can take the corresponding measures in relation to licensed exporters of the PINK LADY® trademark.

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