

GROWERTALKS

GT in Brief

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STEPABLES Wins Copyright Infringement Lawsuit

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Think twice before you borrow photos from the Internet for your website or catalog: The Perennial Farm of Glen Arm, Maryland, just lost a court case—\$900,000 in actual damages and \$300,000 in statutory damages—for using photos belonging to Under A Foot Plant, Co. and their STEPABLES brand. (The plaintiff has to choose one of the awards, so at most it's a \$900,000 judgment.)

The jury verdict came May 11 in the U.S. District Court in Maryland.

STEPABLES is Under A Foot Plant, Co.'s product line of perennial plants for walkways, borders and lawn replacement. Company President Frances White, creator of the STEPABLES plant line, alleged that The Perennial Farm had used STEPABLES's copyrighted photographs to market a competing line of products called "Treadwell." She testified that she had discovered her pictures on Treadwell webpages, brochures and posters in 2011, 2012 and 2014 and these infringements continued.

Professor Jeffrey Sedlik, an expert on visual arts and photography licensing, was called as an expert witness. He testified that The Perennial Farm had infringed 24 of STEPABLES photographs a total of 133 times from 2011 to 2017. He confirmed the infringement using a fingerprint-like "feature point analysis" of the photographs and then researched the fair market value for licensing similar images in similar marketing materials.

"This was a huge win for artists, photographers and creators," Frances said of the jury's decision and the award. "These photographs were the result of countless hours of time, attention, planning and preparation. Today, the jury sent a clear message that the work that goes into marketing and selling high-quality plants is valuable and worthwhile."

Dan Schmidt, the attorney representing The Perennial Farm, made it clear that his client "intends to explore all avenues of post-verdict relief, including an appeal." **GT**