

Azalea Trademark Dispute

Plant Development Services Inc. (PDSI) in Loxley, Ala., filed a lawsuit against El Modeno Gardens Inc. in Irvine, California. The suit is for trademark infringement, counterfeiting and false designation of origin. The complaint stems from El Modeno Gardens' unlawful use of the Encore® registered trademark, according to PDSI. The nursery was licensed to propagate, produce and sell Encore® products in California, but the agreement was terminated on July 6, 2005, according to a PDSI press release. PDSI also stated, "In a subsequent agreement dated Aug. 15, 2006, El Modeno Gardens agreed to cease and desist any and all use of the Encore® trademark and/or the use of any name confusingly similar to the Encore® name. This included, but was not limited to, trademark use on pots, tags, labels, containers, advertisements, brochures and web sites. El Modeno Gardens also agreed to cease and desist from all further propagation, production, marketing, sales and shipping of Encore® azaleas."

El Modeno disputes the claim made by PDSI. El Modeno vice-president Jo-Anne Newton, said that El Modeno Gardens has not violated agreements with Plant Development Services Inc. "After El Modeno mutually agreed to discontinue its business relationship with PDSI in September 2006, El Modeno took steps to remove all Encore® pots from its sales inventory, even though it had PDSI's permission to sell through existing inventory through spring 2007," Newton said. "El Modeno has learned that PDSI found 1 instance in which a store has continued to display an El Modeno plant in an Encore® pot. It is unclear whether this was merely part of old store inventory or existing pot inventory that was inadvertently shipped. El Modeno is working diligently to investigate and remedy the matter."