

Working Group on Variety Denominations

UPOV/WG-DEN/3/2

**Third Meeting
Geneva, April 7, 2017**

Original: English
Date: March 21, 2017

REVISION OF DOCUMENT UPOV/INF/12/5 “EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION”

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EXECUTIVE SUMMARY

1. The purpose of this document is to provide background information to assist the Working Group on Variety Denominations (WG-DEN) in its consideration of the proposals for a revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

2. The WG-DEN is invited to:

(a) note the matters agreed by the WG-DEN at its second meeting, as reported in paragraph 6 of this document; and

(b) consider document UPOV/INF/12/6 Draft 3, as set out in paragraph 8 of this document.

3. The structure of this document is as follows:

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4. The following abbreviations are used in this document:

- CAJ: Administrative and Legal Committee
- CAJ-AG: Administrative and Legal Committee Advisory Group
- WG-DST: Working Group for the Development of a UPOV Denomination Similarity Search Tool
- WG-DEN: Working Group on Variety Denominations

BACKGROUND

5. The background to this matter is provided in document UPOV/WG-DEN/2/2 “Revision of document UPOV/INF/12/5 ‘Explanatory Notes on Variety Denominations under the UPOV Convention’”.

DEVELOPMENTS BY THE WG-DEN, AT ITS SECOND MEETING

Items agreed by the WG-DEN

6. The WG-DEN, at its second meeting, held in Geneva, on October 25, 2016, considered document UPOV/INF/12/6 Draft 2 and agreed the following with regard to a possible revision of document UPOV/INF/12/5:

(a) Section 2.2.2 (c), the current text could eventually allow the use of a denomination consisting solely of figures in all denomination classes, and agreed that the current text was appropriate, on that basis;

(b) Section 2.3.1 (a), the example in the section provided clear guidance;

(c) Section 2.3.1 (b), to delete current Section 2.3.1 (b) and invited the CPVO to provide alternative guidance;

(d) Section 2.3.1 (d), the use of any botanical name as a variety denomination was unsuitable except for certain common names that had a wider meaning and for which there was no likelihood of confusion (e.g. "Rosa");

(e) Section 2.3.3 (a), the proposal that for all categories of denominations including pronounceable words, a difference of one letter or one figure should not be considered to be liable to mislead and cause confusion concerning the identity of the variety should not be pursued.

Items agreed to consider further

7. The WG-DEN agreed to consider the following items at its third meeting:

(a) Section 1 "Designation of varieties by denominations; use of the denomination", a proposal that if an authority did allow a denomination to be registered when the breeder of the variety was also the holder of a trademark that was identical to the variety denomination, the authority should inform the breeder of the obligation to allow the use of the denomination in connection with the variety, even after the expiration of the breeder's right;

(b) Section 2 "Characteristics of the denomination", the definition of "words" and the four categories of denominations: pronounceable words; letters only (not in the form of pronounceable words); letters and figures; and figures only;

(c) Section 2.1 "Identification", the WG-DEN noted that some members considered two elements on Section 2.3.1 "Characteristics of the variety", (a) the denomination should not convey the impression that the variety has a particular characteristics which in reality it does not have; and (b) the denomination should not refer to specific characteristics in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties or species in question also have or may have the same characteristics, with Section 2.1;

(d) Section 2.3 "Liable to mislead or to cause confusion", three aspects: visual; phonetic; and conceptual, it was noted that introducing a conceptual aspect would necessitate consideration of linguistic and cultural aspects, which could potentially increase the risk of synonyms because, for example, differences in conceptual meanings could be linked to specific understandings in different languages that would not be understood in other languages, and it was agreed to consider whether it would be appropriate to introduce the conceptual aspect with information to be provided by CPVO;

(e) Section 2.3 "Liable to mislead or to cause confusion", "first names", to be considered based on the information provided by the CPVO on its consideration on "first names" under the explanation of the conceptual differences;

(f) Section 2.3.1 (b), alternative guidance to be provided by the CPVO;

(g) Section 2.3.1 (c): to consider two elements together, botanical relationship of varieties and confusion in relation to the identity of the breeder, to cover refusal of following cases:

- (i) a variety denomination "Dannys Royal Gala" even if it had little botanical relation with variety denomination "Royal Gala", and
- (ii) a breeder submitting a type of variety denomination, which resulted in a copy of another breeders well known practice. For instance, the practice of a breeder that proposes denominations consisting of names of mountains;

(h) Section 2.3.2 "Value of the variety", to consider examples of acceptable and unacceptable uses of superlatives and comparatives; and

(i) Section 2.3.3 "Identity of the variety", to consider exception to Section 2.3.3 (a) "[a]s a general recommendation, a difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety".

MATTERS FOR CONSIDERATION BY THE WG-DEN AT ITS THIRD MEETING

8. In order to facilitate the work of the WG-DEN, it is proposed to consider document UPOV/INF/12/6 Draft 3, which incorporates the comments of the WG-DEN at its second meeting, up to Section 2.3.3 (b).

9. *The WG-DEN is invited to:*

(a) *note the matters agreed by the WG-DEN at its second meeting, as reported in paragraph 6 of this document; and*

(b) *consider document UPOV/INF/12/6 Draft 3, as set out in paragraph 8 of this document.*

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