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UPOV

UPOV/C/V/12
Original: English
Date: August 17, 1971

INTERNATIONALER VERBAND
ZUM SCHUTZ VON
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE
POUR LA PROTECTION
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION
FOR THE PROTECTION OF
NEW PLANT VARIETIES

COUNCIL

Fifth Session

Geneva, October 13 to 15, 1971

Comments by

ASSINSEL AND CIOPORA

on the

Provisional Guidelines for Variety Denominations

Report by the Secretary General

1. After the adoption of the Provisional Guidelines for Variety Denominations by the Council of UPOV at its fourth meeting, held in Geneva on October 28 and 29, 1970, the Secretariat informed ASSINSEL (Association internationale des Sélectionneurs pour la Protection des Obtentions végétales) and CIOPORA (Communauté internationale des Obtentions de Plantes ornementales de Reproduction asexuée) accordingly.
2. By letters dated November 27, 1970, and November 30, 1970, CIOPORA and ASSINSEL forwarded respectively their comments on the adopted guidelines. The letters are attached as Annexes I and II to this Report.

3. In reply to the above-mentioned letters, the Secretary General informed the two organizations that the letters would be presented to the Working Party on Variety Denominations and the Council at their forthcoming meetings.
4. The two letters were presented to the Working Group on Variety Denominations at its sixth meeting on May 4 and 5, 1971. The Working Group decided to instruct the Secretariat to give a negative answer to the two organizations.
5. By letters dated May 28, 1971, the Secretary General answered the two organizations accordingly. The replies are attached to this Report as Annexes III and IV.
6. By a letter dated July 28, 1971, CIOPORA made a new request for revision of the Guidelines. That letter is attached to this Report as Annex V.

7. The Council is invited to take note of the above.

/End of document;
Annexes follow/

Original: French

CIOPORA

International Community of Breeders
of Asexually Reproduced Ornamentals

4 place Neuve - Geneva
November 27, 1970

The Secretary-General
UPOV
32 chemin des Colombettes
1222 - Geneva 20

RR/MF
333.C/70

Sir,

We have the honor to acknowledge receipt of your letter of November 6, 1970, in response to ours dated October 12, 1970.

In view of the serious nature of the information contained in your above-mentioned letter, the Board of Directors of our Association has held an extraordinary meeting at which the question of trademarks and denominations was again discussed.

We have the honor to communicate to you hereby the remarks made during that meeting in connection with the information which you had kindly furnished to us.

We consider that refusal, by the working party of the Council of the Union, to accept combinations of letters and figures as denominations constitutes, by virtue of the consequences which it entails, a serious violation of the rights accruing to breeders in pursuance of the Paris Convention of 1883 for the Protection of Industrial Property, and consequently of the fundamental principle of the equality of everyone before the law.

Furthermore, we consider it regrettable that the guidelines, even though provisional, should have been put before the Governments without a further consultation with the representative professional associations, which would have afforded more comprehensive information for the working party.

The fact is that most of the breeders who are members of CIOPORA have been using the system of "coded" denominations for nearly twenty years past. This is therefore a case of an established professional custom which, far from giving rise to difficulties when new ornamental varieties are put onto the market, has considerably rationalized the situation in the profession by making possible more precise identification of the new ornamental varieties created since then.

We are given to understand that certain UPOV member countries have based their decision on the grounds that, in certain countries, it is said to be customary for new ornamental varieties to be marketed only under a "fancy name." It should be pointed out that this can only have occurred in countries where the fact that a trademark is at the same time a generic denomination does not invalidate the said mark, or in countries where the majority of breeders were not interested in trademarks, because of the fact that their trade was of a purely domestic character. Since the entry into force of the 1961 Convention, those same breeders are now very much interested in registration of those same fancy names as trademarks, and they are fully disposed to use our "code denominations" as new generic denominations. Furthermore, if the UPOV member countries were to accept the principle of "code denominations," this fact would not prevent any breeder who was not interested in obtaining trademark protection for his fancy names from registering them as denominations--and this would satisfy everybody.

Lastly, we consider it dangerous and unjust to allow the directives proposed by the working party to be applied, even on a provisional basis:

- dangerous, because the prohibition of "code denominations" will result in a proliferation of "fancy name denominations" which will come up against the trademark registered fancy names used for the same varieties, and great confusion will ensue in professional circles as well as among the public in general;

- unjust, because there is nothing in the text of the 1961 Convention to prohibit combinations of letters and figures. Now, the 1961 Convention has always been considered as constituting a minimum below which no signatory country could go.

We would request you kindly to convey these remarks to the member countries of the UPOV Council, as well as to the experts who are members of the working party.

We hope that the Council of the Union and the working party will be disposed to reconsider their position on this problem of denominations, the solution of which cannot in any case be dissociated from that of the problem of trade-marks, and will agree to hear a delegation from CIOPORA once more.

Awaiting your reply, etc. etc.

(signed) René Royon
Secretary-General, CIOPORA

/End of Annex I
Annex II follows/

" ASSINSEL "

ASSOCIATION INTERNATIONALE DES SÉLECTIONNEURS
POUR LA PROTECTION DES OBTENTIONS VÉGÉTALES

Autorisée par arrêté ministériel du 26 Février 1959

Siège Social et Administration :
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C. C. P. PARIS 2538-39

Mr. G.H.C. Bodenhausen
Secretary General
Office of the
International Union for the Protection
of New Plant Varieties
32, chemin des Colombettes

1211 Genève 20

Einbeck, November 30th, 1970

Sir,

I want to thank you sincerely for your letter of November 6th informing me about the results of the UPOV Council meeting held on October 28th and 29th in Geneva.

I understand that the Council has adopted the proposed Guidelines for variety denominations "provisionally".

Our Council has meanwhile discussed the situation. We understand that the UPOV Council felt the necessity for the adoption of such Guidelines on a provisional basis.

However, to our great concern we regret that our wish with regard to allowing a combination of letters and figures for the variety denomination was not fully accepted.

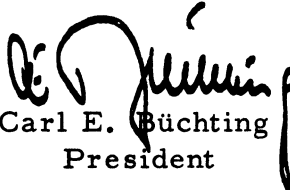
We welcome the decision of the Council that such a combination of letters and figures will be allowed for maize (corn) varieties. We strongly feel that this should also apply to other plant varieties.

Annex II to UPOV/C/V/12
page 2

We are glad to learn from your letter that the Council has decided to review the Guidelines at a later date, and I want to express our hope that the Council will then be able to follow our proposal.

We further understand that the provisional Guidelines for variety denominations do not deal with the problem of trade marks. The problem of trade marks will be discussed at a later date and we sincerely hope that we will be given the opportunity to present our views on this problem.

Accept, Sir, the assurance of my highest consideration.


Carl E. Büchting
President

End of Annex II,
Annex III follows

LETTER FROM THE SECRETARY GENERAL OF UPOV TO THE
PRESIDENT OF ASSINSEL, DATED MAY 28, 1971

Subject: Variety Denominations

Sir,

Your letter of November 30, 1970, was brought to the attention of the Working Group on Variety Denominations at its meeting on May 4 and 5, 1971, and was thoroughly discussed by that group.

The Working Group expressed the opinion that experience was needed with the practical application of the Provisional Guidelines for Variety Denominations before the subject could be discussed again. The Working Group does, therefore, not intend to take further action for the time being. This does not mean, however, that in the light of future experience the matter will not be rediscussed at a later date.

The Working Group is grateful for your attention to this matter.

Accept, Sir, the assurance of my highest consideration.

/End of Annex III;
Annex IV follows/

Original: French

LETTER FROM THE SECRETARY GENERAL
OF UPOV TO THE SECRETARY GENERAL OF CIOPORA,
DATED MAY 28, 1971

Re: Variety denominations

Your letter of November 27, 1970, was brought to the notice of the Working Group on Variety Denominations at its meeting on May 4 and 5, 1971, and was discussed in detail.

The Working Group expressed the opinion that practical experience had to be acquired with the application of the Provisional Guidelines for Variety Denominations before the subject could be discussed again. Consequently, the Working Group does not intend to take other measures for the time being. This does not mean, however, that the question may not be raised again at a later date in the light of new experience.

The Working Group appreciates the attention you are devoting to this matter.

[/End of Annex IV;
Annex V follows]

Original: French

LETTER FROM THE SECRETARY GENERAL
OF CIOPORA TO THE SECRETARY GENERAL OF UPOV,
DATED JULY 28, 1971

Re: Variety denominations

By letter dated May 28, 1971, you informed us that the Working Group which prepared the Provisional Guidelines for Variety Denominations would be prepared to discuss the problem of variety denominations again at a later date.

In view of the fact that the combined effect of the legislative measures adopted in England in April 1968 and in Denmark in August 1970, as well as the trial implementation of the Guidelines for Variety Denominations, has been to create an inextricable situation for the breeders and users of protected roses, quite apart from the extreme confusion in the mind of the client, we have the honor to submit to you the request that the question of denominations be studied once again by the Working Group at the meetings to be held in Geneva on October 14 and 15, 1971.

We hope that you will appreciate the importance and urgency of this matter and that you will be able to accede to our request.

We thank you in advance for kindly attending to this state of affairs.

/End of Annex V and
end of document/