



CAJ/42/6

ORIGINAL: English

DATE: September 15, 2000

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE**Forty-Second Session
Geneva, October 23 and 24, 2000****GUIDELINES ON THE SUITABILITY OF VARIETY DENOMINATIONS IN THE
EUROPEAN UNION AND THE UPOV RECOMMENDATION ON VARIETY
DENOMINATIONS***Document prepared by the Office of the Union*

1. At the forty-first session of the Administrative and Legal Committee (hereinafter referred to as "the Committee"), held in Geneva on April 6, 2000, the Delegation of the European Community reported on draft guidelines on variety denominations to be adopted by the European Commission and subsequently to be applied by the Community Plant Variety Office (CPVO) of the European Community.
2. The discussion focused on the relationship between trademarks and variety denominations, and the view was expressed that future EC guidelines in this respect and for other reasons differed from UPOV principles on variety denominations. It was suggested to make the full text of the Community Guidelines on Variety Denominations available to the Committee and to examine it together with the UPOV Recommendations on Variety Denominations.
3. Annex I consists of the Commission Regulation (EC) No. 930/2000 of May 4, 2000, establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species. Annex II contains a synopsis, prepared by the Office of the Union, comparing in detail UPOV rules on variety denominations as laid down in Article 20 of the 1991 Act of the UPOV Convention and in the UPOV Recommendation on Variety Denominations (UPOV/INF/12 Rev.), with Council Regulation (EC) No. 2100/94 and Commission Regulation (EC) No. 930/2000 (Articles 2 to 7). The first part of Annex II focuses on the rights of third parties in a designation which might hamper the

free use of a variety denomination, and the second part of Annex II contains a general comparison of the EC Regulation with UPOV provisions on variety denominations.

4. As far as trademarks and variety denominations are concerned, the comparison suggests that the EC Regulations do not diverge from UPOV principles as the relevant paragraphs in Commission Regulation (EC) No. 930/2000 must be considered on the basis of Articles 18, 63 and 66 of Council Regulation (EC) No. 2100/94.

5. Commission Regulation (EC) No. 930/2000 explicitly allows for codes as a form of variety denomination and establishes detailed rules as to when variety denominations are not suitable. As a whole, with their very detailed provisions, the new EC Regulations elaborate different forms of variety denominations.

6. The UPOV Recommendations on Variety Denominations are much less detailed than Commission Regulation (EC) No. 930/2000 and allow for a relatively flexible approach to variety denominations, to accommodate new experiences and technical developments, including the possible use of codes.

7. The recent development in the European Community raises the question whether the time has come to revise the UPOV Recommendations on Variety Denominations. The EC example suggests, however, that this could only be done with a view to elaborating the scope for various forms of variety denominations, in particular with a view to the growing membership of UPOV and therefore the growing diversity of languages, both written and spoken.

8. The Committee may wish to consider whether a revision of the UPOV Guidelines on Variety Denominations should be started and whether, in addition to formal aspects, it should address the substance of the recommendations with a view to elaborating the scope for various forms of variety denominations.

[Two Annexes follow]

**COMMISSION REGULATION (EC) No 930/2000
of 4 May 2000**

**establishing implementing rules as to the suitability of the denominations of varieties
of agricultural plant species and vegetable species**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species¹, as last amended by Directive 98/96/EC², and in particular Article 9(6) thereof,

Having regard to Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed³, as last amended by Directive 98/96/EC, and in particular Article 10(6) thereof,

Whereas:

- (1) Directives 70/457/EEC and 70/458/EEC have laid down general rules in relation to the suitability of variety denominations, by means of a reference to Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights⁴, as amended by Regulation (EC) No 2506/95⁵.
- (2) For the purposes of the application of Directives 70/457/EEC and 70/458/EEC, it is appropriate to establish detailed rules for the application of the criteria set out by Article 63 of Regulation (EC) No 2100/94, in particular in respect of the impediments for the designation of a variety denomination as specified in paragraphs 3 and 4 thereof. In a first phase, such detailed rules should be limited to the following impediments:
 - use precluded by the prior right of a third party,
 - difficulties as regards recognition or reproduction,
 - denominations which are identical or may be confused with a variety denomination of another variety,

¹ OJ L 225, 12.10.1970, p. 1.

² OJ L 25, 1.2.1999, p. 27.

³ OJ L 225, 12.10.1970, p. 7.

⁴ OJ L 227, 1.9.1994, p. 1.

⁵ OJ L 258, 28.10.1995, p. 3.

- denominations which are identical or may be confused with other designations,
 - misleading or causing confusion concerning the characteristics of the variety or other features.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS REGULATION:

Article 1

The present Regulation establishes, for the purposes of the application of Article 9(6), first subparagraph, of Directive 70/457/EEC and of Article 10(6), first subparagraph, of Directive 70/458/EEC, detailed rules for the application of certain criteria set out by Article 63 of Regulation (EC) No 2100/94 for the eligibility of variety denominations.

Article 2

1. In the case of a trade mark as a prior right of a third party, the use of a variety denomination in the territory of the Community shall be considered to be precluded by the notification, to the competent authority for the approval of the variety denomination of a trade mark, which has been registered in one or more Member States or at Community level prior to the approval of the variety denomination, and which is identical or similar to the variety denomination and registered in relation to goods which are identical or similar to the plant variety concerned.

2. In the case of a prior right of the applicant in respect of whole or part of the proposed denomination, Article 18(1) of Regulation (EC) No 2100/94 shall apply *mutatis mutandis*.

Article 3

1. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:

- (a) where it is in the form of a “fancy name”:
 - (i) it consists of a single letter;
 - (ii) it consists of, or contains as a separate entity, a series of letters not forming a pronounceable word, except where this series is an established abbreviation;
 - (iii) it contains a number, except where this is an integral part of the name, or where this indicates that the variety is or will be one of a numbered series of biologically related varieties;

- (iv) it consists of more than three entities; however, in the case of Article 63(4) of Regulation (EC) No 2100/94, more than three entities shall not be considered as an impediment;
 - (v) it consists of, or contains an excessively long word;
 - (vi) it contains a hyphen, a blank space other than between the entities of which it consists, another mark, an upper and lower case mixture within the entities, a subscript, a superscript, a symbol or a design;
- (b) where it is in the form of a “code”:
- (i) it consists of a number or numbers only, except in the case of inbred lines or of similarly specific types of varieties;
 - (ii) it consists of a single letter;
 - (iii) it contains more than 10 letters, or letters and numbers;
 - (iv) it contains more than four alternating groups of a letter or letters and a number or numbers;
 - (v) it contains a hyphen, a blank space other than for separation from a pronounceable word, another mark, a subscript, a superscript, a symbol or a design.

2. On submission of the proposal for a variety denomination, the applicant should declare where the proposed denomination is intended to be in the form of a “fancy name” or of a “code.”

3. If the applicant makes no declaration on the form of the proposed denomination, the denomination shall be considered to be a “fancy name.”

Article 4

In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:

- (a) “may be confused with” shall be considered to cover *inter alia* a variety denomination, containing a difference of only one letter or number, or of accents on letters, in relation to the variety denomination of a variety of a closely related species, which has been officially accepted for marketing in the Community, the European Economic Area or in a contracting party to UPOV, or is the subject of a plant variety right in such territories; however, a difference of only one letter in an established abbreviation as a separate entity of the variety denomination shall not be covered. Without prejudice to Article 6, this provision shall not apply to a variety denomination in the form of a code, if the reference variety denomination is equally in the form of a code;
- (b) “closely related species” shall be considered to mean a species belonging to the same class as listed in the Annex, or, where not applicable, to the same botanical genus;

- (c) “a variety no longer remains in existence” shall be considered to mean a variety no longer in commercial existence;
- (d) “an official register of plant varieties” shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, or to any register compiled and maintained by the Community Plant Variety Office, or by an official body of the Member States of the Community or the European Economic Area, or of a contracting party to UPOV;
- (e) “a variety the denomination of which has acquired no special significance”: the denomination of a variety which has at one time been entered in an official register of plant varieties and thereby acquired special significance shall be considered to have lost that special significance on the expiry of a 10-year period after deletion from that register.

Article 5

Designations which are commonly used for the marketing of goods or which have to be kept free under other legislation shall be considered to mean in particular:

- (a) currency denominations, or terms associated with weights and measures;
- (b) terms that have become part of everyday language in the whole or part of the Community and the approval of which as a variety denomination would impede its use by others when marketing reproductive or propagating material of other varieties;
- (c) expressions that, by virtue of legislation, shall not be used for purposes other than those envisaged by that legislation.

Article 6

A variety denomination shall be considered to mislead or to cause confusion if,

- (a) it conveys the false impression that the variety has particular characteristics or value;
- (b) it conveys the false impression that the variety is related to, or derived from, another specific variety;
- (c) it refers to a specific characteristic or value in a way which conveys the false impression that only that variety possesses it, whereas in fact other varieties of the same species may possess the same characteristic or value;
- (d) by dint of its similarity to a well-known trading name other than a registered trade mark or variety denomination, it suggests that the variety is another variety, or conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;
- (e) it consists of, or contains

- (i) comparatives or superlatives;
- (ii) the botanical name, or part thereof, of a genus or species of the plant kingdom;
- (iii) the common name of a genus or species of the plant kingdom within the group either of agricultural plant species or of vegetable plant species, to which the variety belongs;
- (iv) the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder.

Article 7

Variety denominations which have been accepted in the form of a code shall be clearly indicated as such in the relevant official catalogue or catalogues of Member States for officially accepted plant varieties, or in the relevant common catalogue, by a footnote with the following explanation: “variety denomination approved in the form of a ‘code’”.

Article 8

1. This Regulation shall enter into force on the 20th day of its publication in the *Official Journal of the European Communities*.
2. It shall not apply to variety denominations which have been proposed by the applicant to the competent authority for their approval, prior to the day on which this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 May 2000.

For the Commission

David BYRNE

Member of the Commission

ANNEX

CLOSELY RELATED SPECIES

(Article 4(b))

Class A (UPOV Class 1):	<i>Avena, Hordeum, Secale, Triticale, Triticum</i>
Class B (UPOV Class 3):	<i>Sorghum, Zea</i>
Class C (UPOV Class 4):	<i>Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum</i>
Class D (UPOV Class 5):	<i>Brassica oleracea, Brassica chinensis, Brassica pekinensis</i>
Class E (UPOV Class 6):	<i>Brassica napus, Brassica campestris, Brassica rapa, Brassica juncea, Brassica nigra, Sinapis</i>
Class F (UPOV Class 7):	<i>Lotus, Medicago, Ornithopus, Onobrychis, Trifolium</i>
Class G (UPOV Class 8):	<i>Lupinus albus L., Lupinus angustifolius L., Lupinus luteus L.</i>
Class H (UPOV Class 9):	<i>Vicia fabia L.</i>
Class I (UPOV Class 10):	<i>Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima</i>
Class K (UPOV Class 11):	<i>Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn. Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris</i>
Class L (UPOV Class 12):	<i>Lactuca, Valerianella, Cichorium</i>
Class M (UPOV Class 13):	<i>Cucumis sativus</i>
Class N (UPOV Class 14):	<i>Citrullus, Cucumis melo, Cucurbita</i>
Class O (UPOV Class 15):	<i>Anthriscus, Petroselinum</i>
Class P (UPOV Class 16):	<i>Daucus, Pastinaca</i>
Class Q (UPOV Class 17):	<i>Anethum, Carum, Foeniculum</i>
Class R (UPOV Class 21):	<i>Solanum tuberosum L.</i>
Class S (UPOV Class 24):	<i>Helianthus annuus</i>

[Annex II follows]

ANNEX II

Application of UPOV Rules/Guidelines in Council Regulation (EC) No. 2100/94 and Commission Regulation (EC) No. 930/2000 on variety denominations

I. Rights of third parties in a designation

UPOV CONVENTION (1991) Article 20	COUNCIL REGULATION (EC) NO. 2100/94
(1)(a) The variety shall be designated by a denomination which will be its generic designation	
(1)(b) Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.	<p>Article 18</p> <p>1. The holder may not use any right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination in connection with the variety, even after the termination of the Community plant variety right.</p>
(4) Prior rights of third person shall not be affected. If, by reason of a prior right, the use of the denomination of variety of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.	<p>Article 63</p> <p>3. There is an impediment for the designation of a variety denomination where:</p> <p>a) its use in the territory of the Community is precluded by the prior right of a third party.</p> <p>Article 18</p> <p>2. A third party may use a right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination only if that right was granted before the denomination was designated pursuant to Article 63.</p> <p>Article 66</p> <p>1. The Office shall amend a variety denomination designated pursuant to Article 63 if it establishes that the denomination does not satisfy, or no longer satisfies the conditions laid down in Article 63 and in the event of a prior conflicting right of a third party, if the holder agrees to the amendment or the holder or any other person required to use the variety</p>

UPOV CONVENTION (1991) Article 20	COUNCIL REGULATION (EC) NO. 2100/94
	<p>denomination has been prohibited, by a final judgement, for this reason from using the variety denomination.</p> <p>2. The Office shall give the holder an opportunity to propose an amended variety denomination and shall proceed in accordance with Article 63.</p>
<p>(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.</p>	

II. Provisions for variety denominations

UPOV CONVENTION (1991) Article 20	COUNCIL REGULATION (EC) NO. 2100/94
(1)(a) The variety shall be designated by a denomination which will be its generic designation	
(1)(b) Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.	<p>Article 18</p> <p>1. The holder may not use any right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination in connection with the variety, even after the termination of the Community plant variety right.</p>
(4) Prior rights of third person shall not be affected. If, by reason of a prior right, the use of the denomination of variety of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.	<p>Article 63</p> <p>3. There is an impediment for the designation of a variety denomination where:</p> <p>a) its use in the territory of the Community is precluded by the prior right of a third party.</p> <p>Article 18</p> <p>2. A third party may use a right granted in respect of a designation that is identical with the variety denomination to hamper the free use of that denomination only if that right was granted before the denomination was designated pursuant to Article 63.</p> <p>Article 66</p> <p>1. The Office shall amend a variety denomination designated pursuant to Article 63 if it establishes that the denomination does not satisfy, or no longer satisfies the conditions laid down in Article 63 and in the event of a prior conflicting right of a third party, if the holder agrees to the amendment or the holder or any other person required to use the variety denomination has been prohibited, by a final judgement, for this reason from using the variety denomination.</p>

<p>UPOV CONVENTION (1991) Article 20</p>	<p>COUNCIL REGULATION (EC) NO. 2100/94</p>
	<p>2. The Office shall give the holder an opportunity to propose an amended variety denomination and shall proceed in accordance with Article 63.</p>

<p>UPOV CONVENTION (1991)</p>	<p>COMMISSION REGULATION (EC) No. 930/2000</p>
<p>Article 20 (2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties.</p>	<p>Article 3</p> <p>1. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:</p> <p>(b) where it is in the form of a 'code':</p> <p>(i) it consists of a number or numbers only, except in the case of inbred lines or of similarly specific types of varieties.</p>
<p>It must not be liable to mislead or to cause confusion concerning the characteristics, value or identify of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species.</p>	<p>See below</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>Recommendation 2</p> <p>(1) Designations that the average user cannot recognize or reproduce in speech and/or writing are not suitable as generic designations and thus also as variety denominations.</p>	<p>Article 3</p> <p>1. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:</p> <p>(a) where it is in the form of a ‘fancy name’:</p> <ul style="list-style-type: none">(i) it consists of a single letter;(ii) it consists of, or contains as a separate entity, a series of letters not forming a pronounceable word, except where this series is an established abbreviation;(iii) it contains a number, except where this is an integral part of the name, or where this indicates that the variety is or will be one of a number series of biologically related varieties;(iv) it consists of more than three entities -, however, in the case of Article 63(4) of Regulation (EC) No. 2100/94, more than three entities shall not be considered as an impediment;(v) it consists of, or contains an excessively long word;(vi) it consists of a hyphen, a blank space other than between the entities of which it consists, another mark, an upper and lower case mixture within the entities, a subscript, a superscript, a symbol or a design; <p>(b) where it is in the form of a ‘code’:</p> <ul style="list-style-type: none">(i) it consists of a number or numbers only, except in the case of inbred lines or similarly specific types of varieties;(ii) it consists of a single letter;(iii) it contains more than 10 letters, or letters and numbers;(iv) it contains more than four alternating groups of a letter or letters and a number or numbers;(v) it contains a hyphen, a blank space other than for separation from a pronounceable word, another mark, a subscript, a superscript, a symbol or a design.

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
	<p>2. On submission of the proposal for a variety denomination, the applicant should declare where the proposed denomination is intended to be in the form of a “fancy name” or of a “code”.</p> <p>3. If the applicant makes no declaration on the form of the proposed denomination, the denomination shall be considered to be a “fancy name”.</p> <p>Article 7</p> <p>Variety denominations which have been accepted in the form of a code shall be clearly indicated as such in the relevant official catalogue or catalogues of Member States for officially accepted plant varieties, or in the relevant common catalogue, by a footnote with the following explanation “variety denomination approved in the form of a ‘code’.”</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>(... Recommendation 2)</p> <p>(2) In the case of varieties whose propagating material is exclusively marketed within a limited circle of specialists, as in the case of parent varieties for the production of hybrids, the average user should be taken to mean the average specialist in that circle.</p>	<p>Article 3</p> <p>1. A variety denomination shall be considered to cause its users difficulties as regards recognition or reproduction in the following cases:</p> <p>(b) where it is in the form of a 'code':</p> <p>(i) it consists of a number or numbers only, except in the case of inbred lines or of similarly specific types of varieties;</p>
<p>Recommendation 3</p> <p>Designations whose use is to remain free are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with designations which consist exclusively or predominantly of terms in everyday language whose recognition as variety denominations would prevent others from using them when marketing reproductive or propagating material of other varieties.</p>	<p>Article 5</p> <p>Designations which are commonly used for the marketing of goods or which have to be kept free under other legislation shall be considered to mean in particular:</p> <p>(a) currency denominations, or terms associated with weights and measures;</p> <p>(b) terms that have become part of everyday language in the whole or part, of the Community and the approval of which as a variety denomination would impede its use by others when marketing reproductive or propagating material of other varieties;</p> <p>(c) expressions that, by virtue of legislation, shall not be used for purposes other than those envisaged by that legislation.</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>Recommendation 4</p> <p>Designations whose use may be forbidden in the marketing of propagating material of the variety are not suitable as generic designations and thus also as variety denominations. This may be the case in particular with:</p> <p>(i) designations in which the applicant himself has some other right (for instance a right in the name or a trademark) which he could assert under the legislation of the member State concerned to oppose use of the registered variety denomination, either at any time or at least after the expiration of protection;</p>	<p>Article 2</p> <p>2. In the case of a prior right of the applicant in respect of whole or part of the proposed denomination, Article 18(1) of Regulation (EC) No 2100/94 shall apply <i>mutatis mutandis</i>.</p>
<p>(ii) designations in which third parties have asserted a prior right;</p>	<p>1. In the case of a trade mark as a prior right of a third party, the use of a variety denomination in the territory of the Community shall be considered to be precluded by the notification, to the competent authority for the approval of the variety denomination of a trade mark, which has been registered in one or more Member States or at Community level prior to the approval of the variety denomination, and which is identical or similar to the variety denomination and registered in relation to goods which are identical or similar to the plant variety concerned.</p>

UPOV/INF/12 Rev. (Part I)	COUNCIL REGULATION (EC) No. 2100/94
<p>(... Recommendation 4)</p> <p>(iii) designations that are contrary to public policy in the member State concerned.</p>	<p>Article 63</p> <p>3. There is an impediment for the designation of a variety denomination where:</p> <p>(e) it is liable to give offence in one of the Member States or is contrary to public policy;</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>Recommendation 5</p> <p>Names and abbreviations of international organizations which are excluded by international conventions from use as trademarks or parts of trademarks are not suitable as generic designations and thus also as variety denominations.</p>	
<p>Recommendation 6</p> <p>A designation is not suitable as variety denomination on the grounds of liability to mislead if there is a risk of it giving rise to misconceptions concerning the characteristics or value of the variety. This may be the case in particular with:</p> <p>(i) designations that convey the impression that the variety has particular characteristics which in reality it does not have;</p>	<p>Article 6</p> <p>A variety denomination shall be considered to mislead or to cause confusion if,</p> <p>(a) it conveys the false impression that the variety has particular characteristics or value;</p>
<p>(ii) designations that refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics;</p>	<p>(c) it refers to a specific characteristic or value in a way which conveys the false impression that only that variety possesses it, whereas in fact other varieties of the same species may possess the same characteristic or value;</p>
<p>(iii) comparative and superlative designations;</p>	<p>(e) it consists of, or contains</p> <p>(i) comparatives or superlatives;</p>
<p>(iv) designations that convey the impression that the variety is derived from or related to another variety when that is not in fact the case.</p>	<p>(b) it conveys the false impression that the variety is related to, or derived from, another specific variety;</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
	<p>Article 6</p> <p>A variety denomination shall be considered to mislead or to cause confusion if,</p> <p>(e) it consists of, or contains</p> <ul style="list-style-type: none">(ii) the botanical name, or part thereof, of a genus or species of the plant kingdom;(iii) the common name of a genus or species of the plant kingdom within the group either of agricultural plant species or of vegetable plant species, to which the variety belongs.(iv) the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder.
<p>Recommendation 7</p> <p>A designation is not suitable as a variety denomination on the ground of liability to mislead if there is a risk of it giving rise to misconceptions concerning the identity of the breeder.</p>	<p>Article 6</p> <p>A variety denomination shall be considered to mislead or to cause confusion if,</p> <p>(d) by dint of its similarity to a well-known trading name other than a registered trade mark or variety denomination, it suggests that the variety is another variety, or conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;</p> <p>(e) it consists of, or contains</p> <ul style="list-style-type: none">(iv) the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder.

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>Recommendation 8</p> <p>(1) A designation is liable to cause confusion and/or to mislead, and therefore is not suitable, if it is identical or similar to a designation under which a variety of the same or a closely related botanical species has been made known or officially registered or under which reproductive or propagating material of that variety has been marketed.</p>	<p>Article 4</p> <p>In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:</p> <p>(a) ‘may be confused with’ shall be considered to cover <i>inter alia</i> a variety denomination, containing a difference of only one letter or number, or of accents on letters, in relation to the variety denomination of a variety of a closely related species, which has been officially accepted for marketing in the Community, the European Economic Area or in a contracting party to UPOV, or is the subject of a plant variety right in such territories; however, a difference of only a letter in an established abbreviation as a separate entity of the variety denomination shall not be covered. Without prejudice to Article 6, this provision shall not apply to a variety denomination in the form of a code, if the reference variety denomination is equally in the form of a code;</p> <p>(d) ‘an official register of plant varieties’ shall be considered as a reference to the common catalogue of varieties of agricultural plant species or of vegetable species, or to any other register compiled and maintained by the Community Plant Variety Office, or by an official body of the Member States of the Community or the European Economic Area, or of a contracting party to UPOV;</p>
<p>(2) Paragraph (1) is not to be applied where the variety made known or registered earlier or already marketed is no longer cultivated and its denomination has not acquired any particular importance, except where special circumstances nevertheless might make it liable to mislead.</p>	<p>(c) ‘a variety no longer remains in existence’ shall be considered to mean a variety no longer in commercial existence;</p> <p>(e) ‘a variety the denomination of which has acquired no special significance’: the denomination of a variety which has at one time been entered in an official register of plant varieties and thereby acquired special significance shall be considered to have lost that special significance on the expiry of a 10-year period after deletion from that register.</p>

UPOV/INF/12 Rev. (Part I)	COMMISSION REGULATION (EC) No. 930/2000
<p>Recommendation 9</p> <p>For the purposes of the fourth sentence of Article 13(2) of the Convention, all taxonomic units are considered related that belong to the same botanical genus or are contained in the same class in the list in Annex I to these Regulations.</p>	<p>Article 4</p> <p>In evaluating the identity of, or confusion with, a variety denomination of another variety, the following shall apply:</p> <p>(b) ‘closely related species’ shall be considered to mean a species belonging to the same class as listed in the Annex, or, where not applicable, to the same botanical genus;</p>

[End of Annex II and of document]

