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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

GENEVA

**ADMINISTRATIVE AND LEGAL COMMITTEE****Forty-Fourth Session  
Geneva, October 22 and 23, 2001**

## VARIETY DENOMINATIONS

*Document prepared by the Office of the Union*

1. At its forty-second session of the Administrative and Legal Committee (hereinafter referred to as "the Committee"), held in Geneva on October 23 and 24, 2000, discussions on variety denominations took place based on the document CAJ/42/6 "Guidelines on the Suitability of Variety Denominations in the European Union and the UPOV Recommendations on Variety Denominations" (see paragraphs 85 to 95 of document CAJ/42/7). On that occasion, the Vice Secretary-General invited delegations to:

(i) identify conflicts with current UPOV Recommendations;

(ii) provide any other rules which are being applied on variety denominations in addition to those of the European Community.

2. The initial deadline to submit the information requested of December 2000 was extended to January 26, 2001 (see circular U. 3039).

3. The Office of the Union received replies from eleven States: Argentina, Austria, Belgium, Brazil, Canada, Germany, Netherlands, New Zealand, Russian Federation, Spain and Switzerland. The Office also received a reply from one non-governmental organization: the International Seed Trade Federation (FIS).

4. A preliminary review of the replies received provides a basis from which to consider the need to establish an *ad hoc* working group on variety denominations (see paragraph 94 of document CAJ/42/7).

5. The real issue is less a question of conflict between the UPOV Recommendations on Variety Denominations and other national or regional rules, but rather the need to adopt appropriate measures to promote the harmonization of decisions in all UPOV Contracting Parties.

6. The denomination serves to identify the variety. In order to serve this identification purpose, if possible, the denomination should be the same in all territories where protection has been granted. The International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the “UPOV Convention”) provides that a variety must be submitted to all Contracting Parties under the same denomination. The authority, unless it considers the denomination unsuitable, has the obligation to register that denomination (Article 20(5) of the 1991 Act and Article 13(5) of the 1978 Act).

7. In the absence of a harmonized approach to what should be considered a “suitable or unsuitable denomination,” decisions from the competent authorities may vary from one Contracting Party to the other.

8. In some cases, different decisions could be unavoidable, for example, when a right of a third party could be infringed by the proposed denomination in only one of the UPOV Contracting Parties. In other cases, authorities may apply different criteria to determine if a prior right precludes or not the use of the proposed denomination.

9. Another example that illustrates the need for harmonization is the requirement in the last sentence of Article 20(2) of the 1991 Act and Article 13(2) of the 1978 Act. The proposed variety must be different from other denominations in UPOV Contracting Parties which designate varieties of the same or closely related species. Presently, some authorities may interpret that the addition of a letter (in the case of a denomination in the form of a code) is difference enough, and the proposed denomination will be approved. Other authorities may consider that a difference of only one letter is liable to cause confusion, and the proposed denomination will be rejected.

10. The obligation under the UPOV Convention to allow for the free use of the denomination in connection with the variety, even after the expiration of the breeder’s right, may also require coordination between different practices. This is of particular relevance if the applicant of the proposed variety denomination is also the holder of a trademark applicable to the same product (see UPOV Recommendation 4(i) and Article 18(1) of Council Regulation (EC) No. 2100/94).<sup>1</sup>

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<sup>1</sup> Recently this issue was raised in the context of the Specialized Section of the Working Party on Standardization of Perishable Produce and Quality Development of the Economic Commission for Europe of the United Nations (UN/ECE) to clarify a question related to the use of the trademarks “Superior Seedless” and “Early Superior Seedless,” as a varietal name in a list of table grape varieties (Geneva, May 15-18, 2001).

11. The Office of the Union proposes that the following terms of reference, for the *ad hoc* working group, be considered by the Committee:

(i) the working group, based on its experience and the replies received by UPOV Contracting Parties and FIS, will identify key concepts of the UPOV Convention and UPOV Recommendations on Variety Denominations that required further clarification. It will also find out any conflict or different approach between the UPOV Recommendations on Variety Denominations and other national or regional rules and guidelines, including the European Community Regulations;

(ii) the working group will study the relationship and impact of the variety denomination system under the UPOV Convention and the trademark system; this will include situations whereby a trademark is a prior right of a third party and, also the cases whereby the holder of a trademark and the variety denomination are the same;

(iii) in conducting its assessment, the working group will explore solutions already adopted at national or regional level and will evaluate their suitability as a harmonized approach for UPOV Contracting Parties;

(iv) the working group will recommend a set of guidelines to encourage harmonized decisions on variety denominations and, if it is deemed necessary, propose changes to the UPOV Recommendations on Variety Denominations;

(v) the working group will report its assessment and recommend a course of action to the Committee. The Committee will then consider the recommendations proposed by the working group.

12. *The Committee is invited to consider the suitability of the terms of reference proposed by the Office of the Union.*

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