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

**ADMINISTRATIVE AND LEGAL COMMITTEE**

**Thirty-Eighth Session**  
**Geneva, April 2, 1998**

USE OF VARIETY DENOMINATIONS

*Document prepared by the Office of the Union*

1. Article 20(7) and (8) of the 1991 Act of the UPOV Convention (which is substantively identical to Article 13(7) and (8) of the 1978 Act) provides as follows:

“(7) [*Obligation to use the denomination*] Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder’s right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

“(8) [*Indications used in association with denominations*] When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.”

2. The purpose of the above provisions and other provisions of Article 20 of the 1991 Act is to ensure that whenever propagating material of a variety is traded, it is identified by a generic designation that will, to the greatest extent possible, be the same in all UPOV member States. However, Article 20(8) recognizes the desire of breeders and traders to be able to use a trademark in relation to the propagating material of protected varieties which they place into commerce.

3. There is a quite acceptable and normal tension between the public interest in requiring the use of a generic designation to clearly identify a product and the interest of the trader in seeking to distinguish the goods which he offers for sale from other goods of the same kind. The provisions of Article 20(7) and (8) of the 1991 Act are intended to establish a reasonable balance between these competing interests.

4. Information available to the Office of UPOV has suggested that in certain sectors, particularly trade in ornamentals, the balance between the public interest in a clear generic identity for material of a variety and the private interest of the trader in a unique identity for his product is being eroded to the disadvantage of the generic identity. It is thought

(a) that in some countries a substantial number of transactions may take place without any reference to the variety denomination;

(b) that, although breeders themselves may be well aware of the role of the variety denominations, other parties involved in the channels of production and distribution of propagating material may be less aware.

5. It has been noted by the Office of the Union that, in some technical circles and in some essentially technical documents, there is a tendency to identify varieties by the trademark that is associated (for the time being) with the variety rather than by the variety denomination even within institutions responsible for the DUS testing or the granting of protection. If the system of variety denominations is allowed to fall into disuse and is replaced in practice by a system involving only the use of trademarks or trade names, varieties will be known by different names in different countries. In some cases, the same trademark or trade name may be used for different varieties. General confusion concerning variety identity will result not only for consumers but also for scientists. Furthermore, the interests of breeders will also be prejudiced since it will be more difficult to detect infringements.

6. The subject of denominations and their relationship to trademarks and trade names was discussed by the Administrative and Legal Committee at its thirty-sixth session in October 1996 on the basis of paragraphs 11 to 14 of document CAJ/36/3. The Committee shared the view of the Office of the Union expressed in paragraph 14 of the said document which reads as follows:

“14. There may be no wholly satisfactory solution to the confusion caused by trademarks and trade names, other than to reassert the obligation under the Convention to use the denomination in relation to selling and marketing, and to persuade all other persons associated with varietal evaluation and commentaries to use the denomination as well as any trademark in their literature.”

7. The number of UPOV member States obligated by treaty to observe the variety naming rules embodied in Article 20 of the 1991 Act has recently increased and is expected to increase substantially in the years immediately ahead. The opportunity will exist for the UPOV denomination rules to provide the global legal basis for the nomenclature of many, perhaps most, varieties of cultivated plants in the future, replacing practices based in many cases on purely voluntary codes that differ widely from country to country. It would be unfortunate if the reasonably well established UPOV system were to become weakened by default on the part of UPOV and its member States

8. The Office of UPOV, whenever possible, seeks to promote the denomination rules of the UPOV Convention linked as they are with a clear-cut concept of what constitutes a plant variety. Contacts with members of the International Commission for the Nomenclature of Cultivated Plants of the International Union of Biological Sciences have been developed in this context, and UPOV has been invited to provide speakers on the subject of variety naming at the Third International Symposium on the Taxonomy of Cultivated Plants to be held in Edinburgh, United Kingdom, from July 20 to 26, 1998, and at the XVI International Botanical Congress to be held in St. Louis, Missouri, United States of America, from August 1 to 7, 1999. A number of experts in plant nomenclature have expressed their appreciation of the role of UPOV in relation to variety denominations and their wish to see the system respected. They particularly regret any tendencies for a variety to be known by one name in one country and by another name in another country. The Office of the Union is prepared to devote additional promotional efforts to making the naming rules of the UPOV Convention more widely known whilst respecting the balance between the public interest and the interests of traders that is established by the Convention.

9. It would, however, be futile for the Office of the Union to expend efforts to promote and defend the notion of a clear generic identity for plant varieties if member States do not share the same objective and are not themselves active in pursuing that objective by appropriate activity at national level. Appropriate activity might include the monitoring of the practices of traders, explaining the role of the generic identity of varieties to a wider audience, the warning of those who breach naming rules, and in the last resort their prosecution. The cooperation of breeders and trade organizations might well be forthcoming in relation to any such proposed activity particularly if its benefits from the standpoint of enforcement of the breeders' right are appreciated.

10. Since the interest in a harmonized system of generic naming of varieties is international, it is suggested that the Committee should itself monitor the situation by requesting an annual report from member States on efforts in monitoring and enforcing the generic designation provision of the UPOV Convention.

*11. The Committee is invited to comment on the suggestions made in paragraphs 9 and 10.*

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