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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Sixth Session

Geneva, November 13 and 14, 1980

GUIDELINES FOR VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. At its fifth session, the Administrative and Legal Committee decided to review the Guidelines for Variety Denominations at its sixth session in order to determine what future activities should be undertaken regarding variety denominations (see paragraph 15 of document CAJ/V/7). The Guidelines for Variety Denominations are reproduced in the Annex to this document.

2. It is recalled that the Technical Committee, at its twelfth and thirteenth sessions (in November 1978 and in March 1979) examined whether a change in the list of classes (Appendix to the Guidelines for Variety Denominations) was expedient as far as vegetable species were concerned. The Committee concluded that a change was not necessary at that time but that it might be useful to reconsider the whole system of classes for naming purposes in a few years (see paragraph 34 of document TC/XIII/9).

(Annex follows)

GUIDELINES FOR VARIETY DENOMINATIONS

(as adopted by the Council of UPOV on October 12, 1973)

The Council,

By virtue of the provisions of subparagraph (h) of Article 21 of the International Convention for the Protection of New Varieties of Plants,

Recalling that the Convention prescribes that each new variety, if protected, shall be given a denomination (Article 6(1)(e) and Article 13(1)) which shall be considered as the generic name for that variety (Article 13(8)(b)) and must be used by any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of such variety, even after the expiration of the protection of the variety (Article 13(7)),

Recalling that the Convention permits, in respect of the same product, that a trademark be added to the denomination of the variety (Article 13(9)),

Taking into account the fact that the purposes of the denomination of the variety and of a trademark, which may be added to it, are entirely different, the denomination being the generic name of the variety itself, independent of its origin, whereas the trademark distinguishes the products of one enterprise from those of other enterprises, even if an enterprise uses different trademarks for different products,

Considering therefore, in case of simultaneous use of a denomination and a trademark, that it is important, on the one hand, that the denomination be of such character that it is not overshadowed and its significance is not appreciably diminished by the trademark, and, on the other hand, that the latter, in particular, be prevented from appearing to be the name of the variety itself,

Considering that apart from regulating the choice of denominations member States of the Union should prescribe that any denomination must always be visibly presented as such, in order to distinguish it from all other signs and indications, and that it must be clearly distinguishable and legible in all documents made available to the public,

Recommends to the member States of the Union that, in respect of variety denominations, they apply the following guidelines when implementing Article 13 of the Convention:

Article 1

(1) A variety shall be designated by only one denomination.

(2) If a variety has already been submitted for registration or registered in a member State of the Union, only the denomination under which the variety has been registered in that State can be accepted in the other member States unless the authority which has to decide on the new application considers the denomination unsuitable for linguistic or other reasons.

Article 2

The denomination must make it possible to identify the new variety without risk of confusing a purchaser of average attentiveness.

Article 3

(1) The denomination must consist of one to three words with or without a pre-existing meaning, easy to pronounce and to remember and capable of being used as the generic name of the variety.

(2) Figures to a maximum of 4 may be included in a denomination if they have a meaning in connection with the word or words they refer to.

(3) A denomination may not be formed by substituting figures for other figures included in a denomination already in use, or by adding figures to a denomination or by omitting figures from it.

(4) Where a variety is exclusively used for the production of propagating material of other varieties, its denomination may also be formed by combining letters and figures, provided that in the opinion of the competent authorities such combinations are established international custom for the species concerned.

Article 4

A denomination may not embody any element which, on expiration of the term of protection of the variety, would prevent or hamper the free use of such denomination, or would prevent the free commercialization of the variety.

Article 5

The denomination must in particular not

(1) be liable to deceive or cause confusion as to the origin, derivation, characteristics or value of the variety or identity of the breeder;

(2) refer solely to attributes which are also common to other varieties of the species concerned;

(3) be liable to give offense;

(4) be unsuitable for linguistic reasons.

Article 6

The denomination may not consist of the botanical or common name of a species or genus; neither may it include the botanical or common name of a species or genus where this is likely to deceive or to cause confusion.

Article 7

The denomination must not be the same as that of any other variety belonging to a species of the same class as prescribed in the appendix, nor so nearly resemble it as to be likely to deceive or to cause confusion.

Article 8

The denomination must not suggest that the variety concerned is derived from or related to another variety when this is not the case.

Article 9

The denomination must not include words such as "variety," "cultivar," "form," "hybrid" and "cross" or translations of such words.

Article 10

A new variety may not be given a denomination which has been applied previously to a variety belonging to a species of the same class as prescribed in the appendix if, according to a national authority, the old variety is still in cultivation or its denomination still of particular importance.

LIST OF CLASSES
(Appendix to the Guidelines)

This list gives only the classes comprising several genera or only some of the species belonging to one and the same genus. Any genus not appearing on this list is considered to form a class on its own.

- Class 1: Avena, Hordeum, Secale, Triticum
- Class 2: Panicum, Setaria
- Class 3: Sorghum, Zea
- Class 4: Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum
- Class 5: Brassica oleracea
- Class 6: Brassica napus, B. campestris, B. rapa, B. juncea, B. nigra, Sinapis
- Class 7: Medicago, Ornithopus, Onobrychis, Trifolium
- Class 8: Lupinus albus L., L. angustifolius L., L. luteus L.
- Class 9: Vicia faba L.
- Class 10: Beta vulgaris L. var. alba D.C., Beta vulgaris L. var. altissima
- Class 11: 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
- Class 12: Lactuca, Valerianella, Cichorium
- Class 13: Cucumis sativus
- Class 14: Cucumis melo, Cucurbita
- Class 15: Anthriscus, Petroselinum
- Class 16: Daucus, Pastinaca
- Class 17: Anethum, Carum, Foeniculum
- Class 18: Chamaecyparis, Juniperus, Thuya, Taxus
- Class 19: Picea, Abies, Pseudotsuga, Pinus, Larix
- Class 20: Malus, Pyrus
- Class 21: Solanum tuberosum L.
- Class 22: Nicotiana rustica L., N. tabacum L.
- Class 23: Helianthus tuberosus
- Class 24: Helianthus annuus