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UPOV

CAJ/XVII/ 4

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Seventeenth Session
Geneva, April 16 and 17, 1986

VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. Pursuant to the decision taken by the Administrative and Legal Committee at its sixteenth session (see paragraph 72 of document CAJ/XVI/8 Prov.), the Office of the Union has requested the international non-governmental organizations invited to the meeting of April 18, 1986, to inform it "about the practical problems which the members of [that] organization have encountered in the implementation of the provisions of the UPOV Recommendations on Variety Denominations (document INF/10 [...]) and about the solutions which are proposed to remedy the situation."
2. To that end, the Office of the Union had set a period of about six weeks expiring on February 28, 1986.
3. The annexes to this document contain the observations from ASSINSEL and FIS, which were received by the Office of the Union at the date of this document.

[Annexes follow]

ANNEX I

OBSERVATIONS FROM ASSINSEL

Annex to a Letter, Dated March 27, 1986,
from the Secretary General of ASSINSEL
to the Secretary-General of UPOV

The problems in the field of variety denominations differ according to the species or groups of species to which the provisions of article 13 of the UPOV Convention and the UPOV Recommendations on Variety Denominations apply.

Few specific problems are reported by cereal and forage plant breeding companies other than that the UPOV Recommendations on Variety Denominations are considered to be too elaborate and in fact superfluous as the text of the Convention is in itself clear and adequate.

It is reported that sometimes finding a suitable (phantasy) variety denomination has become extremely difficult. In this connection it should be taken into account that latest by the time protection is granted to a variety, a variety denomination must be established. Often, however, it is not yet certain whether the variety concerned will be a success.

The consequence of this system is that many good variety denominations get lost without ever having been used commercially.

The breeders of varieties of cereal species organised in our association agree with their colleagues from the maize section that the best system would be to give the breeders the absolute freedom to choose the variety denomination they want just in the same way as the breeders in one of the UPOV member-States, viz the USA are free to choose their variety names, under the U.S. Plant Variety Protection Act and the Plant Varieties Patent Act.

The maize breeding companies in our association have particularly drawn our attention to the fact that due to this different approach by UPOV member-States maize varieties or hybrids originating in USA are for instance in Italy systematically rebaptized. It happens that a maize hybrid has different names in Italy, in France and in the United States.

The same may happen to hybrid sunflower varieties.

The following example was cited :

A hybrid sunflower variety moving in the trade in the U.S.A., in Argentina, etc under a denomination consisting of letters and figures was given, in Italy a phantasy name in accordance with the requirements and the variety was subsequently put on the OECD list. In 1985 the Italian company acting as the representative for the variety wanted to import seed from a third country in which seed of the variety is produced under the same variety denomination as in the USA. It has taken the authorities in the country concerned 45 days to furnish a control certificate stating both the variety name current in the USA and that under which the variety has been listed in Italy.

Similar cases are reported to happen regularly in most UPOV member-States. These developments render the system envisaged in the UPOV Convention in such cases unworkable and it is therefore felt that abolishment of all recommendations which go beyond the Convention text may normalize the situation.

For vegetable breeding companies the question of variety denominations is of particular importance. There are among our members companies exporting vegetable seed to more than 100 countries in the world. In most of these countries there is no form of protection for their varieties available. Also in the UPOV member-States there is for a number of vegetable species, not yet any protection available.

Our members belonging to the vegetable seed sector have, far before the UPOV Convention entered into force, tried to obtain some protection via trade mark protection. We are of course aware of the fact that there existed in those days already in some countries some jurisprudence according to which variety denominations were to be considered generic names.

When the UPOV Convention was drawn up in the years 1957-1961 this view was ultimately confirmed in the Convention text of 1961. From the records it becomes clear that the existence of the International Code of Nomenclature drawn up mainly by botanists has played an important role in this decision.

Now it should be recognized that the criteria botanists apply to the naming of varieties are not necessarily the same as the criteria of the commercial plant breeding companies. On the contrary, it can be easily demonstrated that these criteria are entirely different.

If the botanist has only one main aim in view, viz the possibility of distinguishing by its name a variety from any other variety, the commercial plant breeding company has at least in the field covered by our organization, traditionally chosen a name for its variety which is commercially the most attractive name and which therefore must not be identical with another variety name.

Both in the jurisprudence referred to above and in the text of the UPOV Convention (the 1961 and the 1978 versions) the criteria of the botanists have been given predominance over those of the plant breeding companies. Yet, the UPOV Convention has not been drawn up with the aim of facilitating the scientific registration of varieties, but in the first place to provide protection to the breeding companies for their varieties and to do this in such a way that the legitimate interests of the general public are safeguarded.

Experience in all other segments of our daily life shows that to achieve this very last objective it is not necessary to declare the names of new products generic when, in all fairness, they are not, or to draw up burdensome rules for the naming of these products.

The result of all this has been that also through the effect of the UPOV Convention vegetable seed breeding companies have now fewer possibilities of obtaining some protection for their varieties through other legal means than plant breeders' rights in the many countries in which this is necessary.

When the UPOV Convention was revised in 1978 the professional organizations have brought this curious consequence of the UPOV Convention, which, after all, aims at giving plant breeding companies more, not less, protection than before, to the attention of the Diplomatic Conference.

Several possible solutions were discussed, but no fundamental changes were made to cope with this situation.

A variety denomination has remained a generic name and in the meantime the Guideline for variety denominations to which the entire group of international professional organizations was opposed, has been replaced by Recommendations, which are generally considered superfluous by the international professional organizations.

Some vegetable breeding companies have, in an effort to develop a system which would be of some use to them in countries in which no protection is available, worked with very insignificant and meaningless variety names to which, in accordance with the possibilities provided by the Convention, a trade mark has been added. In most cases this system proved for practical reasons, not feasible, which can easily be understood if one realizes the great number of species involved and the necessity to streamline administration procedures in accordance with modern practices. The fact remains however, that in many cases the vegetable breeding companies do not enjoy any plant breeders' rights and that UPOV, whose efforts in other fields are certainly recognized and appreciated, has through its rules on variety denominations by no means improved the situation for them.

Our association believes that as long as the UPOV does not basically change its approach towards variety denominations the vegetable breeding companies will have little understanding for such documents as the Guidelines on Recommendations for variety denominations.

[Annex II follows]

ANNEX II



Fédération Internationale du Commerce des Semences

Nyon, 27th March 1986

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The Secretary General
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Sir,

Information meeting on variety denominations, April 18, 1986, Geneva

We are informing you that the undersigned will represent our organization at the above meeting.

As it is hardly conceivable that there are already many breeders in UPOV member States who have been able to gain experience with the UPOV Recommendations on Variety Denominations (how many States have implemented these Recommendations?) we are not in a position to comply with your request to report on practical problems with these Recommendations.

We represent the point of view that the Recommendations are redundant as the Convention text is clear and do not in any way contribute to the objective of having one variety denomination in all UPOV member States.

Besides, the Recommendations make the addition of trade marks more difficult and render this more confusing than should be the case and is desirable.

Yet, we repeat our point of view that members of the seed industry should have the same right to use trade marks, if they wish so, as those active in any other industry. These rights are granted to them by other international treaties than the UPOV Convention and should not be made unduly difficult or confusing to the general public by UPOV Guidelines or Recommendations.

Yours faithfully,

Hans H. Leenders
Secretary General

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