

Working Group on Variety Denominations

UPOV/WG-DEN/3/3

**Third Meeting
Geneva, April 7, 2017****Original:** English
Date: August 31, 2017

REPORT*adopted by the Working Group on Variety Denominations**Disclaimer: this document does not represent UPOV policies or guidance***OPENING OF THE MEETING**

1. The Working Group on Variety Denominations (WG-DEN) held its third meeting in Geneva on April 7, 2017, under the chairmanship of the Vice Secretary-General of UPOV.
2. The meeting was opened by the Chair, who welcomed the participants. The list of participants is reproduced in Annex I to this report.

ADOPTION OF THE AGENDA

3. The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/3/1 Rev.
4. The draft report of the second meeting of the WG-DEN, held in Geneva on October 25, 2016 (document WG-DEN/2/4 Prov. "Draft Report"), was circulated for consideration by correspondence. On the basis of the comments received, the WG-DEN adopted the report of its second meeting (document WG-DEN/2/4) with the following amendment to paragraph 25 of the draft report:

"25. The WG-DEN ~~agreed that~~ considered whether the use of any botanical name as a variety denomination was unsuitable except for certain common names that had a wider meaning and for which there was no likelihood of confusion (e.g. "Rosa")."

REVISION OF DOCUMENT UPOV/INF/12/5 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS"

5. The WG-DEN considered documents UPOV/WG-DEN/3/2 and UPOV/INF/12/6 Draft 3.
6. The WG-DEN noted the matters agreed by the WG-DEN at its second meeting, as reported in document UPOV/WG-DEN/3/2, paragraph 6.
7. In accordance with the approach agreed at its second meeting (see document UPOV/WG-DEN/2/4 "Report" Paragraph 30), the WG-DEN started discussion of document UPOV/INF/12/6 Draft 3 at paragraph 2.3.3(b).

Paragraph 2 [Characteristics of the denomination]**Section 2.3.3 "Identity of the variety"*****Section 2.3.3(c)***

8. The WG-DEN concluded that, at that time, there was no agreement to change the current wording of Section 2.3.3(c), but before finally concluding on that matter the WG-DEN requested members of the WG-DEN to provide examples/guidance in the implementation of the following element of Section 2.3.3(c) "In some limited cases an exception may be acceptable, for example a variety which was never

commercialized, or was only commercialized in a limited way for a very short time” and the WG-DEN agreed to send a circular for that purpose.

Section 2.3.4 “Identity of the breeder”

9. The WG-DEN agreed to reflect further on whether PVP Offices should seek to have a role in recognizing breeders practices in naming varieties (e.g. prefixes, themes) or whether that should be left to other mechanisms (e.g. trademarks). It was agreed that the Office of the Union should send a circular inviting comments on that matter. It was also agreed that the Office of the Union should investigate the background that led to the adoption in the Convention of the principle in Section 2.3.4 “Identity of the breeder” at the 1961 Diplomatic Conference.

Section 2.4 “Different from an existing variety of the same plant species or of a closely related species”

10. The WG-DEN agreed that the term “variety” related to the definition of variety as defined in Article 1(vi) of the 1991 Act of the UPOV Convention and, in particular the term “variety” was wider than protectable variety. The WG-DEN noted that the role of PLUTO in that matter would be considered under a separate agenda item.

Section 2.5 “Variety denomination classes: a variety denomination should not be used more than once in the same class”

11. The WG-DEN noted that there had been no proposals to amend the list of classes in document UPOV/INF/12.

12. The WG-DEN noted the changes in the list of classes in the ninth edition of the International Code of the Nomenclature for Cultivated Plants (ICNCP) of March 2016. It noted that there was agreement on the general rule for denomination classes (one genus/one class) between UPOV and the International Commission for the Nomenclature for Cultivated Plants (IUBS Commission) but there was a wide divergence on the exceptional classes. The WG-DEN agreed that UPOV should explain its exceptional classes to the IUBS Commission with a view to achieving greater harmonization in the tenth edition of the ICNCP.

13. The WG-DEN noted that, for some UPOV members, the acceptability of similar denominations varied according to class. For example, in the case of a class following the general rule (one genus/one class) a similar denomination might be accepted for a different species within the same genus. The WG-DEN agreed that UPOV members should be invited to provide information on such approaches by means of the circular to be issued.

Paragraph 4 [Prior rights of third persons]

14. The WG-DEN agreed to propose additional text to explain that, if an authority allows a denomination to be registered when the breeder of the variety is also the holder of a trademark that is identical to the variety denomination, the authority should inform the breeder of the obligation to allow the use of the denomination in connection with the variety, even after the expiration of the breeder’s right. This matter will be considered under Section 1.2.

Items raised by the WG-DEN at its second meeting

15. Having completed consideration of document UPOV/INF/12/6 Draft 3 from paragraph 2.3.3(b) until the end of the document, the WG-DEN agreed to consider the items raised at the second meeting of the WG-DEN in relation to paragraphs 1 – 2.3.3(a) (see document UPOV/WG-DEN/3/2 paragraph 7).

16. The WG-DEN welcomed the presentation of the CPVO on the assessment of similarity between two denominations based on visual, phonetic and conceptual aspects. The presentation by the CPVO is reproduced in Annex II to this report. The WG-DEN concluded that conceptual criteria in the UPOV guidance might not be suitable due to the difficulties for the harmonized implementation of the conceptual aspect at the international level.

17. The WG-DEN welcomed the presentation of the CPVO on the characteristics of the variety. The presentation by the CPVO is reproduced in Annex III to this report.

18. The WG-DEN noted that there were some significant differences in the detailed criteria for variety denomination suitability between UPOV members and that it might be difficult to achieve complete harmonization. The WG-DEN noted that such differences in criteria would not lead to the creation of a synonym if authorities accepted the denomination that was submitted and registered with the first application, even if the denomination would not have met the criteria in their territory.

19. The WG-DEN agreed to issue a circular in order to explore the frequency that UPOV members were faced with existing denominations that did not meet their own criteria and the frequency that synonyms were created as a result. In addition, the WG-DEN agreed to issue a circular to users on whether the current practices created problems.

UPOV DENOMINATION SIMILARITY SEARCH TOOL

20. The WG-DEN agreed that matters that agenda item 4 “UPOV Denomination Similarity Search Tool” would be considered at a later meeting on the basis of the document presented at the second meeting.

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

21. The WG-DEN agreed that matters that agenda item 5 “Expansion of the content of the PLUTO database” would be considered at a later meeting on the basis of the document presented at the second meeting.

NON-ACCEPTABLE TERMS

22. The WG-DEN agreed that matters that agenda item 6 “Non-acceptable terms” would be considered at a later meeting on the basis of the document presented at the second meeting.

DATE, PLACE AND PROGRAM OF THE NEXT MEETING

23. The WG-DEN agreed to hold its fourth meeting in Geneva, in the morning of October 27, 2017.

24. The following program was agreed for the fourth meeting of the WG-DEN:

1. Opening of the meeting
2. Adoption of the agenda
3. Revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”
4. UPOV denomination similarity search tool
5. Expansion of the content of the PLUTO database
6. Non-acceptable terms
7. Date, place and program of the next meeting

25. *This report was adopted by correspondence.*

[Annexes follow]

ANNEX I

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[Annex II follows]

UPOV Working Group on Variety Denominations

Assessing the similarity between Fancy names

CPVO presentation, Geneva
April 7, 2017



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

Preliminary remarks

- Current practice of the CPVO based on the Guidelines revision of 2012
- Ongoing revision of the interpretation of the Guidelines:
 - Feedback that the CPVO should have a more lenient approach
 - Working group on Variety Denomination met twice in 2016
 - CPVO drafting a proposal to be reviewed by the working group in June 2017
 - Proposal to the Commission and the Administrative Council in October 2017



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

Word

a single unit of language that has a **meaning** and can be **spoken** or **written**.
(*Cambridge dictionary*).

Fancy name (denomination)

a **unit of language** consisting in letters and that can be **spoken or written**,
with or without a **meaning** (CPVO).



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

Assessment of the similarity

to evaluate the similarity and dissimilarity between two denominations following **3 criteria**:

1. **Visual similarity**
2. **Phonetic similarity**
3. **Conceptual similarity**

- **More criteria for more balanced decisions**
- **less room for subjectivity**



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

1. Visual similarity

As a *general principle*, a two-letter difference makes two denominations visually sufficiently distinct.

! Some letters may be more similar than others, eg letters m/n; h/k; j/i

2. Phonetic similarity

A similar or identical **pronunciation** in one of the EU languages can be decisive in the assessment.

3. Conceptual similarity

- The **meaning** of the denominations, if any, is also considered. This criteria is not taken into account if one the two denominations has no meaning.
- **First names** are considered as conceptually similar when they have the same origin.



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A two-letter difference (or more) is often sufficient to make the denominations visually and phonetically distinct.

Example

Myrsel <> Miriel

- ✓ 1. Two different letters: **visually distinct**
- ✓ 2. One of the two different letters (letter 's' <> 'i') creates a **sufficient phonetic difference**
- 3. No meaning, the **conceptual criteria is not relevant**

➤ *The proposal is suitable*



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A two-letter difference (or more) is often sufficient to make the denominations visually and phonetically distinct

Example

Hibizat <> Ibiza

- ✓ 1. Two different letters: **visually distinct**
 - ✗ 2. Identically pronounced in several EU languages **phonetically identical**
 - 3. Hibizat has no meaning, the **conceptual criteria is not relevant**
- *The proposal is suitable*
- *Idea to consider the conceptual criteria when only one of the denominations has a meaning.*



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A two-letter difference (or more) is often sufficient to make the denominations visually and phonetically distinct

Example

Micaelo <> Mihaela

- ✓ 1. Two different letters: **visually distinct**
 - ✓ 2. The different letters produce a significant **phonetical difference**
 - ✗ 3. The two first names have the same origin: **conceptually similar**
- *The proposal is suitable*
- *Idea to consider the male/female variant of the same first name as conceptually distinct*



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

But

A two-letter difference (or more) might be not sufficient to consider that the denominations are sufficiently distinct in case of phonetical and/or conceptual similarity.

One letter difference may be sufficient to establish sufficient difference between 2 denominations.



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Assessing the similarity between fancy names

A two-letter difference (or more) might be not sufficient to consider that the denominations are sufficiently distinct in case of phonetical and/or conceptual similarity.

Example

Crystal <> Kristall

- ✓ 1. three-letter difference : **visually distinct**
- ✗ 2. Identically pronounced in several EU languages: **phonetically identical**
- ✗ 3. The denominations have the same meaning: **conceptually identical**

➤ *The proposal is not suitable*



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Assessing the similarity between fancy names

A two-letter difference (or more) might be not sufficient to consider that the denominations are sufficiently distinct in case of phonetical and/or conceptual similarity.

Example

Diamant <> **Diamond**

- ✓ 1. Two different letters: **visually distinct**
- ✗ 2. The pronunciation of the words is very close: **phonetically similar**
- ✗ 3. The denominations refer to the same concept: **conceptually similar**

➤ *The proposal is not suitable*



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Assessing the similarity between fancy names

A two-letter difference (or more) might be not sufficient to consider that the denominations are sufficiently distinct in case of phonetical and/or conceptual similarity.

Example

Comtessa <> **Contesse**

- ✗ 1. Two different letters, ('m' visually close to 'n'): **visually similar**
- ✓ 2. The different vowel leads to a different pronunciation: **phonetically distinct**
- ✗ 3. The denominations refer to the same concept: **conceptually identical**

➤ *The proposal is not suitable*



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

But

A two-letter difference (or more) might be not sufficient to consider that the denominations are sufficiently distinct in case of phonetical and/or conceptual similarity.

A one-letter difference may be sufficient to establish enough difference between 2 denominations, in particular when the different letter is placed in the first position in the denomination, when the denominations are short (4 letters or less) and the different letter produces a clear phonetic difference.



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A one-letter difference may be sufficient to establish sufficient difference between 2 denominations.

Example

Castello <> Pastello

- ✓ 1. One different letter, **in front position: visually distinct**
- ✓ 2. The different letters produce a sufficient **phonetic difference**
- ✓ 3. **Conceptually distinct**

- The proposal is suitable



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A one-letter difference may be sufficient to establish sufficient difference between 2 denominations.

Example

Helena <> Elena

- ✓ 1. One different letter, **in front position: visually distinct**
- ✗ 2. The pronunciation is identical in several EU languages :**phonetically too close**
- ✗ 3. The two first names have the same origin: **conceptually identical**
- **The proposal is not suitable**



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A one-letter difference may be sufficient to establish sufficient difference between 2 denominations.

Examples

Pluto<>Plato Power<>Poker Topic<>Tonic Slide <> Slice

- ✗ 1. One different letter : **visually close**
- ✓ 2. The different letter produces a sufficient **phonetic difference**
- ✓ 3. The denominations are **conceptually distinct**
- **The proposal is suitable**



UPOV WG-DEN, Geneva 07/04/2017

Assessing the similarity between fancy names

A one-letter difference may be sufficient to establish sufficient difference between 2 denominations.

Rapo<> Ravo

- ✓ 1. one different letter, **short word rule: visually distinct**
- ✓ 2. **Phonetically distinct**
- 3. No meaning, the **conceptual criteria is not relevant**

➤ The proposal is suitable



CONCLUSION

In the analysis for similarity, the visual, phonetic and conceptual criteria are interrelated and cannot be ignored:

the written form, the pronunciation and the meaning of the fancy names play a role in the overall impression of similarity between denominations.



Thank you for your attention



UPOV WG-DEN, Geneva 07/04/2017

[Annex III follows]

UPOV Working Group on Variety Denominations

Use of characteristics in variety denominations

CPVO
Geneva, April 7, 2017



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Characteristics

'The characteristics of a person or thing are the **qualities** or **features** that belong to them and make them recognisable' (*Collins dictionary*).

- A characteristic allows to describe a person or thing
- A characteristic does not allow to identify a person or thing



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Principle

- A denomination should be **recognisable as a variety denomination**
- A denomination should enable to **identify a particular variety**

Denominations consisting exclusively of descriptive terms do not allow to recognize a denomination as such and do not allow to identify a particular variety.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Denominations consisting exclusively of descriptive terms do not allow to recognize a denomination as such and do not allow to identify a variety in particular.

Terms are deemed to be descriptive when they provide information on:

- Stage of expression or combination of stages of expression for characteristics of the variety
- The value, origin of the variety



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- Stage of expression or combination of stages of expression for characteristics of the variety

Example

- **'Sweetone'** for a peach variety

The denomination refers to a sweet variety but does not allow to identify a variety in particular.

- **'Round Grey'** for a squash variety

The denomination refers to the colour and the shape of the variety but does not allow to identify a variety in particular.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- Stage of expression or combination of stages of expression for characteristics of the variety

Example

- **'Yellow Petite'** for a pepper variety

The denomination refers to the colour and the size of the variety but does not allow to identify a variety in particular.

- **'Early Sauvignon'** for a grape variety

The denomination refers to the type and the maturity of the variety but does not allow to identify a variety in particular.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- The value of the variety

Example:

- **'Famoso'**

The denomination refers to the reputation of the variety, that is not specific to this variety.

- **'Unico'**

The denomination refers to the uniqueness of the variety, which is common to other varieties in the PBR procedure.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- The value of the variety

Example

- **'Lucrativa KWS'**

The denomination refers to a profit-making variety, a characteristics that can be common to other varieties of the same species.

- **'Newberry'**

does not allow to identify a raspberry variety in particular. All varieties applied for PBR are supposed to be new.

- **'Innovation'**

describes a time-limited characteristic of novelty which can be common to other varieties.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- The value of the variety

Terms that exaggerates the merits of a variety and/or implies a comparison with other varieties are not suitable.

Example

- **'Meliorator'** fodder radish variety
implies a comparison with other variety and refers to improvement characteristics for this variety.
- **'Bestrose'** rice variety
Leads to believe that this is the best light red rice variety.



UPOV WG-DEN, Geneva 07/04/2017

Use of characteristics in variety denominations

Terms that exaggerates the merits of a variety and/or implies a comparison with other varieties are not suitable.

Example

- **'Leader'** pea variety
leads to think that this variety is the most successful pea variety.
- **'Twice as nice'** lily variety
Implies a comparison with other lily varieties and is not suitable.



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Use of characteristics in variety denominations

Terms are deemed to be descriptive when they provide information on:

- The origin of the variety

Example

- **'Swiss Red'** Apricot variety

The denomination describes the colour and the origin of the variety but does not allow to identify a variety in particular

- **'Dutch Parrot'** Tulip variety

The denomination describes the origin and the type of the variety but does not allow to identify a variety in particular



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Use of characteristics in variety denominations

Denominations consisting exclusively of descriptive terms do not allow to recognize a denomination as such and do not allow to identify a variety in particular.

But

- In association with other words which are not descriptive, these terms can be suitable provided that they are not misleading as to the characteristics of the variety.
- Such terms may be acceptable if they have a wider meaning that would not mislead anybody.



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Use of characteristics in variety denominations

In association with other words which are not descriptive, descriptive terms can be suitable provided that they are **not misleading** as to the characteristics of the variety.

Example

- **'Red Tiger'** is suitable for a tomato variety if the variety is red
- **'Early Riser'** is suitable for a maize variety if the variety is early
- **'Gold Ball'** is suitable for a pumpkin if this is a yellow round-shaped variety
- **'Cornish King'** is suitable for a narcissus if the variety originates from Cornwall
- **'Ruby Pinot'** is suitable if the type and colour of the variety are not misleading



Use of characteristics in variety denominations

Such terms may be acceptable if they have a wider meaning that would not mislead anybody.

Example

- **'Bianca', 'Scarlet', 'Alba', 'Blanche'** are first names and are suitable as variety denominations.

If the colour is relevant for the species concerned, it should not be misleading.



Conclusion

Descriptive terms in relation to characteristics, value or origin that **can be attributed to a variety**:

- Cannot be used alone in variety denominations or in combination with other descriptive terms, unless these terms have another well-recognisable meaning;
- In combination with other non descriptive terms, should not be misleading;
- Should not exaggerate the merits of the variety and/or imply comparison with other varieties of the same species



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Thank you for your attention



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