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 UPOV

UPOV/C/VII/2  
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INTERNATIONALER VERBAND  
ZUM SCHUTZ VON  
PFLANZENZÜCHTUNGEN

UNION INTERNATIONALE  
POUR LA PROTECTION  
DES OBTENTIONS VÉGÉTALES

INTERNATIONAL UNION  
FOR THE PROTECTION OF  
NEW PLANT VARIETIES

## C O U N C I L

Seventh Ordinary Session

Geneva, October 10 to 12, 1973

### GUIDELINES FOR VARIETY DENOMINATIONS

#### Report by the Secretariat

#### Background

1. It is recalled that, at its fifth session, held in Geneva from October 13 to 15, 1971, the Council decided to request the Working Group on Variety Denominations to review the Provisional Guidelines for Variety Denominations, which had been adopted by the Council at its fourth session (1970), after a hearing of the interested international professional organizations. The Working Group was requested to report back to the Council as soon as possible.
2. Owing to a number of difficulties, the hearing of the professional organizations could not take place until December 1972. The Working Group met from December 5 to 7, and the hearing took place on December 6, the second day of the meeting.
3. The following organizations were represented at the hearing: ASSINSEL, CIOPORA, FIS, AIPPI, ICC.
4. On the basis of the hearing, the Working Group decided to propose the amendment of Articles 1 to 4 of the Provisional Guidelines for Variety Denominations and the deletion of Article 11.
5. A Pre-Draft (document UPOV/VD/VII/4) prepared in accordance with the decision taken by the Working Group on December 7, 1972, was discussed at the meeting of the Working Group which took place on April 2 and 3, 1973.
6. The proposed new versions of Articles 1 to 4 are contained in Annex 1 to this report.

#### Summary and Comments

7. The Working Group proposed to change the heading of the Guidelines by deleting the word "provisional," considering that one of the main reasons for having included the word in the title of the original guidelines was that a further hearing of the

professional organizations was expedient before the Guidelines were declared to be no longer "provisional." It was also agreed that the Guidelines for tests would not be declared provisional, and that any Guidelines adopted by the Council were likely to be amended when the necessity arose.

8. The preamble is considerably longer than that of the existing Provisional Guidelines. It was felt necessary to include in the preamble first of all some explanation of the legal background which had been taken into account, and of the delimitation between the two concepts of variety denomination and trademark. Finally the preamble should contain a reference to the use of denominations and trademarks.

9. The first explanation contained in the preamble (the first paragraph starting with "Recalling") refers to the main provisions of the Convention for the Protection of New Varieties of Plants which lie behind the requirements which must be met under the Guidelines: first of all, the concept of the denomination as a generic name, which, under certain circumstances, must be used.

10. The paragraph starting with "Taking into account" explains the differences between the functions of the denomination and the accompanying trademark. The Working Group unanimously agreed that a variety denomination need have no competitive function, this function being left to the trademark.

11. The first paragraph of the preamble starting with the word "Considering" emphasizes the importance of the variety denomination as a real denomination rather than only a registration number. The denomination must be used in such a way that it is not illusory, in the sense that it is likely to be forgotten by trade and the public in daily life.

12. The second paragraph starting with "Considering" contains the opinion of the Working Committee that the member States should make provisions to ensure that the desiderata expressed in the foregoing paragraph are complied with. By prescribing that the denomination must be clearly presented as such, in order that trade, buyers etc. may know which word on labels and other documents is the denomination and what the other words (including trademarks, house marks, quality indications, etc.) stand for, and by requiring that the denomination be reproduced in a clearly distinguishable and legible way, the Working Group did not consider it expedient to propose in which way these indications should be made, but noted that while the trademark could be followed by the letter R in a circle, the denomination could be followed by another symbol, for instance the letter D in a circle, or it could be made clear which was the denomination by prescribing a certain place for it in relation to other indications. The Working Group also found it expedient to leave member States free to determine what requirements should be met with respect to visibility, etc.

13. The French Delegation had proposed to publish, instead of the preamble, a detailed official commentary on the Guidelines. However, in view of the difficulty of drafting and agreeing upon such a commentary on one hand and of the vulnerability of such a long text on the other, it was finally unanimously agreed that the preamble should be maintained with the basic explanatory elements.

14. Article 1 has not undergone any amendment. The Working Group discussed the question of making Article 1, paragraph (2), a separate article, but finally decided to let Article 1 stand as it was.

15. Article 2 contains a comparison with Article 2 of the existing Provisional Guidelines and an addition requiring that the identifying power of the denomination must be such that a purchaser of average attentiveness is not confused. The Working Group attached great importance to this Article, considering unacceptable the proposals put forward by the international professional organizations according to which registration signs also should be used for denominations. Such signs might be useful within the professional circles concerned, but would not satisfy the need of the public in general.

16. Article 3(1). In accordance with the wish expressed by the professional organizations, the Working Group proposed that it should be expressly stated in the Guidelines that words without a pre-existing meaning were accepted as variety denominations. The requirements as to ease of pronunciation and memorization refer to the purchaser of average attentiveness, who must have the possibility of distinguishing one denomination from another when he is faced with only one of the two. In connection with the requirement that the denomination be capable of being used

as a generic name, the Working Group discussed at length the question of very short words. While the Working Group admitted that a number of very short words (mostly monosyllables), such as Rex, Dux, and many others, were adequate as denominations, the Working Group was aware of the fact that short words might be less easy to memorize and pronounce, and as a whole less capable of being used as generic names. The Working Group finally agreed that no special provision for very short words should be included, but that each word would be examined in the light of the general criteria, and, as with very short words, the authorities would be aware of the danger of short artificial words. In this connection it was also pointed out that member States could counteract the danger of short words by prescribing how the denomination was to be used.

17. Article 3(2). The requirement that figures should confer a special meaning on the word or words they refer to should be understood in the light of the following examples:

Acceptable as denominations:

- (1) Louis XIV, Catherine II of Russia or Queen Elizabeth II;
- (2) Flora 1972, indicating an exhibition at which the new variety was shown to the public.

Unacceptable figures:

- (1) figures indicating the year in which the variety was created or the application for protection filed;
- (2) figures used by the breeder during the breeding work;
- (3) figures indicating maturity or ripening, as were used earlier for maize and sorghum.

18. Article 3(3). The word "adding" should be understood to cover also the concept of "including." The following examples show what is not permissible under this paragraph:

Supposed existing  
denominations

Charles II  
Queen Elizabeth  
Catherine of Russia  
Queen Elizabeth II

Conflicting new  
denominations

Charles III  
Queen Elizabeth II  
Catherine II of Russia  
Queen Elizabeth

It should be noted that the provision in Article 4(2)(b) of the existing Provisional Guidelines for Variety Denominations has not been repeated in the draft. Accordingly, figures may also be added to denominations consisting of three words.

19. Article 3(4). In respect of plant material for the production of hybrids (hereditary components), the Working Group considered that normally such material did not go on to the market. The requirements for variety denominations need not be as strict, therefore, as for other groups of plants. In view of this, it was not thought necessary to apply the general rules for parental material, but to require only an indication which was sufficient for identification by experts. In connection with Article 3(4) the Working Group considered the question of applying the same rule to rootstocks, but in view of the fact that most countries now applied the same rules to rootstocks as to other material and in view of the small number of rootstock varieties, the Working Group finally decided not to propose the inclusion of rootstocks.

20. On a proposal by the professional organizations, the Working Group agreed to delete Article 11.

21. The Secretariat has received comments on the subject of the Guidelines from ASSINSEL, CIOPORA, the East Malling Research Station (United Kingdom), the Plant Breeding Institute in Cambridge (United Kingdom) and the Glasshouse Crops Research Institute in Rustington, Littlehampton (United Kingdom). These documents are reproduced in Annexes 2 to 6.

22. The Council is invited to take a decision on this matter.

Draft

GUIDELINES FOR VARIETY DENOMINATIONS

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.

Articles 5 to 10 as they stand; Article 11 to be deleted.

## Annex 2 to document UPOV/C/VII/2

Letter from the President of ASSINSEL dated July 16, 1973

ASSINSEL takes the liberty of sending you herewith a resolution on the question of the Provisional Guidelines for Variety Denominations, which was adopted by the Administrative Council and the General Assembly in Malmö on May 22 and 23, 1973.

ASSINSEL knows that its opinion is shared by all other organizations concerned with the plant breeding profession, as well as by the industrial property organizations.

ASSINSEL lays emphasis once again on the fundamental right of the breeder of new plant varieties to give them variety denominations of his own choosing, and does not wish to see this right restricted more than it already is by the provisions of Article 13 of the Convention.

ASSINSEL also considers that this fundamental principle should apply in the same way to all types of plant, and that it is undesirable to treat one type of plant differently from another.

ASSINSEL is of the opinion that customs which have long existed in this branch must be respected. ASSINSEL therefore draws attention once again to these customs, which are reflected in the OECD schemes for various species, and to the fact that the variety catalogues relating to those schemes contain a large number of variety denominations which indeed would not be permissible under the Provisional Guidelines, but which have long since established themselves in practice; there is moreover no record of their having given rise to any kind of difficulty or confusion in the sale of seed material.

ASSINSEL therefore emphatically reiterates its request that you, Mr. Chairman, take the wishes, misgivings and proposals of the professional organizations into consideration.

ASSINSEL is confident that UPOV will do justice to the consistently and repeatedly expressed wishes of the seed industry as a whole when it takes its decisions.

As a result of the work of the various technical sections and the Administrative Board of ASSINSEL at a meeting held in Malmö (Sweden) on Tuesday, May 22, 1973, the General Assembly adopted the following motion and decided to communicate it to UPOV and the competent governmental authorities of the States members of UPOV.

Considering that, for the denomination of varieties of various species, there exist systems which are entirely satisfactory to both users and breeders, as in the case of maize, where in 1952 the FAO proposed the denomination of varieties by a combination of letters and figures,

Considering that, after many years of widespread use all over the world, these systems are satisfactory not only in that they define the variety and its origin, but also as they inform the user on its growth cycle and its place in a range of products,

Considering that they oblige breeding firms to make constant efforts to maintain the quality of their products, by referring to all their constituent elements (value of the research department, the organization of production, distribution networks and technical advisory services),

Considering further that they provide incentive for international exchanges, in that the appellation codes may be transposed in all countries without linguistic or interpretation difficulties,

Considering therefore that the current practice in professional circles meets the conditions prescribed by Article 13 of the International Convention for the Protection of New Varieties of Plants and Article 1 of the UPOV Council Guidelines of October 28 and 29, 1970,

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page 2

The members of ASSINSEL request:

- (i) that the provisions of Articles 3 and 4 of the UPOV Guidelines of October 28 and 29, 1970, be abrogated and reconsidered;
- (ii) that present denomination systems may be maintained;
- (iii) that none of the States having signed the Paris Convention introduce provisions on variety denominations contrary to present practice.

/Annex 3 follows/



Letter from the Secretary General of CIOPORA, dated July 11, 1973

In the course of its Hamburg General Assembly on April 27, 1973, and the last meeting of its Steering Committee, held in Zurich on June 20, 1973, our International Community had the opportunity to discuss once again the matter of variety denominations.

All the members of our Association were pleased to learn that it--together with other associations such as ASSINSEL, FIS, IAPIP and the ICC--had been given the opportunity to inform UPOV of our views on the subject at the hearing organized for the purpose on December 6, 1972.

However, we feel obliged to convey to you the great disappointment felt by our Association on reading the Note published by the UPOV Secretariat in the March 1973 issue of "Industrial Property."

The Note does not reflect exactly the points of view expressed by the various international organizations mentioned. It lays down the following basic principles concerning the nature and purpose of the variety denomination and the trademark:

(1) In order to afford suitable identification of a variety, the denomination must be both easy to pronounce and easy to remember for a buyer of average attentiveness. The denomination designates the variety irrespective of the stock of reproductive material concerned. The denomination must not be "overshadowed" by the trademark where a trademark is used in conjunction with it.

(2) The trademark must not have a purpose other than that of indicating the "origin" of the reproductive material put on the market, in other words the "enterprise" supplying the marketed material; the trademark must not appear to be the name of the variety.

Our Association has the following comments to make on the above principles:

(1) It is true that the denomination must identify the variety and that it could be desirable for it to be easy to pronounce. On the other hand, the fact of requiring that it be also "easy to remember" is tantamount to giving it the commercial and advertising function which belongs essentially to the trademark. Moreover there is nothing in Article 13 of the Convention to suggest that the denomination must be used otherwise than in relations between the breeder and the professional grower, that it must, in other words, extend as far as a public "of average attentiveness." On the contrary, paragraph (7) of the same Article 13 is very clear in this respect.

(2) The use of trademarks cannot be confined to marks denoting firms, but should continue to be allowed--as it is in other sectors of industry and trade--for marks relating to goods. It has been a constant practice for several decades in the horticultural trade to give each variety a distinct trademark. As far as the public, and therefore the buyer of average attentiveness, is concerned, it is primarily the trademark which must, as in all other fields, be the pole for attracting custom.

In view of the foregoing, our Association feels obliged to recall its position of principle in relation to this important problem, which it made known to UPOV in its letter of August 28, 1972. It further takes the liberty of reiterating its request:

(i) that the Guidelines on denominations at present in preparation take into consideration denomination systems which have been proved by the practice of professional circles;

(ii) that, in particular, the provisions of Article 4 of the UPOV Provisional Guidelines of October 28 and 29, 1970, be abrogated, since they are contrary to common practice in professional circles;

(iii) that national laws which contradict the provisions of Article 13(9) of the Convention, or unnecessarily restrict their application, be amended.

In view of the implications which the solutions found for this problem will have for the general operation of the protection system established by the 1961 Convention, CIOPORA sincerely hopes that the competent bodies of UPOV will consent to take the contents of this letter into consideration.

/Annex 4 follows/

# EAST MALLING RESEARCH STATION

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**DIRECTOR**  
**A. F. POSNETTE, Sc.D., F.R.S.**  
**SECRETARY: R. L. OXLEY**  
  
**YOUR REF. OUR REF.**

**TELEPHONE:**  
**WEST MALLING 843833**  
**(STD CODE 0732)**  
**TELEGRAMS:**  
**RESEARCH, EAST MALLING**

27th July 1973

Dear Sir,

I believe that the Union pour la Protection des Obtentions Vegetales (UPOV) is proposing to implement a regulation which would prohibit the use of a house name as part of a variety name.

I must protest that this would be very inconvenient if applied to rootstock varieties for fruit trees. Traditionally clonal apple rootstocks have been distinguished by a number following the place name of the origin (e.g. Alnarp 2; Merton 793; Malling I to Malling 27). Omitting the origin and using only a number would lead to confusion and synonymy, while the application of a name only would not distinguish between scion cultivars and rootstocks.

I propose that, instead of imposing a rigid rule, UPOV should proclaim its disapproval of house name prefixes and then allow institutes to decide whether or not they can dispense with them according to circumstances.

Yours sincerely,

  
A.F. Posnette

Professor G.H.C. Bodenhausen,  
Secretary-General of UPOV,  
32 Chemin des Colombettes,  
1211 Geneva 20,  
Switzerland.

/Annex 5 follows/

PLANT BREEDING INSTITUTE

MAIDS LANE, HUNTINGTON, CAMBRIDGE CB3 9EB, ENGLAND

TELEPHONE 027 651 2311

*Director: Professor H. Riley, D.Sc., F.R.S.*  
*Secretary: D. R. Hadden, F.C.S.*

*Our reference:*  
*Your reference:*

3 August 1973

Dear Professor Bodenhausen,

I am writing to you on behalf of the Governing Body of the Plant Breeding Institute, and on behalf of the entire Institute, to protest most strongly at the proposal by the Union Internationale pour la Protection des Obtentions Vegetales (UPOV) to exclude the use of distinctive words as prefixes in the designation of crop varieties.

The prefix MARIS has been used in the names of all the varieties released from the Plant Breeding Institute since 1963. The system has been applied to more than 60 varieties of barley, oats, wheat, potatoes, kale, sugar beet, field beans, red clover, lucerne, maize, tall fescue, timothy and ryegrass. There has never been any confusion in the minds either of farmers, seeds merchants, or processors, due to the presence of the MARIS prefix. There has been no confusion (i) between varieties of the same crop, or (ii) between MARIS-prefixed varieties of different crops. Confusion of the second type would have been conspicuous and it has not occurred, nor is there any evidence of the less conspicuous confusion of the second kind. Indeed, the general response has been, as was hoped by the Institute when the system was first introduced, that the users of varieties welcomed the reassurance that the Plant Breeding Institute was prepared to have its name conspicuously associated with each variety that it released.

It would surely be wrong to introduce, as proposed by UPOV, systems which prevented those breeding organisations that have a genuine pride and well-founded confidence in their varieties from indicating this by means of a distinctive name. The desirability of this is recognised by UPOV in its support of the argument for the use of a distinctive syllable as a prefix to the name. Because of the limited permutations possible under such a scheme, and because of the lack of certainty that the appropriate prefix genuinely indicates a common source of varieties, the use of a distinctive syllable cannot fill the need.



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Director

D. RUDD-JONES, M.A., PH.D

Secretary

N. TOMLINSON, F.C.I.S.

Our Reference:

P.6

Your Reference:

23rd August, 1973.

Dear Sir,

Naming of Plant Varieties

My attention has been drawn to the regulation which the Union Internationale pour la Protection des Obtentions Végétales (UPOV) is proposing to operate which would prohibit the use of a House name as a prefix to a variety name.

This Institute has over a number of years released through the National Seed Development Organisation varieties of protected crops of tomatoes, cucumbers and lettuce. Although we have not used a specific House name, we have, with our F.1 hybrid tomatoes, used a series of names derived from Sussex villages located close to the Institute, followed by the word 'Cross' to indicate their hybrid nature.

The association of such varieties with the Institute has thereby been established and come to be widely recognised. It is the professional pride which we have in our varieties and of their merit which has convinced us that in choosing varietal names we should emphasize the association with the Institute. We are not concerned about the more commercial aspects of such naming which may require trade mark protection.

It has been suggested that such House or series names are confusing to growers and merchants. We cannot accept that this is likely to be the case with our own, and we see no reason why it should be in those State-aided Institutes, the varieties of which all have a common House name, e.g. "Maris" and "Pentland".

It has also been suggested that the varietal denomination should not contain an element which would impede its release to the public at the end of the protection period. It is difficult to accept that such difficulties could arise when one considers analogous situations such as "John Innes Compost" or "Levington Compost".

In writing to you I hope you will use your good offices to ensure that the valuable work which is being done by plant breeders in State-supported Research Institutes may continue to be recognised in the release of varieties of crop plants under specific House names.

Yours faithfully,

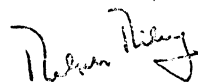
  
D. Rudd-Jones

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/End of Annexes  
and of document/

It would, therefore, be a retrograde step to preclude the use of a distinctive word in prefix to a variety name. Most importantly, this will arise because one of the spurs to the provision of an effective plant breeding service will be removed. This is the stimulus that arises in a plant breeding organisation from the knowledge that all users can without fail recognise its varieties. It may fairly be claimed, therefore, that the application of the UPOV proposal would lead to less effective and less urgent plant breeding in Europe.

Yours sincerely,



Ralph Riley  
Director

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/Annex 6 follows/