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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Eighteenth Session

Geneva, November 18 and 19, 1986

VARIETY DENOMINATIONS

Document prepared by the Office of the Union

1. On April 18, 1986, an information meeting on variety denominations was held with international organizations as a follow-up of the second meeting with international organizations held in October 1985. The report on this meeting is contained in document IOM/VD/I/1.
2. The purpose of the meeting was to discuss the amendments to the UPOV Recommendations on Variety Denominations (document UPOV/INF/10) made by international professional organizations. In this respect the Secretary General of CIOPORA stated that "UPOV must ask the question whether recommendations, and in any case the recommendations in their present form, are really necessary" (see paragraph 13 of document IOM/VD/I/1).
3. The need for recommendations has been affirmed on several occasions at the meeting by representatives of member States (thereby expressing the opinion of the majority of the members of the Administrative and Legal Committee--see paragraphs 32 and 33 of document CAJ/XVII/10) and also by representatives of professional circles, including CIOPORA (see in particular paragraph 58 of document IOM/VD/I/1).
4. The Committee is invited to confirm that recommendations are necessary.
5. The Recommendations at present in force have been criticized for the "extreme detail into which they go" (see for example paragraphs 11 and 25 of document IOM/VD/I/1). Independently of this criticism it should perhaps be added that the Recommendations seem to be difficult to transform into national legislation for member States which wish or have the obligation to do so.

6. The Committee is invited to consider whether the drafting of the Recommendations should be revised with a view to simplifying them.

7. With the exception of discussions on the philosophy of the variety denomination, the main part of the meeting concerned Recommendation 2. The most far-reaching amendment proposed consisted in deleting the whole of the recommendation. In this respect it should be noted that the representatives of AIPH placed considerable emphasis on the need for a denomination which could be used in marketing. This was an argument against the proposed amendment in that the aim of Recommendation 2 is precisely to prevent the creation of "impossible" denominations.

8. The Committee is invited to decide whether Recommendation 2 should be deleted.

9. Criticisms against Recommendation 2 related to two specific aspects. The first concerns the obligation for the denomination to be easy "to remember or pronounce for the average user," which would constitute, for CIOPORA in particular, an encroachment on trademark law. Deletion of this passage would involve a complete redrafting of Recommendation 2. It is in this context that a possible amendment which derives logically from the AIPH observations on the need for a denomination which could be used in marketing should be considered. Such a modification would consist of including a reference to Article 13(7) of the Convention and the obligation on the part of any person marketing propagating material of the variety to use the denomination. It is obvious from this obligation, which is not extinguished upon expiration of protection, that the denomination should not be "impossible."

10. The Committee is invited to consider whether the reference to the denomination being easy to remember and pronounce should be deleted.

11. The Committee is also invited to consider whether a reference to the provision of Article 13(7) of the Convention should be added.

12. The second specific criticism related to the total or partial exclusion of certain types of denominations, particularly combinations of letters and figures. This criticism is based on three considerations (in addition to the claim that breeders in Europe should have the same possibilities as in the United States of America):

(i) Article 13(2) of the Convention excluding only denominations composed "solely of figures except where this is an established practice for designating varieties," any supplementary exclusion would be contrary to the Convention according to the representatives of several organizations.

(ii) The requirement that the denomination be a fantasy name leads almost necessarily to an obligation to use synonyms in certain member States and therefore goes against the principle contained in Article 13(5) of the Convention.

(iii) The requirement that the denomination be a fantasy name can lead to confusion between it and a trademark which might be associated to it and which is also a fantasy name.

13. The Committee is invited to consider:

(i) whether the main part of Recommendation 2 should be deleted;

(ii) if not, whether all kinds of combinations of letters and figures should be permitted, and this for all species;

(iii) if not, whether the exclusion of those combinations provided in paragraph (2)(v) for species for which they are not established practice should be deleted (thereby maintaining the obligatory letter-figure order and the three-letter and four-figure limit in accordance with subparagraphs (2)(i), (2)(ii) and (2)(v) of Recommendation 2).

14. The Secretary General of CIOPORA asked for the denomination code system elaborated by CIOPORA to be officially recognized as international practice. According to the information available to the Office of the Union, that system consists in combining the following elements:

- (i) a part in capital letters identifying the breeder;
- (ii) a part in small letters forming one or more syllables;
- (iii) a series of figures (corresponding in principle to a serial number);
- (iv) one or more capital letters corresponding to the car registration code for the country of origin.

The following examples were given by the United Kingdom delegation in Annex A to document VD/V/6 in 1970:

| | |
|-----------------|--------------------|
| MEI figa 0467F | MEI disb 00318F |
| MEI danu 0497F | MEI daub 00321F |
| MEI dad 0500 F | |
| MEI elpa 0498F | MACsas 62 2221 IRL |
| MEI cham 00283F | MACmed 61 2561 IRL |
| MEI desi 00258F | MACmer 61 321 IRL |

15. It is clear that the system first of all raises the question whether it conforms to the established idea of variety denominations and more specifically to the principles contained--before or after possible amendment--in the Recommendations. At present, the system is not in conformity with Recommendation 2 for a number of reasons. As long as at least one reason for non-conformity remains it is not necessary to take a decision on recognition as an international practice.

16. In the event that the question would arise or that the Committee would decide to raise it despite the existence of reasons of non-conformity, the question of the appropriateness of such a system should be raised. The main consideration should be whether it is reasonable for an official service to impose the use of such complicated "denominations" in the seeds and seedlings trade at a time when the breeders concerned are satisfied in practice with the combination of a "prefix" and arbitrary syllables.

17. The Committee is invited to take the necessary decisions concerning the denomination code system of CIOFORA.

18. The idea of revising the Convention is beginning to make headway. The possibility—or even the necessity—of amending Article 13 was mentioned several times at the information meeting. The decision on the appropriateness of amending the Article must however be taken in a broader context in the Consultative Committee. In fact, at its thirty-third session, in April 1986, that Committee agreed to a proposal from the delegation of the Federal Republic of Germany that an item on the possibilities of improving the Convention should be included on the agenda for the next session, to be held in December 1986 (see paragraphs 15 and 16 of document CC/XXXIII/4).

19. During the information meeting the wish was also expressed that a small group of experts from member States and organizations should be set up, including trademark specialists, and, if such a step was taken, that the group should meet as soon as discussions on substantive points began.

20. The Committee is invited to make the necessary recommendations to the Consultative Committee on the appropriateness of revising Article 13 of the Convention and possibly on the procedure to be followed in preparatory work.

21. It is no doubt premature at this stage to consider the various possibilities of amending Article 13 of the Convention. For the time being the Committee has to consider the question of amending the Recommendations. In addition, it should also reply first to the question raised in paragraph 19 above concerning the participation of organizations in the preparatory work. Moreover not all the organizations have expressed their point of view on the matter yet or had the opportunity to compare points of view, some of which are obviously contradictory (for example, the wish expressed by vegetable breeders to use trademarks in States not providing protection for new plant varieties, reported by the Secretary General of FIS—see paragraph 35 of document IOM/VD/I/1—and the statement of the Secretary General of CIOFORA contained in paragraph 74 of the same document in reply to a remark in the same connection by Mr. Heuver).

22. A number of statements made at the information meeting lead to believe that deletion of Article 13 altogether and of any mention of the variety denomination in the Convention, and consequently in the system of protection of new plant varieties, will be proposed.

23. The representative of COMASSO asked for reconsideration of the principle by which a denomination is a generic designation, which means that the breeder is unable to take action against abuse when his denomination is used to sell material of an inferior quality not belonging to his variety (see paragraph 22

of document IOM/VD/I/1). In addition, AIPH circles are favorable to the duration of a trademark associated with a variety denomination being limited to the duration of the protection of the variety concerned. These considerations, together with the desire to have a single name for the variety, seem to be giving a new life to the solution which was adopted in the 1953 Seed Law of the Federal Republic of Germany (Article 7(3)). In simplified form it consisted in permitting registration of the variety denomination as a trademark while restricting the rights ensuing from such registration to the extent necessary to guarantee free use of the denomination in relation to the variety. It was also included in the Draft Convention presented to the Diplomatic Conference in 1961* but was rejected, apparently at the instigation of trademark purists.

24. The principle of the uniqueness of the denomination in all member States was also criticized in connection with the obligation to use fantasy denominations, in fact as an argument for letter-figure combinations and other coded denominations. Even if criticism should diminish or disappear in the event that satisfaction is given to the claim concerning the denomination code, the principle of uniqueness should be considered to see whether it should not be made more flexible, taking into account the territorial extension of UPOV and the linguistic diversity within the Union.

25. The Committee is invited to take note, for the time being, of the above information.

* The text of the provision in question was as follows (page 64 of the Records of the Diplomatic Conferences of 1957-1961; 1972):

"(5) From the date of the issue of a title of protection to the breeder in a member State of the Union:

1. The name of the new variety may not be used, in any member State of the Union, as the name of another variety of the same or closely related botanical species;

2. In those member States of the Union where this name may be protected as a trademark, only the breeder or his successor in title may validly obtain registration or make use of the afore-mentioned name as a trademark for the variety in question.

The breeder or his successor in title who has made use of this power may not forbid use of the name by a third party, inasmuch as the latter is obliged to use the name in accordance with the provisions of this Convention;

3. A third party may not validly obtain registration or make use of the afore-mentioned name as a trademark for another variety of the same or a closely related botanical species."

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