



UPOV/WG-DEN/2/4

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

WORKING GROUP ON VARIETY DENOMINATIONS

Second Meeting Geneva, October 25, 2016

REPORT

adopted by the Working Group on Variety Denominations

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OPENING OF THE MEETING

1. The Working Group on Variety Denominations (WG-DEN) held its second meeting in Geneva on October 25, 2016, under the chairmanship of the Vice Secretary-General of UPOV. The list of participants is reproduced in the Annex to this report.
2. The meeting was opened by the Chair, who welcomed the participants.

ADOPTION OF THE AGENDA

3. The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/2/1 Rev.

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

4. The WG-DEN considered documents UPOV/WG-DEN/2/2 and UPOV/INF/12/6 Draft 2.
5. The WG-DEN noted the developments reported in documents UPOV/WG-DEN/2/2 and UPOV/INF/12/6 Draft 2.

Section 1 "Designation of varieties by denominations: use of the denomination"

6. The WG-DEN recalled that the denomination is the generic designation of the variety and, subject to prior rights, no rights in the designation shall hamper the free use of the denomination of the variety, even after the expiration of the breeder's right.
7. The WG-DEN considered whether the authority should reject a proposed denomination on the basis of an existing trademark owned by the breeder, or whether breeders should have the freedom to risk a trademark becoming generic because the denomination would become the generic designation of the variety. It was noted that the situation differed according to the legislation of the members of the Union.
8. The WG-DEN agreed to consider, at its third meeting, a proposal that if an authority did allow a denomination to be registered when the breeder of the variety was also the holder of a trademark that was

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.

Section 2 "Characteristics of the denomination"

9. The WG-DEN noted that, at its first meeting, it had identified four categories of denominations: pronounceable words; letters only (not in the form of pronounceable words); letters and figures; and figures only.

10. The WG-DEN agreed that the definition of "words" and the categories would need further consideration, and agreed to consider that matter at its third meeting.

Section 2.1 "Identification"

11. The WG-DEN recalled that Section 2.3.1 "Characteristics of the variety" provided guidance in relation to two matters (a) the denomination should not convey the impression that the variety has a particular characteristics which in reality it does not have; and (b) the denomination should not refer to specific characteristics in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties or species in question also have or may have the same characteristics.

12. The WG-DEN noted that some members considered those two elements of Section 2.3.1 "Characteristics of the variety" with Section 2.1 "Identification".

Section 2.2 "Solely of figures"

13. The WG-DEN considered Section 2.2.2 (c).

14. The WG-DEN noted that the current text could eventually allow the use of a denomination consisting solely of figures in all denomination classes, and agreed that the current text was appropriate, on that basis.

Section 2.3 "Liable to mislead or to cause confusion"

Three aspects: visual; phonetic; and conceptual

15. The WG-DEN received an explanation from the Community Plant Variety Office of the European Union (CPVO) on the three aspects it used in the examination of variety denominations: visual; phonetic; and conceptual.

16. The WG-DEN agreed to request CPVO to provide more information on the guiding principles in applying the visual, phonetic, and conceptual aspects, when examining variety denominations.

17. The WG-DEN noted that introducing a conceptual aspect would necessitate consideration of linguistic and cultural aspects, which could potentially increase the risk of synonyms because, for example, differences in conceptual meanings could be linked to specific understandings in different languages that would not be understood in other languages. It agreed to consider further, at its third meeting, whether it would be appropriate to introduce the conceptual aspect in the revision of document UPOV/INF/12.

First names

18. The WG-DEN received an explanation from the CPVO that, in the CPVO, consideration of "first names" was linked to similarity, notably to the conceptual aspects.

19. The WG-DEN agreed to request the CPVO to provide more information on its consideration "first names" under the explanation of the conceptual differences at its third meeting and to consider the matter further on the basis of that information.

Section 2.3.1 "Characteristics of the variety"*Section 2.3.1 (a)*

20. The WG-DEN agreed that the example in Section 2.3.1 (a) provided clear guidance.

Section 2.3.1 (b)

21. The WG-DEN agreed to propose to delete the current text in Section 2.3.1(b) and invited the CPVO to provide alternative guidance.

Section 2.3.1 (c)

22. The WG-DEN noted that Section 2.3.4 covered only the cases of prefixes, and the deletion of Section 2.3.1 (c) would not cover refusal of the following:

(i) a variety denomination "Dannys Royal Gala" even if it had little botanical relation with variety denomination "Royal Gala"; and

(ii) a breeder submitting a type of variety denomination, which resulted in a copy of another breeders well known practice. For instance, the practice of a breeder that proposes denominations consisting of names of mountains.

23. The WG-DEN agreed to consider further the following two elements together at its third meeting:

(i) botanical relation of the varieties; and

(ii) confusion in relation to the identity of the breeder.

Section 2.3.1 (d)

24. The WG-DEN considered the proposal by the WG-DST for a new Section 2.3.1 (d) in conjunction with the related proposals and comments.

25. The WG-DEN 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").

Section 2.3.2 "Value of the variety"

26. The WG-DEN noted that, at its first meeting, it had agreed that superlatives and comparatives should only be unacceptable if they misled or caused confusion concerning the characteristics of the variety, and that examples of acceptable and unacceptable use of superlatives and comparatives should be provided in document UPOV/INF/12.

27. The WG-DEN considered the proposals submitted by the Delegations of France, the Netherlands and New Zealand, as reproduced in document UPOV/INF/12/6 Draft 2, page 9.

28. The WG-DEN agreed to consider the examples of acceptable and unacceptable uses of superlatives and comparatives further at its third meeting.

Section 2.3.3 "Identity of the variety"*Section 2.3.3 (a)*

29. The WG-DEN considered the proposal made by the Delegation of New Zealand as reproduced in document UPOV/INF/12/6 Draft 2, page 10, that for all categories of denominations including pronounceable words, a difference of one letter or one figure should not be considered to be liable to mislead and cause confusion concerning the identity of the variety. The WG-DEN agreed that there would need to be exceptions to such a general rule and concluded that the proposal should not be pursued.

Consideration at the third meeting of the WG-DEN

30. The WG-DEN agreed to consider the remainder of document UPOV/INF/12/6 Draft 2 from Section 2.3.3 (b) at its third meeting, and to use document UPOV/INF/12/6 Draft 2 as the basis for its consideration, in order to avoid any confusion.

31. The WG-DEN agreed to consider the following items of UPOV/INF/12/6 Draft 2 after considering the remainder of document UPOV/INF/12/6 Draft 2 from Section 2.3.3 (b):

(a) Section 1 "Designation of varieties by denominations; use of the denomination": relation of denominations and trademarks (see paragraph 8);

(b) Section 2 "Characteristics of the denomination: the definition of "words" and the categories (see paragraph 10);

(c) Section 2.1 "Identification": relationship with Section 2.3.1 "Characteristics of the variety" (see paragraph 12);

(d) Section 2.3 "Liable to mislead or to cause confusion", three aspects: visual; phonetic; and conceptual: whether to introduce the conceptual aspect (see paragraph 17), based on an information to be provided by CPVO;

(e) Section 2.3 "Liable to mislead or to cause confusion", "first names": based on information provided by the CPVO (see paragraph 19);

(f) Section 2.3.1 (b): alternative guidance provided by the CPVO (see paragraph 21);

(g) Section 2.3.1 (c): botanical relationship of varieties, and confusion in relation to the identity of the breeder (see paragraph 23);

(h) Section 2.3.2 "Value of the variety": examples of acceptable and unacceptable uses of superlatives and comparatives (see paragraph 28); and

(i) Section 2.3.3 "Identity of the variety" (a): exceptions to the general rule (see paragraph 29).

DATE AND PROGRAM OF THE NEXT MEETING

32. The WG-DEN agreed to hold its third meeting in Geneva, in the morning of April 7, 2017.

33. The following program was agreed for the third 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

34. *This report was adopted at the third meeting of the WG-DEN, held in Geneva on April 7, 2017.*

[Annex follows]

ANNEX

LIST OF PARTICIPANTS

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