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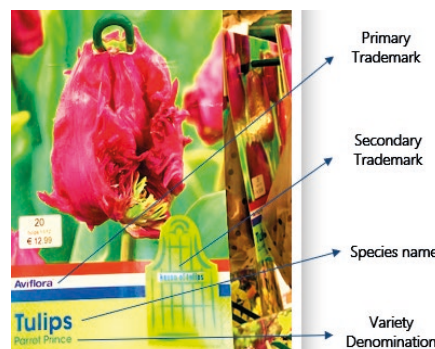
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In the plant-related market, trade marks and plant variety denominations serve the common purpose of assisting consumers in making a choice between a range of similar products. But there is an importance difference between them. Whereas a trade mark is the industrial property right in a sign that indicates a commercial origin, a variety denomination is the generic designation for a concrete plant variety, by which it can be individually identified and distinguished from other plant varieties. To ensure that consumers are able to differentiate between trade marks and variety denominations, when confronted with the label of a plant-related product, ideally, the variety denomination should be presented within

single quotation marks or preceded by the word 'variety' (or the abbreviation thereof, 'var.'), while the trade mark could be followed by the notices TM or [®].



Illustrative example of coexistence of trade marks and variety denominations © CPVO (Extracted from CPVO Webinar presentation)

Just like in the case of signs for which trade mark protection is applied, the acceptance of proposed variety denominations is also subject to a process of thorough assessment in accordance with the relevant legislation. To learn more about said process, this article will introduce you to the role of 'denomination examiners' and of the so-called 'Variety Denomination Committee' of the Community (EU) Plant Variety Office (CPVO).

INTRODUCTION TO COMMUNITY (EU) PLANT VARIETY RIGHTS AND THE REQUIREMENT TO DESIGNATE A VARIETY BY MEANS OF A VARIETY DENOMINATION

The European Union counts on a sui generis system for the industrial protection of plant varieties, known as the Community (EU) Plant Variety Rights' system. The CPVO is the agency of the European Union competent for the granting and management of Community plant variety rights (CPVRs), which mission is to deliver and promote an efficient intellectual property rights system that supports the creation of new plant varieties for the benefit of society. A CPVR is an industrial property right which is valid and enforceable throughout the EU on account of the so-called 'principle of

unitary character'. The subject matter of a CPVR is a plant variety: 'variety', within the meaning of Council Regulation No. 2100/94 on Community plant variety rights, must be understood as 'a plant grouping within a single botanical taxon of the lowest known rank' (in simpler terms: the smallest unit in the taxonomic classification of plants). To be eligible for CPVR protection, a variety must comply with several requirements (distinctness, uniformity, stability, and / commercial/ novelty). In addition, for a

of the denomination service of the CPVO, within the remit of the CPVO's Technical Unit. The denomination service currently counts on three denomination experts: Bénédicte Legrand and Rudi Caes, in charge of examining denomination proposals; and Carole Bonneau, responsible for the management of the CPVO database 'Variety Finder'.

When confronted with a proposal for variety denomination, denomination examiners assess the suitability of it in accordance

numerous practical examples for each criterion relevant to the evaluation on the suitability of denominations. These Explanatory Notes are the tool on which denomination examiners rely daily and which applicants for CPVRs can consult when evaluating what variety denomination to propose to the CPVO. It must be noted in this regard that the CPVO Guidelines envisage the existence of prior trade marks and geographical indications as prior rights in relation to proposed variety denominations.

Before submitting a proposal for variety denomination, an applicant for a CPVR may wish to consult earlier variety denominations and registered signs in the CPVO database 'Variety Finder', available at <https://vf.plantvarieties.eu/>. Variety Finder contains records from 152 registers in 72 countries, including inter alia registers of plant variety rights, registers of varieties authorised for marketing, and the EUIPO's records of EU trade marks registered in relation to products in Class 31. This database proves useful not just to experts in the field of plant varieties, but also to a broader range of actors such as trade mark examiners.

Variety Finder is not only equipped with search criteria tabs, but also with a similarity testing tool, providing for the possibility automatic screening aimed at identifying those earlier variety denominations and signs with which the newly proposed variety denomination could potentially conflict



The premises of the CPVO © CPVO

CPVR to be granted, it is also a requirement that the variety is designated by a suitable variety denomination, which must have been proposed by the applicant for the CPVR. Once a CPVR is granted, the use of the variety denomination is mandatory for any person commercialising propagating material of the protected variety, and this obligation continues to apply even after the expiration of the concerned right.

PRACTICE OF THE CPVO FOR THE ASSESSMENT OF PROPOSALS FOR VARIETY DENOMINATION

The assessment of proposed variety denominations is under the competency

are comparable to the 'EUIPO Examination Guidelines'.

In addition, the CPVO has elaborated some explanatory notes to these guidelines: the 'CPVO Guidelines with Explanatory Notes on Variety Denominations', exhibiting



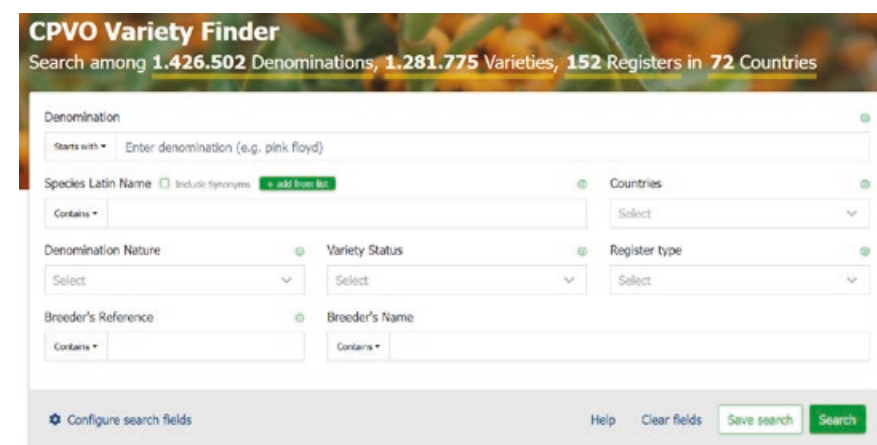
Carole Bonneau, Rudi Caes and Bénédicte Legrand © CPVO

The Variety Denomination Committee of the Community (EU) Plant Variety Office and Its Role as Custodians of the Designation of Plant Varieties*

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on account of their identity or similarity. Denomination examiners also make use of this tool when examining proposals for variety denomination. Around 80,000 denomination similarity tests are launched every year.

Since 2010, the CPVO also offers an internal online-service for co-operation in denomination-matters with the national authorities of EU Member States (registers of plant variety rights and of commercial varieties). By this means, these authorities can consult the CPVO and request opinions about the suitability of the proposals for variety denomination which they receive. Ultimately, this service contributes to the harmonisation of practices in the



Variety Finder © CPVO website Variety Finder 2022

examination of variety denominations in the EU and ensures that the same variety is designated by a single denomination in all territories. In 2020, the CPVO received more than 7,600 consultations. Together with the number of assessments of proposed denominations in the context of applications for CPVRs, this means that denomination experts assess a total of over 11,000 variety denominations per year!

ROLE AND MISSION OF THE VARIETY DENOMINATION COMMITTEE

At the CPVO, the body that is ultimately responsible for the approval of proposed



Variety Finder Statistics © CPVO Annual Report 2020

variety denominations as well as, where required, for the amendment of registered variety denominations, is the Variety Denomination Committee (VDC). The Variety Denomination Committee is of a

(Chair of the VDC), Head of the Technical Unit Gerhard Schuon and Legal Officer Ángela H. Martínez López (writing this article).

The VDC members are entrusted with the tasks below described:

- Taking decisions on the suitability of variety denominations: the primary role of the VDC members is to act as gatekeepers in the process of registration of proposed variety denominations, by deciding on the suitability of these at the stage of the decision-taking on the granting of the title of EU plant variety protection.
- Providing advice on consultations by denomination examiners: denomination examiners consult the VDC members weekly about complex cases via an internal platform of the CPVO called 'VDC consultation'. The VDC members express their opinions and then a decision is collectively reached. For instance, they are often consulted about proposed variety denominations which are highly similar to an earlier registered variety



Jean Maison, Gerhard Schuon, Ángela H. Martínez López © CPVO

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denomination (for the same or a closely related species). This scenario is comparable to that of conflicting trade marks. Indeed, denomination examiners also make use of a sort of 'likelihood of confusion' methodology, consisting of an overall assessment whereby they must consider the similarity between confronted variety denominations at visual, phonetic and conceptual level. In this context, the relevant public is that of professional users of varieties, namely, those acquiring propagating material of varieties (for example: farmers, plant breeders, and seed distributors), although for some specific plant species a broader public may be considered.

- Taking decisions in cases where an applicant contests the denomination expert's reasoning: where denomination examiners inform an applicant that they consider his/her proposed variety denomination unsuitable because an impediment to its registration arises, and the applicant contests their reasoning, the VDC members analyse the applicant's observations and take a decision on whether to uphold or reject the applicant's position. If the proposed variety denomination is found to be unsuitable, the applicant is invited to submit a new one.
- Taking decisions in objection procedures against denomination proposals: the VDC members are also competent for taking the decision of upholding or rejecting a formal objection having been lodged by a third party against a proposed variety denomination.
- Participating in monthly meetings: the VDC members meet monthly to discuss, amongst others, complex cases that are particularly contentious, matters regarding Variety Finder and any other issue concerning variety denominations that is brought to their attention.
- Reviewing of the CPVO Guidelines on Variety Denominations and of the Explanatory Notes: the VDC members and

denomination experts work together in drafting the CPVO Guidelines on Variety Denominations, which are adopted by the Administrative Council of the CPVO. The principles of the practice developed by the VDC throughout the years are then further crystallised in the Explanatory Notes to these guidelines.



ENTRY INTO FORCE OF THE LATEST VERSION OF THE CPVO GUIDELINES WITH EXPLANATORY NOTES ON DENOMINATIONS

An ad hoc working group on Denominations was set up by the CPVO with the aim of consulting the relevant stakeholders in the plant breeding sector and of understanding their needs and concerns regarding variety denominations, with a view to reflecting these in the text of the CPVO Explanatory Notes on Denominations. This working group is made up of the CPVO (VDC members and denomination examiners) and of representatives of the European Commission, EU Member States and plant breeders' associations.

The latest version of the CPVO Guidelines was adopted in December 2021 by the Administrative Council of the CPVO and entered into force recently on 1 January 2022, in parallel with the entry into force of the new Commission Regulation 2021/384 on the suitability of denominations of varieties of agricultural plant species and vegetable species.

Commission Regulation 2021/384 concerns the examination of denominations for varieties of the referred species in the context of the registration for their marketing in the EU internal market, for which national authorities of the EU Member States are competent. Importantly, the system for the registration of industrial property rights for plant varieties is separate and independent from that for the registration of varieties authorised for marketing. However, if the same variety is registered both for a plant variety right and for its marketing, that variety should ideally be designated by the same variety denomination. The CPVO thus updated the latest version of its guidelines to harmonise these with the new Commission's regulation and to thereby ensure consistency in the naming of varieties.

TO LEARN SOME MORE...!

In you are curious about the magical world of denominations, consult the section 'CPVO legislation' of the CPVO website <https://cpvo.europa.eu/>, more precisely:

- Articles 17, 18, 63 and 66 of Council Regulation 2100/94 on Community plant variety rights;
- Articles 28 and 29 of Commission Regulation No. 874/2009 (CPVO Proceedings' Regulation);
- CPVO Guidelines on Variety Denominations;
- CPVO Guidelines on Variety Denominations with Explanatory Notes.

In addition, the webinar 'What's in a Name: Plant Variety Denominations and Their Interface with Trade Marks and Geographical Indications' will be organised by the Commission's IPR Helpdesk in collaboration with the CPVO, and be held on 10 October 2022 at 10.30 am (more information available at <https://intellectual-property-helpdesk.ec.europa.eu/>).«