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Working Party on Standardization of
Perishable Produce and Quality Development
Fifty-seventh session, Geneva, 12 - 14 November 2001

REPORT OF THE FIFTY-SEVENTH SESSION

Addendum 13

Note by the secretariat

The secretariat reproduces in this document the advice received from the Office of Legal Affairs concerning the mention of trademarks in UNECE Standards.

**UN/ECE Working Party on Standardization of
Perishable Produce and Quality Development:
Use of Registered Trademark Information in UN/ECE Standards**

The Working Party for some time has been considering the appropriate manner for designating fresh fruits and vegetables in several of its standards. A problem has arisen insofar as the Working Group has, in the past, adopted standards in which, in certain instances only, the designation of a varietal, or generic, name for a fresh fruit or vegetable was, in fact, the trademarked name for such fruit. Thus, one trade associate has complained to UN/ECE that the standards proposed by the Working Party allegedly “misuse certain registered trademarks without authorization as synonyms for varietal names on packaging.” Other producers and trade associations have lodged similar complaints.

In light of such complaints, the Specialized Section on Coordination of Standardization of Fresh Fruit and Vegetables of the Working Party decided in 1999 to qualify use of trademarks in the designation of fruit and vegetable varieties in UN/ECE standards with notations indicating the existence of the trademark and with a footnote stating that some of the names included in the list of varieties “may indicate registered and patented trademarks in some countries.” Nevertheless, some producers and trade associations continue to protest any use of trademark names in UN/ECE standards for fresh fruit and vegetables out of a concern that such use of trademarks in such standards is being done without the authority of, and may harm the property interests of, the trademark holder.

In order to resolve this problem, the UN/ECE Secretariat has consulted with certain producers and trade associations [as well as representatives of certain Member States, or officials of their Governments,] in order to determine whether a fair resolution of the problem could be developed that balances the interests of patent and trademark owners with the needs of UN/ECE Member States to have appropriate standards indicative of actual commercial practice. Following such consultations, the UN/ECE Secretariat consulted with the Office of Legal Affairs in appropriately formulating two proposed options for listing varietal names in UN/ECE standards for fresh fruits and vegetables. Both options are enclosed with this paper.

Under the first option, UN/ECE fresh fruit and vegetable standards would contain a listing of such products by their varietal, or generic name, in one column and a separate listing of other known, non-trademarked names for such varieties in a second column. An introductory note would indicate that some of the varieties are marketed under trademarks and that names known by UN/ECE to be trademarks are not included in the list of varieties but, rather, are included as endnotes for informational purposes only. The introductory note would further clarify that, for purposes of satisfying the provisions of section V.I.B of the standards, marking of trademark names on transport packaging by authorized licensees or owners of such trademarks could not substitute for mandatory marking of the variety but could only be used as supplemental markings on transport packaging.

The second option draws upon the two-column approach set forth in the first option. Under this second option, a third column would be added in varietal listings setting out any known trademarks for the variety. Similar introductory remarks and disclaimers regarding the use of trademarks would be included in order to indicate that such trademarks appear for informational purposes only, that they must be used only with appropriate authorization, and that, in any case, they cannot substitute for varietal, or generic, name labeling

on transport packaging.

In the case of both options, the following three points should be kept in mind. First, the varietal listing under either option indicates that UN/ECE does not take any position as to ownership or enforceability of any known trademark designations for such varieties, whether such trademark is listed in an endnote or in a third column for informational purposes only. Second, the use of trademarks may only be used as supplemental information in transport packaging. Thus, trademark owners or licensees should ensure that a correct variety, or generic, name is noted on the packaging. Third, to the extent that the Working Party may have inadvertently included a trademark name in any proposed varietal listing in one of its standards, the trademark holder must promptly inform UN/ECE as to the correct varietal, or generic, name for the product and provide adequate proof of the validity of any patent for the varietal, or generic, name of the variety as well as of the trademarked name for the variety, whether or not the trademark is registered.

Option One

LIST OF VARIETIES: NON EXHAUSTIVE

0. Note by the secretariat:

- (1) Some of the varietal names listed in the following may indicate varieties for which patent protection has been obtained in one or more countries. Such proprietary varieties may only be produced or traded by those authorized by the patent holder to do so under an appropriate license therefor. The United Nations takes no position as to the validity of any such patent or the rights of any such patent-holder or its licensee regarding the production or trading of any such variety.
- (2) (a) Some of the varieties listed in the following may be marketed under names for which trademark protection has been sought or obtained in one or more countries.
- (b) Names known by the United Nations to be trademarks for such varieties are not included in the list of varieties (first column) nor in the list of other names by which such variety may be known (second column). References to trademark names have been included as endnotes for informational purposes only.
- (c) The United Nations takes no position as to the validity of any such trademarks or the rights of any such trademark owners or their licensees to mark such varieties under such trademarks.
- (d) For purposes of demarcations on transport packaging of varieties according to provision VI.B of the standard, trademark names may only be used with appropriate authorization from the trademark owner as supplemental markings on transport packaging. Thus, trademarks cannot be used as a substitute for varietal, or generic, names on transport packaging.
- (3) The United Nations has endeavoured to ensure that no trademark names are listed in the following. However, it is the responsibility of any trademark owner to notify the United Nations promptly if a trademark name has been included in the following listing and to provide the United Nations with an appropriate varietal, or generic, name for the variety as well as adequate evidence of the validity of any applicable patent or trademark regarding such variety.

Variety (see, however, NOTE 0.)	Other names by which the variety may be known.
XXX	XXX

Option Two

LIST OF VARIETIES: NON EXHAUSTIVE

0. Note by the secretariat:

- (1) Some of the varietal names listed in the following may indicate varieties for which patent protection has been obtained in one or more countries. Such proprietary varieties may only be produced or traded by those authorized by the patent holder to do so under an appropriate license therefor. The United Nations takes no position as to the validity of any such patent or the rights of any such patent-holder or its licensee regarding the production or trading of any such variety.
- (2) (a) Some of the varieties listed in the following may be marketed under names for which trademark protection has been sought or obtained in one or more countries.
- (b) Names known by the United Nations to be trademarks for such varieties are not included in the list of varieties (first column) nor in the list of other names by which such variety may be known (second column). References to trademark names have been included (third column) for informational purposes only.
- (c) The United Nations takes no position as to the validity of any such trademarks or the rights of any such trademark owners or their licensees to mark such varieties under such trademarks.
- (d) For purposes of demarcations on transport packaging of varieties according to provision VI.B of the standard, trademark names may only be used with appropriate authorization from the trademark owner as supplemental markings on transport packaging. Thus, trademarks cannot be used as a substitute for varietal, or generic, names on transport packaging[, and only the information in either column one or column two of the following listing may be used in such transport packaging].
- (3) The United Nations endeavoured to ensure that no trademark names are listed in the following. However, it is the responsibility of any trademark owner to notify the United Nations promptly if a trademark name has been included in the following listing and to provide the United Nations with an appropriate varietal, or generic, name for the variety as well as adequate evidence of the validity of any applicable patent or trademark regarding such variety.

Variety (see, however, NOTE 0.)	Other names by which the variety may be known.	Known trademarks (see Note 0.)
XXX	XXX	XXX