



## European IPR Helpdesk

### Fact Sheet

### *The value of geographical indications for businesses*

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## Introduction

Parma Ham, Roquefort, Cognac, Porto are not only product names. They reflect and evoke qualities and reputation strictly linked to their geographical origin.

Such a special “link” between the quality and/or reputation of a product and its geographical origin might have a considerable market value and its protection, as a geographical indication, consequently constitutes a crucial step for producers to gain the related competitive advantage.

Indeed, consumers are often prepared to pay more for products with certain characteristics linked to their place of origin. Geographical indications may therefore play an important commercial role in trade and for enterprises may present an interesting marketing potential in terms of product branding.

The aim of this fact sheet is to introduce to the readers geographical indications as a valuable exclusive right protecting geographical names or symbols which are able to create qualitative and/or reputational expectations in consumers regarding the geographical origin of the products to which they are affixed.

After the explanation of key concepts relating to geographical names and their value for businesses, this fact sheet analyses the different protection routes for geographical indications at national, international and European Union level.

This fact sheet also underlines the main differences between GIs and trade marks, providing practical suggestions to avoid potential conflicts between them.

### 1. Key concepts: Geographical names

Geographical names and marks in connection with products have long been used in trade.

These products generally sell better and producers use the geographical names to indicate the geographical origin of the goods to the consumers.

However, geographical names or signs<sup>2</sup> only function as an indicator of the origin of the goods if they are viewed as such by consumers and traders.

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<sup>2</sup> Not only the names of countries or places can function as an indicator of the geographical origin of a product or service, but also signs, emblems, and symbols can be understood as indicating the origin of the goods to which they are affixed. For instance, famous buildings such as the Colosseum, the Eiffel Tower, or a famous real or fictive person such as William Tell or Uncle Sam. These are indirect geographical references which create a relationship to a geographical place without explicitly naming the place of origin.

**Certain geographical names or signs, when affixed to a product, do not raise any expectations regarding the geographical origin of the product.**

The reason for this can be that:

- the name is not known by consumers, or the name has acquired a second meaning that has nothing to do with the original geographical area (for instance, "Hawaii toast" on a menu or the term "Venetian room" do not create the expectation that the toast originates from Hawaii or the room from Venice);
- the name has lost its original meaning and is no longer understood by the public as an indicator of the specific origin of goods. In such a case, the geographical name has become *generic*, i.e. the geographical name denotes a specific kind or category of product independent of its geographical origin. Examples of generics include "Eau de Cologne", "Wieners", or "French fries".

Geographical names that are not understood by the public as an indication of the geographical origin do not require protection against incorrect use because there is no expectation that the product comes from the place to which it refers.

**On the other hand, certain geographical areas<sup>3</sup> create an expectation in consumers regarding not only the geographical source but also particular characteristics, qualities and/or reputation for specific products (for instance "Champagne" or "Bordeaux" for wine).**

These characteristics and qualities may result from natural geographical conditions (soil, climate, topography, etc.), indigenous raw materials, particular human know-how or manufacturing developed at the place of origin, or a combination of these elements. These geographical names deserve protection and have been protected for a very long time.

## **2. What are the different kinds of protected geographical names?**

A distinction is generally made between three categories of protected geographical names: indications of source, geographical indications and appellations of origin.

### **2.1 Indications of source**

An indication of source is defined as any expression or sign used to indicate that a product or a service originates in a country, region or a specific place, without implying the presence of any special quality or reputation attributable to that geographical origin.

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<sup>3</sup> The geographical area has a broad meaning; it may refer to a relatively small piece of land, a whole area or even a whole country.

Indications of source can be geographical names that refer directly to the place of origin (e.g. the name of a country, region, or city, such as “Made in Italy”, “Product of Spain” or “Swiss quality”) or signs which create a relationship to a geographical place without explicitly naming the place of origin (e.g. images, symbols, or emblems evoking a specific place or country, such as national flags).

## 2.2 Geographical indications

A geographical indication is a sign identifying a product originating in a certain territory, where a given quality, reputation or other characteristics of the product is essentially attributable to that geographical origin.

The requirements for a geographical indication are higher than for an indication of source because the product should have a quality, or at least a reputation, strictly linked to its place of origin.

Like indication of source, geographical indications may consist of a geographical name or of an indirect reference (e.g. figurative symbol or emblem such as the image of a famous mountain in Switzerland).

## 2.3 Appellations/Denominations of origin

An appellation of origin (AO) is a special kind of geographical indication implying a stronger link with the place of origin<sup>4</sup>. Indeed, an AO can be defined as “the geographical name of a country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors<sup>5</sup>”.

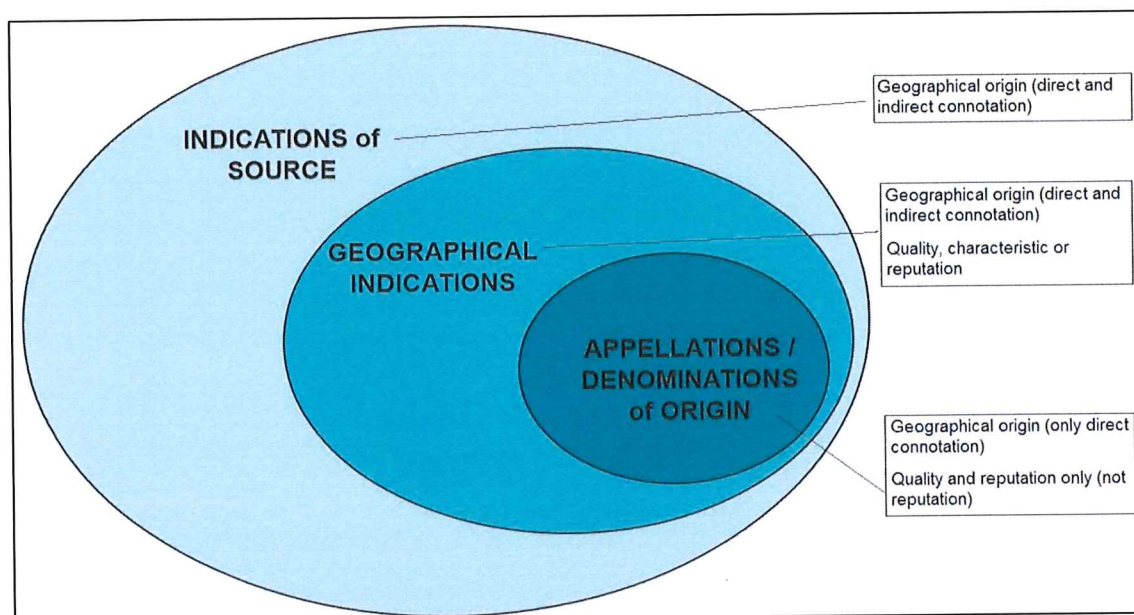
The requirements for an appellation of origin are higher than for a geographical indication since the mere reputation linked to the place of origin of a product is generally not sufficient to acquire protection; the product must have quality and characteristics that are exclusively or essentially due to its geographical origin.

An appellation of origin is generally always a geographical name. It cannot consist of an indirect reference (e.g. symbols or emblems).

As shown in figure 1 below, geographical indications and appellations of origin can be seen as a special kind of indication of source.

<sup>4</sup> In some jurisdictions geographical indications implying a stronger link with the place of origin are called Denomination of Origin (e.g. at European Union level the term used is protected denominations of origin – PDOs).

<sup>5</sup> This definition corresponds to Article 2(1) of the Lisbon Agreement of 1958 for the Protection of Appellations of Origin.



Despite their different level of connection with the geographical area, geographical indications and appellations/denominations of origin are all geographical names creating qualitative and/or reputational expectations in consumers regarding the geographical origin of the products. Therefore, for the sake of simplicity, hereinafter, unless differently indicated, we will refer to both as *geographical indications* or *GIs*.

### 3. How are geographical indications protected?

#### 3.1 Why protect GIs?

Geographical indications constitute a visual means (like a mark) for consumers who associate the product with a particular quality, characteristic or reputation due to its particular geographical origin. In this sense, geographical indications function as a valuable tool to differentiate competing goods on the market.

Furthermore, GI products generally command a premium price since GIs are not just names or symbols; they represent qualities and reputation having a value in the marketplace. Geographical indications may therefore play an important commercial role in trade and for enterprises may present an interesting marketing potential in terms of product branding.

According to a study published by the European Commission<sup>6</sup>, the estimated worldwide sales value of products protected by geographical indications in the EU in 2010 was € 54.3 billion and it is estimated that, on average, products protected

<sup>6</sup> AND International and European Commission, Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI), October 2012; available at [http://ec.europa.eu/agriculture/external-studies/value-gi\\_en.htm](http://ec.europa.eu/agriculture/external-studies/value-gi_en.htm)

by geographical indications in the EU are sold at a price 2.23 times higher than that of a similar quantity non GI product.

The risk of a geographical indication being misused is high because there is an incentive for free riders<sup>7</sup> to capture the premium associated with it by simply using the name in relation to lower quality products originating from a place that does not enjoy a similar reputation.

It is therefore crucial to protect geographical indications by giving producers entitled to use a particular geographical name the right to exclude other producers from using it.



A protected GI does not enable the right holder to prevent someone from making a product using the same techniques and/or originating from the same place as those set out in the GI standards.

Furthermore, obtaining an exclusive right to a geographical name or sign is important to prevent the registration of a conflicting trade mark<sup>8</sup> and to limit the risk of the indication becoming a generic term.

### 3.2 Protection routes

The main ways of protecting a geographical indication are:

- So-called *sui generis* systems (i.e. special regimes of protection), which generally operate with previous registration. However, some countries, such as Switzerland, provide automatic protection to all geographical indications and/or indications of source, regardless of any previous registration<sup>9</sup>.
- Using collective and certification marks.

In addition, other methods might be available, for instance unfair competition law, labelling and advertising regulations, protection of consumer law or methods focusing on business practices including administrative product approval schemes.

#### 3.2.1 *Sui generis* protection

The protection of geographical indications operates similarly to trade marks and other intellectual property rights (IPRs) insofar as they confer to their legitimate

<sup>7</sup> Competitors or other economic actors willing to take an unfair advantage from the unauthorised use of third parties' exclusive rights.

<sup>8</sup> See section 5 on "Geographical indications and trade marks", on page 12 of this fact sheet.

<sup>9</sup> The protection without previous registration is a passive protection according to which the concept of geographical indications or indications of source is defined in the law and the law protects automatically all geographical indications and/or indications of sources against false or misleading usage, i.e. the use of the indication for goods not originating in the place indicated.

users the exclusive right to use the designation. Protected GIs are indeed a particular category of IPRs.

Like all other intellectual property rights, GIs are governed by the “territoriality principle”. Thus, where a *sui generis* right over a GI is obtained in one jurisdiction, it is protected there but not abroad. In order to protect a GI abroad, depending on the different national, regional and international legislation, there may be a requirement to first protect the GI in the country of origin.

**A registered GI is protected without any limitation in time.** This means that the protection will remain valid with no need of renewal, unless the GI registration is cancelled. Depending on the jurisdiction, a protected GI can be cancelled if compliance with the conditions laid down in the product specification is no longer ensured or if a third party with a legitimate interest requests cancellation of the registration.

**GIs do not confer individual rights** (such as in the case of patents and trade marks) but rather “collective rights”. Indeed, once protected, the exclusive right to use the geographical indication belongs to all producers in a given geographical area, who comply with the specific conditions of production for the product.

#### What type of products?

Geographical indications are used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products. However, at European Union level, non-agricultural products or industrial goods (like textiles, wood, ceramics, etc.) are not protectable with a GI.

Nevertheless, some Member States of the EU provide for the protection of these products as GIs through specific legal instruments at national level (e.g. German law protects GIs for cutlery, scissors, knives, etc.). Also Switzerland has a specific regulation for the use of GIs for watches.

#### 3.2.1.1 At national level

National legislations may provide specific GI protection systems. More information concerning the national legislative framework on GIs in a particular country can be found through the [WIPO lex](#) database.

#### 3.2.1.2 At European Union level

A *sui generis* protection system exists in the European Union with regard to GIs for wines and spirits, agricultural products and foodstuffs<sup>10</sup>. In particular, two types of GI, indicating different levels of connection with a geographical area, confer

<sup>10</sup> See Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L 343/1.

exclusive rights on geographical names<sup>11</sup> in the whole territory of the European Union.



**Protected Designations of Origin (PDO)** identify products that are *produced, processed and prepared* in a specific geographical area, using the recognised know-how of local producers and ingredients from the region concerned. These products, whose characteristics are strictly linked to their geographical origin, must adhere to a precise set of specifications and may bear the PDO logo.

Products bearing a PDO logo have proven characteristics resulting solely from the terrain and abilities of producers in the region of production with which they are associated. PDO products thus require all stages of the food production process to be carried out in the area concerned. There must be an objective and close link between the product's features and its geographical origin. Examples are "Café de Valdesia", "Staffordshire Cheese" or "Shetland lamb".

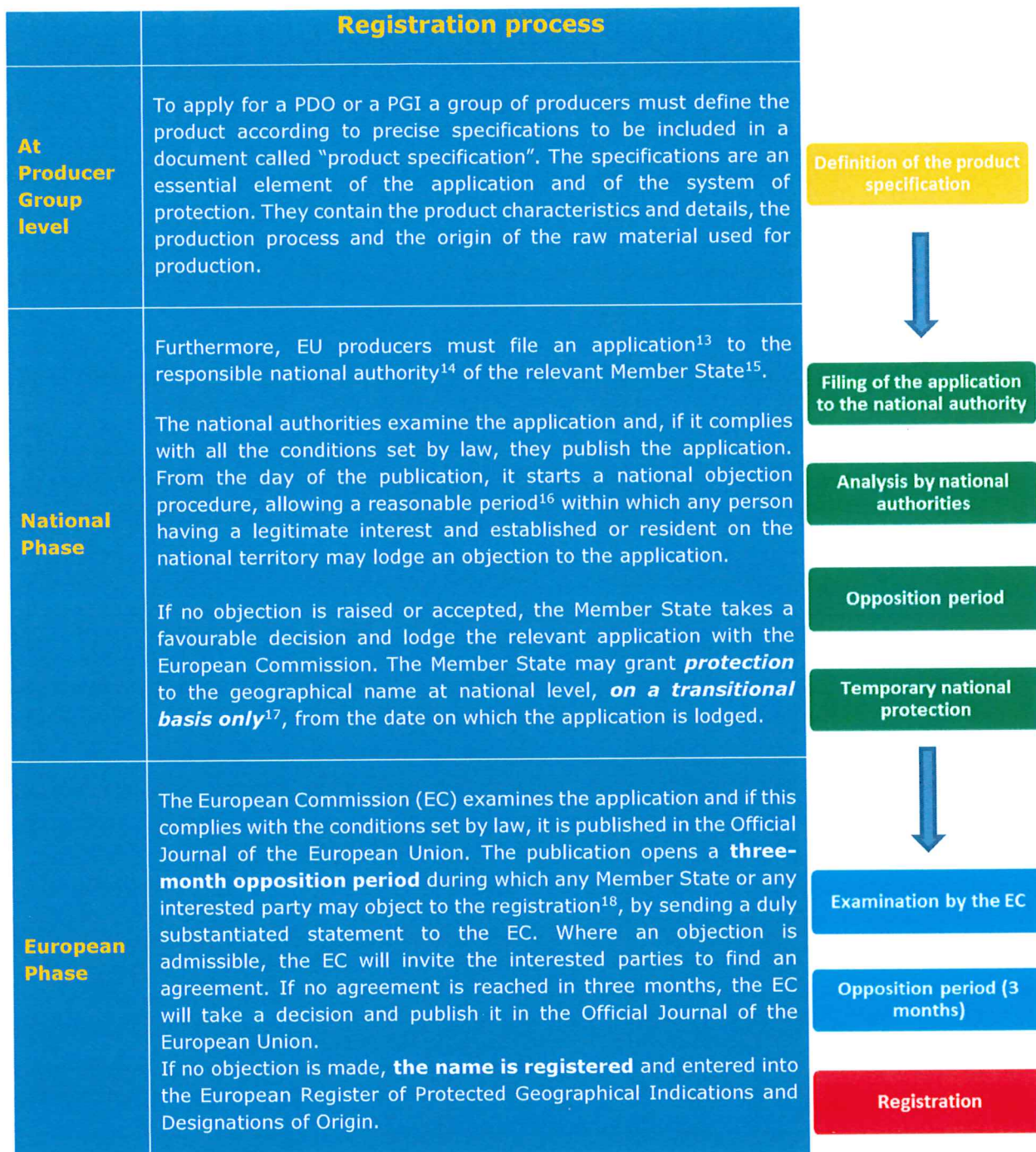


**Protected Geographical Indications (PGIs)** identify products whose quality or reputation is linked to the place or region where they are *produced, processed or prepared*, although the ingredients used need not necessarily come from that geographical area. All PGI products must also adhere to a precise set of specifications and may bear the PGI logo.

Products bearing the PGI logo have a specific characteristic or reputation associating them with a given place, and at least one stage in the production process must be carried out in that area, while the raw materials used in production may come from another region<sup>12</sup>. Examples are "Clare Island Salmon", "Jamón de Serón" or "Dortmunder Bier".

<sup>11</sup> Geographical indications are often place names. However, non-geographical names can also be protected if they are linked to a particular place. For example, Feta cheese is not named after a place but is so closely connected to Greece as to be identified as an inherently Greek product.

<sup>12</sup> In this respect, PGI wine products represent an exception. EU legislation, indeed, requires that at least 85% of the grapes used for their production come exclusively from the relevant geographical area and the other 15% from the same EU Member State (100 % of the grapes is required for PDOs).



<sup>13</sup> For information on the PDO/PGI application is available on the [Guide to Applicants](#) published by the European Commission.

<sup>14</sup> The list of [EU national authorities](#) is available on the European Commission website.

<sup>15</sup> If the applicant is a producer outside the European Union, the application can be filed by e-mail directly to the European Commission or via a national authority, once the geographical name has been protected as a GI at national level in the country of origin.

<sup>16</sup> It may vary depending on the national jurisdiction (e.g. in UK this period amounts to four weeks)

<sup>17</sup> Such national protection will cease once a decision on the protection of the GI is taken by the European Commission.

<sup>18</sup> European legislation provides several grounds for opposition including the conflict with the name of plant variety or animal breed, the conflict with a registered trade mark, the genericness of the term for which registration is requested.

Once registered, the commercial use of PDOs and PGIs is prohibited for all comparable products which do not meet the specifications.

*In 1997 Switzerland adopted a similar system of protection for PDOs/PGIs, based on the principles set out in the European Union legislation. The European Union and Switzerland concluded subsequently an Agreement for the mutual recognition of PDOs and PGIs. Therefore, Swiss PDOs and PGIs are recognised and protected on the territory of the EU and PDOs/PGIs registered in EU are recognised and protected in Switzerland. Recently, the protection for PDOs/PGIs in Switzerland has been extended to non-agricultural products.*

### 3.2.1.3 At international level

The Lisbon System, administered by the World Intellectual Property Organization ([WIPO](#)), offers a means of obtaining protection for an AO already protected in one contracting party in the territories of all other members<sup>19</sup>. This can be done through a single registration called an "international registration".

Indeed, once protected in the country of origin, the holders of the right to use the appellation of origin may request their government to file an application for international registration under the Lisbon Agreement. International registration of an AO takes place at the request of the country of origin, and WIPO then notifies the [competent authorities](#) of the other Contracting Parties to the Lisbon Agreement of any new international registration of an AO<sup>20</sup>. The competent authorities that have received notice of the registration of an AO have the right to refuse to protect it in their territory by lodging a declaration with the WIPO within one year from the notification of registration. In the absence of refusals within this term, the AO will be protected in the contracting parties of the Lisbon Agreement.



The Lisbon System allows the protection as an AO of non-agricultural products. An example is *Trojanska Keramica* protected for particular ceramic objects manufactured in the area close to the City of Trojan in Bulgaria.

### 3.2.2 Collective and certification marks

It has to be mentioned that in many jurisdictions, a right to the geographical name or sign can also be acquired, in application of the relevant trade mark law, through

<sup>19</sup> The total number of contracting parties to the Lisbon Agreement is 28. Among the EU Member States, only Bulgaria, Czech Republic, France, Greece, Hungary, Italy, Portugal, Romania, Slovakia and Spain signed the agreement, becoming part of the so-called Lisbon Union. The full list of members of the Lisbon Union is available on the [WIPO website](#).

<sup>20</sup> Further information on the Lisbon System is available on the [WIPO website](#).

the registration of a collective mark<sup>21</sup> and/or a certification mark<sup>22</sup> in one or more classes of goods and/or services.

**Collective marks** designate the source of products or services not in geographical terms, but in relation to an association of producers and its members. An organisation applying for the protection of a GI as a collective mark must be composed of members from the region indicated by the GI.

**Certification marks** serve to certify that a good or a service complies with certain standards. Among these standards, there can be the geographical origin of production. A certification mark grants protection for a name in combination with a logo that can be used by any producer meeting the standards.

While GIs are not subject to a specific period of validity, collective and certification marks are generally protected for renewable ten-year periods.

#### 4. GI enforcement

When a protected GI product is counterfeited in the EU, there are a wide range of actions (civil and/or penal actions). However, procedure and sanctions vary from one Member State to the other.

Furthermore, one effective tool against counterfeiting offered by European legislation is represented by the EU customs actions, enabling right holders to request customs authorities to prevent the entry into European Union Member States of goods infringing their intellectual property rights (including GIs). In particular, customs authorities can seize products that seem to violate GI rules and can keep them in custody and destroy them, provided that the owner or the declarant of the seized goods does not oppose the destruction within ten working days from the notification of the seizure (3 days for perishable goods)<sup>23</sup>.

<sup>21</sup> A collective mark is registrable at European Union level as a European Union collective mark or at international level under the [Madrid System](#). Further information on European Union collective marks is available on the [EUIPO website](#). Further explanations on collective trade are available on the [WIPO website](#).

<sup>22</sup> Although certification marks already exist in some national intellectual property systems, from October 1 2017 it will be possible to register a European Union (EU) certification mark granting protection in the whole territory of the European Union. Further information can be found on the [EUIPO website](#). Further explanations on collective trade marks are available on the [WIPO website](#).

<sup>23</sup> For further information, read "EU IP customs action: a cost-effective weapon against counterfeiting" on page 5 of our [Bulletin No 17](#).

## 5. Geographical indications and trade marks

### 5.1 Distinctive signs with different functions

Geographical indications and trade marks are distinctive signs used to distinguish the goods or services in the marketplace. Both convey information about the origin of a product or service, and enable consumers to distinguish between products according to their origin and the particular quality represented by this origin.

While **trade marks** distinguish the goods or services of one enterprise from those of another, **geographical indications** identify a product or service as originating from a particular geographical area, independently from the company which produces or offers it.

As a rule, a trade mark is a sign, or a combination of signs, which presents a sufficient distinctive character. Any exclusively descriptive word, such as regarding the material, the quality, the type, or place of production, or the purpose or price of the product or any other purely descriptive indication may not be protected as a trade mark. Therefore, **it is generally not possible to register as a trade mark a sign that merely consists of a geographical name**. Descriptive signs belong to the public domain: they must remain available to everyone equally and may not be monopolised. However, geographical names are registrable insofar as they have acquired distinctiveness through their use and they identify a particular product or service, without indicating any geographical origin.

In contrast, geographical indications are predetermined by the name of a geographical area and usually correspond to the name of the place of origin of the product, or to the name by which the product is known in that place.

### 5.2 Conflicts between trade marks and GIs

Geographical names are commonly used in business to describe and promote the features of products or services offered in the marketplace. Indeed, many products display a reference to a geographical origin in their trade mark or packaging. It is therefore essential for a trader to be aware of the relation between trade marks and GIs and the potential conflicts that, due to their different functions, may arise between them.

#### Prior GI v later trade mark

If a prior GI has been registered (or registration has been applied for), it prevails over a later trade mark (principle of priority). Therefore, if an applicant requires the registration as a trade mark of a geographical name already entered into registration as a GI, the application would be rejected.

*Prior trade mark v later GI*

Once a GI is registered, the senior trade mark has to co-exist with it, unless it is proved that it has been registered in bad faith.

Nonetheless, in the case of a mark with reputation<sup>24</sup>, this trade mark will prevail if the registration of the name proposed as a protected geographical indication would be liable to mislead the consumer as to the true identity of the product.



Before applying for a trade mark or using a geographical name, it should be checked if a name is protected as a GI in a certain territory. In order to carry out this check, several online databases are available at national, international and European Union level.

## 6. Where to search for GIs

### 6.1 At national level

Some national intellectual property offices (NIPOs) provide databases including a list of geographical indications that are protected within the national territory. Therefore, to perform a search at national level, it is possible to contact the relevant NIPO, which may (or may not) offer a searchable database of registered GIs. A directory of IP offices is available on the [WIPO website](#).

### 6.2 At European Union level

A list of nearly 3,400 EU registered GIs can be accessed via four databases maintained by the European Commission:

- [DOOR](#) for foodstuffs,
- [E-BACCHUS](#) for wines,
- [E-SPIRIT-DRINKS](#) for spirits
- the file of Aromatised Wines<sup>25</sup>.

### 6.3 At International level

It is possible to search GIs protected under the Lisbon System by consulting [WIPO's LISBON EXPRESS](#)<sup>26</sup>.

<sup>24</sup> Trade marks known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the European Union.

<sup>25</sup> Aromatised wines are products obtained from products of the wine sector that have been flavoured. For further information concerning their protection as a GI in the European Union, see Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products.

<sup>26</sup> For further information on how to use GI databases, read "Searching Geographical Indications" at page 12 of our [Bulletin No 22](#).

## Useful Resources

For further information, see also:

- *Geographical Indications – An Introduction, WIPO*  
[http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo\\_pub\\_952.pdf](http://www.wipo.int/edocs/pubdocs/en/geographical/952/wipo_pub_952.pdf)
- *The Lisbon System, WIPO*  
[http://www.wipo.int/edocs/pubdocs/en/geographical/942/wipo\\_pub\\_942.pdf](http://www.wipo.int/edocs/pubdocs/en/geographical/942/wipo_pub_942.pdf)
- *Geographical indications, European Commission*  
<http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/>
- *Intellectual Property for Agri-food Small and Medium Enterprises, WIPO*  
[http://www.uibm.gov.it/attachments/FINAL%20Guide\\_for\\_IP%20Agri-food%20SME%20Italian\\_publication\\_EN\\_GBA-Jaiya.pdf](http://www.uibm.gov.it/attachments/FINAL%20Guide_for_IP%20Agri-food%20SME%20Italian_publication_EN_GBA-Jaiya.pdf)

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**Website:** On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

**Newsletter and Bulletin:** Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

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