

CALMED Workshop

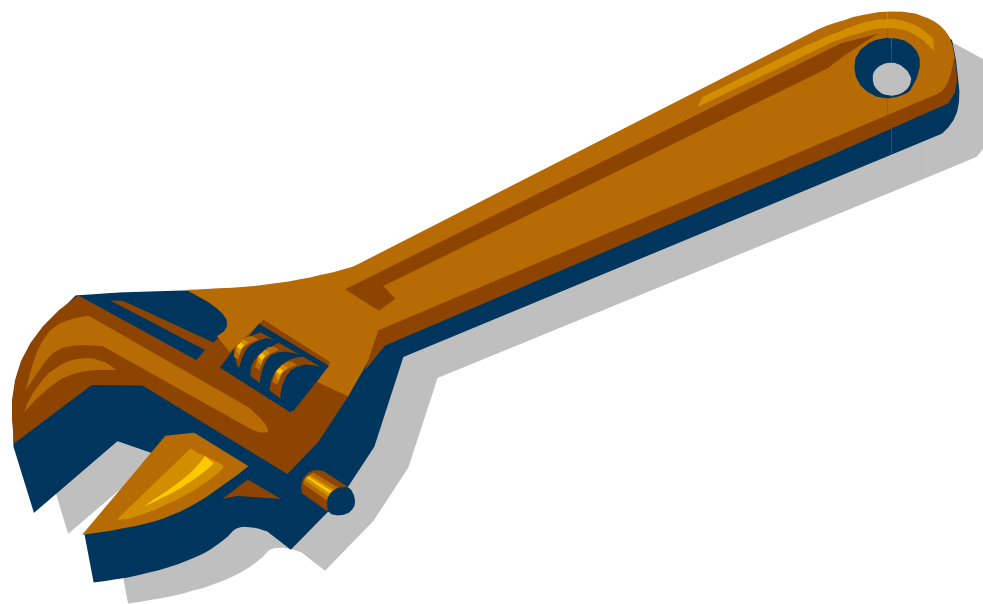
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Geographical Indications

Legal Aspects

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Law provides a ...



Law serves by creating a ...



Lovells

Global Basi(c)s

Geographical indications: Article 22(1) TRIPS:

“Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

Examples of geographical indications

- Rioja
- Napa Valley
- Café de Colombia
- Prosciutto di Parma
- Roquefort
- Gorgonzola
- Parmigiano Reggiano
- Newcastle Brown Ale

One Word – Three Functions

SWISS

One Word - Three Functions

- Geographical Indication
- Generic name
- Trademark

- All subject to TERRITORIALITY

Definition

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TRIPS requirements for GI protection

- Article 22 TRIPS, protection against misleading use
- Article 23 TRIPS, additional protection for wines and spirits
- Member states free to adopt the appropriate procedures under their domestic law (trademark system/sui generis system)

GI protection mechanisms

- Unfair competition
- Registration Systems
 - Trademark law (national/international)
 - *Sui generis* systems (national/regional)
 - *Sui generis* systems (international)

Protection mechanisms under trademark law

- Certification marks
- Collective marks

- Advantages:
 - Well-defined standards for protection and enforcement
 - Familiarity of Trademark Offices/ Courts
 - Predictability/ Certainty

GI protection via trademark systems

- Trademark systems increasingly recognized as appropriate protection mechanisms for geographical indications
- Example: recent introduction of regional collective mark system in Japan

Collective CTMs – some examples

- BAYERISCHES BIER (CTM 226621)
- DARJEELING (CTM 4325718)
- MADEIRA (CTM 3540911)
- PARMA HAM (CTM 3493781)
- PROSCIUTTO DI PARMA (CTM 1116458)
- THAI SILK (fig.)

(e.g. 4099412):



TMs - disadvantages

It's your money and responsibility!

Sui generis systems

- Regional systems: EC Regulation 510/2006 (formerly Regulation 2081/1992)
- National systems, e.g. China, Vietnam, Thailand, Indonesia, Malaysia, some European countries
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

Advantages of *sui generis* systems



Advantages of *sui generis* systems

- Tend to be inexpensive (but not necessarily)
- Tend to provide a fairly broad scope of protection

Disadvantages of *sui generis* systems

- Tend to emphasize the “public nature of the GI”
 - Somewhat unclear message under EC Reg. 510/06 (PDO / PGI) – sufficiently clear quality standard?
- Tool to redesign the value chain or trade impediment?
- Straightjacket and uncertainty about extent of protection

Redesigning the value chain?

- European Court of Justice on the slicing of Parma ham (Oct. 2003)
- Monopoly of local producers up to the very last step of the production process



Straightjacket?

- Newcastle Brown Ale



Conclusion

- Different means of monopolisation of designations available
- GIs will not be available for all agricultural products – i.e. commodities are out
- Question: is the Designation of Origin / Geographical Indication system strong / efficient enough to truly provide a competitive advantage?