

# The Legal Nature of Geographical Indications

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# AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

(Art. 22 - § 1)

- 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.

## Intellectual Property Code Art. L. 721-1 (transcription of the Lisbon Agreement)

- An appellation of origin shall consist of the geographical name of a country, region or locality that serves to designate a product originating therein, the quality or characteristics of which are due to the geographical environment, including both natural and human factors.

# AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

*(Preamble)*

*“Recognizing that intellectual property rights are private rights”*

# Civil Code, Art. 544

- Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations

# Ownership

- Usus
- Fructus
- Abusus

Council Regulation (EEC) No 2081/92 of 14 July 1992  
on the protection of geographical indications and designations  
of origin for agricultural products and foodstuffs

Art. 13-3:

Protected names may not  
become generic

# TRIPS - Art. 16

- The owner of a registered trademark shall have the **exclusive right** to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services (...)



**COUNCIL REGULATION (EC) No 40/94<sup>1</sup>  
of 20 December 1993  
on the Community trade mark**

- Article 64: Community collective marks
- 1. A Community collective mark shall be a Community trade mark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings (...)

- 2. In derogation from Article 7 (1) (c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute Community collective marks within the meaning of paragraph 1. (...)

- 2. (...) A collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

# Civil code, art. 714

There are things which belong to nobody and whose usage is common to all.

Public order statutes regulate the manner of enjoying them.

*Res communes*

Jacques AUDIER,

“De la nature juridique de l’appellation d’origine”

*Bulletin OIV, 1993*

- “The prerogative of both the public authority and the professionals (...) imposes the distinction between the **right over** appellation of origin, of which the public authority is the holder, and the **right to** appellation of origin, right of useage from which the professional benefit”

# GAI INSTITVTIONVM COMMENTARIVS SECVNDVS

- 2. Summa itaque rerum diuisio in duos articulos diducitur: nam aliae sunt diuini iuris, aliae humani.
- 3. Diuini iuris sunt ueluti res sacrae et religiosae
- 8. Sanctae quoque res, uelut **muri et portae**, quodam modo diuini iuris sunt.

*International Wine Law  
Association*

SEATTLE, 25-29 September 2004

**RESOLUTION ON  
TRADEMARKS AND GEOGRAPHICAL  
INDICATIONS**

- The membership of the International Wine Law Association (...)
- Considering also that geographical indications and trademarks are equally entitled to protection under the law ;



- 1.1 Co-existence between a trademark and an identical or similar geographical indication should generally be avoided due to the risks of confusion for the public and of fostering parasitic trade practices.

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- 1.2 Nonetheless, justified exceptions may be recognized on a case-by-case basis. Factors to consider for exceptional co-existence should include but not be limited to: good faith or lack thereof, the relative degree of public recognition, and the availability of alternative designations.

- 3.3 However, taking into account the particular and public nature, collective use and indication of source of a product of geographical indications, priority for a trademark over a geographical indication should be assessed in light of good faith, knowledge of the geographical character of the trademark name, and the risk of confusion for the public between the trademark and the origin of the product.