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► To cite this version:

Delphine Marie-Vivien, François Casabianca. Geographical indications: protection of a name or a logo? A risky shift. *Worldwide Perspectives on Geographical Indications*, Centre de Coopération Internationale en Recherche Agronomique pour le Développement [Cirad], Jul 2022, Montpellier, France. ⟨hal-03791200⟩

HAL Id: hal-03791200

<https://hal.science/hal-03791200v1>

Submitted on 29 Sep 2022

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Geographical indications: protection of a name or a logo? A risky shift

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Abstract – A Geographical Indication (GI) is an official sign protecting a name referring to a place, granting an exclusive right of use in the market. Through the evolution of the countries implementing this intellectual property right, we observe that logos are increasingly added to the official recognition of the protected names. The question is then “are GI procedures protecting a name or a logo”? We analyze the diversity of situations worldwide (Europe, Asia, Africa and South-America). Logos are supposed playing two roles: informing customers and helping public authorities to regulate the markets and implement controls. However the accumulation of information on the label seems to dilute the protection of the name, putting at risk its reservation, with some countries only enforcing the exclusive right on the logo, leaving the name free of use, questioning the mere nature of GI.

Keywords – Legal nature of GI, logo, enforcement, Asia, Africa, Europe

INTRODUCTION

Geographical indications (GI) and appellation of origin confer an exclusive right of use of a name (a geographical name or a name referring to a place) for the benefit of products complying with the GI specifications. This exclusive right is justified by the reputation of the GI, a creation of a localized collective, which makes it an intellectual right, usually codified in the intellectual property law.

However, while GIs have been first institutionalised in Southern Europe at the end of the 19th century, the actual development of GIs in many countries occurs in a world of multi-certifications identified by particular labels and logos, especially in the agri-food sector. See for example, the organic agriculture logos in various jurisdictions. Competition among certifications influences GI with since a decade an increasing use of GI logos next to the GI name. It can be a logo specific to the GI product in question, or an official national logo applying to all GIs in the country.

While these logos are useful for information and marketing, their use is questioning the mere nature of GIs, which are names giving all the necessary information about the products under GI scheme: its origin (Marie-Vivien, 2022).

Yet it seems the sole use of the name is not enough to attract consumers and logos are necessary to bring guarantees of authenticity. However, is such use of logos at risk, the risk of losing the protection of the name?

METHODOLOGY

This paper is the result of analysis of legal documents worldwide regarding the protection of GIs and in particular regarding the conditions of use of the national logos and of surveys in practice regarding enforcement of GIs in markets and use of logos for traceability purpose.

THE INCREASE OF LOGOS WORLDWIDE

In Europe, for agrofood products, the use of the official red (PDO) and blue (PGI) logos or Union

symbols on the labelling next to the indication is mandatory since 2012. Before such use of the logo was optional, with the possibility to only use the indications ‘protected designation of origin’ and ‘protected geographical indication’ in the labelling (see art.8.1 EU Reg. 510/2006).

Countries in Asia, Africa and to a lesser extent South America have put in place such strategy.

In India, the use of the logo is optional for Indian products and not allowed for foreign products. All requests for use of Logo shall be approved by the GI registry, which means an additional procedure; even if it is clear that all GI Authorized Users registered shall be allowed to use the GI Logo (Guidelines for permitting the use of Geographical Indication Logo and Tagline, 24 June 2019).

In Thailand, the use of the logo is permitted by the Department of intellectual property, for a period of 2 years, only for GIs which have been subject to controls. The logo is then used as a label which guarantees that there has been a control of the compliance of the product with the GI specification, a use which goes beyond promotion and marketing (Department of Intellectual Property Regulation on Permission to Use the Thai Geographical Indication Logo, B.E. 2551 (2008)).

In West Africa OAPI countries, the use of the OAPI logo is mandatory, together with the name of the GI. However, the logo can only be used for products packaged in the geographical area, where packaging is controlled by the collective management organisation. Yet the regulation provides that the GI name cannot be used alone without the OAPI logo (Reglement relatif à la production, à l'utilisation et à la gestion du logo IGP de l'OAPI). What happens then for GI product whose specification authorizes final packaging outside the geographical area? No right to use the logo and then no right to use the GI denomination either! .

Interestingly, in Latin America countries where GI systems have been set up before Asia and Africa, very few countries have GI logo and when existing, their use is generally facultative, as an additional instrument for promotion purposes.

In Chili, there is a logo, called the seal, for each industrial property tools recognizing and protecting Chilean origin products: one logo for GI, one for Denomination of Origin, one for Collective Marks and one for Certification Marks (<https://www.inapi.cl/sello-de-origen/para-informarse>).

In Colombia, those who have been authorised to use the PDO may only use the PDO seal. It may be used on the product, on labelling, packaging, advertising, establishments, installations, documentation and/or other elements to be used for the marketing and promotion (manual de uso sello denominación de origen protegida de Colombia, RESOLUCIÓN 36074). At the contrary, Argentina is showing a contrasted situation with a protection only for the use of the official logo while the name remains free of use for all producers in the geographical area. Indeed, only the use of the GI/DO for products not originating from the geographical origin is prohibited (art.27 of

the law 25 966. Such strange situation is offering a large room for many confusions. Therefore, the efforts for making the name well known and increase its reputation are benefiting for all the products, GI or not, using the same name, with GI becoming a mere indication of source. The respect of specification and control creates new costs and GI inducing clear disadvantage for GI producers. So, parasitism (use of a protected name without any official control) is officially encouraged by this type of public decision and jeopardizes the GI system in this country.

FOR OBJECTIVES RANGING FROM PROMOTION AND AWARENESS TO CONTROL AND ENFORCEMENT

A set of three situations is observable: i) name protected without official logo (not existing or being optional), ii) name protected with a mandatory logo and iii) logo protected while the name remains free of use.

Those logos have two main attributes. One is to *inform consumers* that the name is a Geographical Indication, as not all consumers are aware the product is an origin product, especially on the long distance market, a tool for marketing. This is particularly true for the official national logos.

In West Africa, logos are supposed to make this category of products and the guarantees attached to them better known by consumers, in particular by distinguishing them from other products with a simple indication of source.

The other objective, quite new, introduced only in 2006 in the EU Regulation is to permit easier identification of these GI products on the market, thereby *facilitating checks*. The obligation of use the official logo in the same zone of the protected name on the label, is supposed to strengthen the market regulation and the fight against frauds and misuses on the names.

The OAPI regulation provides also that logo will facilitate fight against frauds as well as contribute to the fluidity of commercial transactions at national, regional and international level, while limiting the risks of confusion between products of the same category and of different origins. In Thailand, logos are clearly only for controlled products.

Moreover, commercial brands are still in use within the GI system (see for example, Champagne or Camembert de Normandie). So, if there is enough place, the label must gather the several information on i) the firm and its market identification (including commercial brand), ii) the name that has been protected by public authorities, iii) the logo of the GI and iv) eventually other logos (such as Organic farming for example). However, such accumulation seems *diluting the core information: the protected name*.

CONCLUSIONS

As a conclusion, the whole concept of an intellectual right to a name, based on the creation of the reputation of a product in a given place by a localized collective whose common production rules make this reputation possible (Hermitte, 2001), is thus put at risk by its association with a logo. Logos are designed to be easily recognized by customers on the market, becoming a proxy for the certification warranties and a warning sign for the authorities in charge of the controls. With the risk of a GI logo becoming a simple brand - club, and a GI name being a simple indication of source, without exclusive right on it, far from the expected territorial development objectives!

It is therefore urgent to reaffirm *the reservation of the name*, which goes hand in hand with the endogenous dimension of the GI, i.e. a set of specifications established by a group representing all the actors involved in the GI product. An affirmation endorsed by the wines and spirits producers in the EU who have still managed to avoid this mandatory use of the logo that puts at risk the concept of GIs. of

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