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Geographical Indications: What is their worth for protecting the connection between Australian regional food and origin?

Dr Paula Caroline Zito¹

Abstract – This short paper shares findings from a case study conducted in the regions of Barossa Valley and Adelaide Hills, South Australia, Australia. The case study explored whether regional food producers based in those regions consider that Australia should implement a dedicated food Geographical Indications (GI) framework. This short paper reflects on the cases that exist at both a national and international level for the implementation of an Australian food GI framework, before identifying the key findings made as a result of the case study.

Keywords – Geographical Indications, Food, Wine, Regionality, Regional Names, Connection, Origin, Australia, Barossa Valley, Adelaide Hills, Labelling, Intellectual Property, International Trade, Law.

INTRODUCTION

This short paper explains the cases that exist at both a national and international level for the implementation of an Australian food GI framework. At an international level, the implementation of an Australian food GI framework would encourage Australia's trading partners that support food GIs to trade with Australia. This includes several of Australia's neighbouring countries as well as the European Union (EU) with whom Australia is currently negotiating the proposed Australia-European Union Free Trade Agreement (AUS-EUFTA). A food GI framework would assist with furthering Australia's agricultural and agrifood industries at an international level and effectively protect the value that exists in Australian regional names. Moreover, at a national level, a food GI framework would assist with overcoming the problems that exist as a result of deficiencies of current Australian consumer protection, passing off and trade mark laws that do not adequately regulate whether there is a connection between food and origin before Australian regional names are used on food labels to make an origin claim. The current lack of recognition and protection of Australian regional names pursuant to these laws is a key issue emphasised by the regional food producers who were interviewed as part of the case study.² Given the case for the implementation of an Australian food GI framework, it is important to understand the views of regional food producers, who are most affected by the legal regime. A case study was therefore conducted in the South Australian regions of Barossa Valley and Adelaide Hills. The case study explored the question: *whether regional food*

producers based in the Barossa Valley and Adelaide Hills consider that Australia should implement a dedicated food GI framework? This short paper reports the key findings made from the South Australian case study with the purpose of underscoring the case that exists for the implementation of an Australian food GI framework, emphasising its importance at both a national and international level as well as its potential to significantly improve Australian intellectual property laws.

METHOD ADOPTED IN THE CASE STUDY

As part of the case study, food producers, food organisations and representatives from the South Australian food industry were interviewed. In order to obtain insight into whether the interviewees considered that Australia should implement a dedicated food GI framework, their responses were principally analysed with a view to determining the following: their knowledge of what is a GI; their satisfaction with the current level of legal protection for the connection between food and origin pursuant to existing labelling and consumer protection laws, trade mark laws, and other initiatives; their interest in a food GI framework and the basis for their interest; their opinion on and experience with how regional food is connected to origin; and their thoughts on the key features required for a successful and practical food GI framework. This analysis was important to determine the South Australian interviewees' satisfaction with the current level of legal protection offered to the connection between food and origin. It was also important to determine their level of knowledge regarding GIs, and whether they were interested in having a food GI framework similar to the Australian wine GI framework. In particular, the basis of their interest in a food GI framework was analysed. In relation to the questions regarding the features that the interviewees considered important for a workable food GI framework, the answers were analysed to determine how regional food could be best connected to a region. This assessment was especially important given that the core purpose of a dedicated GI framework is to protect the link between product and place. Therefore, the analysis of the interviewee's answers as to how regional food is connected to origin was pivotal

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² The case study was conducted in accordance with Ethics Approval No HP-2013-075 provided by the University of Adelaide.

to ensure that the connection criteria that might ultimately be incorporated into an Australian food GI framework is practical.

KEY FINDINGS FROM THE CASE STUDY

The key findings made from as a result of the case study included:

1. All the South Australian interviewees have some knowledge of what a GI is, albeit to various degrees.
2. Most of the South Australian interviewees are dissatisfied with the current level of legal protection of the connection between food and origin. They would welcome clearer laws requiring a connection between food and origin before food provenance claims might be made on food products.
3. Most of the South Australian interviewees are interested in a food GI framework to provide legal protection to the connection between regional food and origin. Many of the interviewees would welcome a similar legal framework for food as the Australian wine GI framework.
4. Most of the South Australian interviewees are of the opinion that for regional food to be connected to origin its core ingredients must be locally sourced. Similarly, most of the interviewees believed most of the production and processing of a regional food product should take place within a region to ensure connection between regional food and origin. The last proposed method of connection that most of the interviewees considered should apply between regional food and origin, is if the regional food is made using traditional processes or method unique to a region. The uniqueness of the process and method used was regarded as critical in establishing this connection.
5. Lastly, most of the South Australian interviewees believe that a food GI framework should include the following features: be tailored to Australia's cultural, political and trading needs; be inclusive; be collaborative; have simple rules and criteria for producers to follow; include an education roll-out for consumers to understand what a legal food GI framework represents; be administered by one governing body; and be assisted with government funding.

UTILITY OF FINDINGS FROM THE CASE STUDY

The case study was very useful in providing insight into the basis of the regional food producers' opinions as to why Australia should implement a dedicated food GI framework. The findings from the case study have been used to provide valuable explanation and advice to Australian government and food industry as to how a food GI framework can be tailored to accommodate Australian food industry needs and ultimately protect against any further misuse of Australian regional names on food products that lack a clear and

strong connection with Australian regions. Moreover, the findings of the case study have been used as the basis of advice to Australian government entities, such as the Department of Foreign Affairs and Trade and Intellectual Property Australia, on a possible new Australian GI framework for foods and extension of current GI rights in Australia, as well as the improvement of Australian intellectual property laws. These have all been important considerations in recent times for the Australian government given the negotiations between Australia and the European Union on the AUS-EUFTA in which GI protection remains a prevalent negotiation issue.

CONCLUSION

Overall, the case study disclosed that most of the South Australian interviewees do consider that Australia should implement a dedicated GI framework. The interviewees would like to see the implementation of a similar framework in the food industry as the Australian wine GI framework to provide better regulation and protection of the connection between food and origin and of the value that exists in the names 'Barossa Valley' and 'Adelaide Hills,' than currently provided pursuant to existing laws.

References

- Dr Paula Caroline Zito, 2019, Australian Laws and Regulations on Regional Branding on Food and Wine Labels: Part 1, *Australian Intellectual Property Journal*, 29/2, 67, 90.
- Dr Paula Caroline Zito, 2019, Australian Laws and Regulations on Regional Branding on Food and Wine Labels: Part 2, *Australian Intellectual Property Journal*, 29/3, 127, 177.
- Dr Paula Caroline Zito, 2020, Protection of Australian Regional Names as Food Geographical Indications – South Australian Case Study: Part 1, *Australian Intellectual Property Journal*, 31/1, 43, 63.
- Dr Paula Caroline Zito, 2021, Protection of Australian Regional Names as Food Geographical Indications – South Australian Case Study: Part 2, *Australian Intellectual Property Journal*, 31/4, 242, 261.
- Dr Paula Caroline Zito, 2021, Current and Future Protection of Geographical Indications in Australia, *Journal of Intellectual Property Law & Practice*, 16/4-5, 348, 356.
- Dr Paula Caroline Zito, 2017, Geographical Indications: What is Their Worth? A Comparison of Geographical Indication Registrations Between Australia and Italy, Doctor of Philosophy, The University of Adelaide.