Report Q191
in the name of the German Group
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Relationship between trademarks and geographical indications

Questions

1) Analysis of current legislation and case law

1) Do your country’s laws have enactments or systems dealing specifically with GIs, e.g. a registration system for GIs? If so, what are the criteria of registrability? To which national authority must an application for protection be made? Does the applicant have the right to appeal against the refusal of the national authority to register a GI? If so, to which entity?

Until 1 January 1995, German law protected geographical indications by unfair competition law only. Pursuant to § 3 of the German Act on Unfair Competition (Gesetz gegen den unlauteren Wettbewerb – UWG) in its former version (now § 5 UWG), it was forbidden to use geographical indications in a misleading manner. Whether or not a specific use was misleading depended upon consumer expectation. So, if consumer understanding changed, a geographical indication could become a generic designation. Its use would no longer mislead.

Since 1 January 1995, the law relating to geographical indications has been integrated into the Trade Mark Act (Markengesetz – MarkenG). Geographical indications are signs (Kennzeichen) in the meaning of the Act (§ 1 MarkenG). Nevertheless, their protection continues to be in substance of an unfair competition nature as, according to the definition of § 126 para 1 MarkenG, geographical indications include only such denominations or signs used to identify the geographical origin of goods or services. If their purpose changes and such denominations become generic, they are no longer protected under Trade Mark Act.

Germany has no registration system for geographical indications.

These general principles, however, do not apply to a number of product categories. Many products are no longer governed by national law but by Community legislation. These product categories include:

– Geographical indications for wines are subject to the Regulation (EEC) No. 1493/99 dated 17 May 1999. Their protection does not refer to competition law and does not depend upon consumer understanding.


– Geographical indications for agricultural products and foodstuffs are protected and registered EU-wide under the Regulation (EC) No. 510/2006 of 20 March 2006. Their protection does not depend upon consumer understanding either. However, this Regulation only applies to denominations corresponding to the definitions of Art. 2 of the
Regulation, which, for example, do not cover simple geographical indications. Furthermore, the Regulation only applies to those geographical indications which have actually been entered into the register in Brussels (this issue is still under dispute).

- Specific geographical indications for cheese enjoy a statutory national protection which does not depend upon consumer understanding either.
- A special statutory protection exists for hop as well.
- Finally, special statutory provisions apply to steelware from Solingen.

2) What is the status of a GI in your country? Does the registration of a GI confer a property right? Who would be the rightholder of a GI? Can GIs be the subject of dealings such as assignment, mortgage and licensing?

Rights relating to geographical indications are similar to industrial property rights; however, they are no property or proprietary rights, since they have no individual owner or holder. The holders of a geographical indication are the persons who, in the respective specific area, produce or offer for sale goods or services which in their nature and quality correspond to the goods or services of that indication. This plurality of persons may form a collective body – either a corporate body or a body of persons – if the sign is registered as a collective mark, which is permitted pursuant to § 97 MarkenG or Art. 64 of the Regulation on the Community Mark (CTMR). The holder of the collective mark is the applicant, i.e. an incorporated association. However, the title to such collective mark is not absolute, to the extent that third parties who do not belong to the association are still permitted to use the geographical indication if they meet the applicable prerequisites.

As a collective mark, the geographical indication may be the subject of transactions, e.g. may be transferred to another association and may also be licensed to members of the association. However, a collective mark may not be pledged or seized.

3) Is the application for or registration of a GI made public in your country? Is it possible to oppose such application or registration or cancel such registration of a GI? If so, by whom and on what (absolute or relative) grounds (e.g. generic or descriptive term or prior trademark)?

Since a geographical indication cannot be as such subject of an application or registration, the questions listed under 3) are redundant. However, if a geographical indication is applied for and registered as a collective mark, it will be published pursuant to the provisions of trademark law. In such a case, it is possible to object application and registration and to request cancellation of the registration. This may be done on absolute and relative grounds. An absolute ground would be that the collective mark is not distinctive for constituting a collective mark, or that the geographical indication has become generic. Relative grounds may be manifold; they would not be linked to the geographical indication itself, but e.g. to the applying association.

4) Must use requirements be satisfied in order to maintain GI protection? If so, is there any definition of what constitutes use? Are the legal rules established for appraising the maintenance of a trademark registration applicable to the appraising of the maintenance of GI protection?

In principle, a geographical indication is not subject to any use requirement in order to conserve its character as a geographical indication. In some cases, however, it is conceivable that an imitative use by users who do not originate from the specific area which confers other qualities to the respective goods or services, triggers a development to the effect that the geographical indication is attributed another qualitative content, whereby it may even lose its character as a geographical indication and become a generic term. The use of a
geographical indication is defined in § 126 para 1 MarkenG to the extent that the geographical indication must be used “to identify the geographical origin of goods or services”. A use for other purposes than identification of goods or services would not be within the meaning of this provision. However, this definition is not aimed at maintaining the sign in its essence as geographical indication. The validity of a geographical indication is, as already explained, independent of its use. The definition is merely aimed at determining the content of the protection pursuant to § 127 MarkenG, as in commerce, geographical indications may not be used for goods or services which do not originate from that specific area. If geographical indications are used for other purposes, this does not infringe the scope of protection. To such extent, there is a parallel to trademark law.

5) What is the scope of protection of a GI? Is it only protected against use of the name or also against use of elements of the specification of the GI (e.g. slicing, grating) or any other practice liable to mislead the public as to the origin of the product (e.g. use of same trade dress)? Are the legal rules established for determining the scope of trademark protection applicable to determining the scope of GI protection (e.g. in relation to reputed or well-known GIs, likelihood of confusion, infringing and non-infringing acts)? May rights in a GI be enforced even where a product which allegedly infringes those rights has been made purely for export?

The scope of protection of geographical indications is defined by § 127 MarkenG. In commerce geographical indications may not be used for goods or services which do not originate from the place, the area or the country specified by the geographical indication, if the use of such name, indication or sign for goods or services of another origin would be misleading as to their geographical origin.

The scope of protection of § 127 para 1 MarkenG applies to all geographical indications, i.e. to the simple ones, the qualified ones and also to the indications of origin in the meaning of Art. 2 para 2a of the Regulation 510/2006. All geographical indications are thus protected against misleading use. However, the German Supreme Court (Bundesgerichtshof – BGH), in some judgments, has ruled that in the case of simple geographical indications, a misleading use could be tolerated in specific cases considering all relevant circumstances (BGH GRUR 2002, 160 – Warsteiner III; GRUR 2002, 1074 – Original Oettinger). In this respect, however, there is not yet a consistent case law.

Furthermore, pursuant to § 127 para 2 MarkenG, qualified geographical indications are protected against being used in commerce for goods or services which, though having the same origin as the protected goods or services, do not feature the required quality.

Finally, the law provides a special protection for geographical indications with a particular reputation (§ 127 para 3 MarkenG). These geographical indications may not be used in commerce for goods or services of another origin even if such use does not involve any risk the public being misled, but if the use of such geographical indications for goods or services of another origin could exploit or negatively affect the geographical indication’s reputation or distinctive power in an unfair manner without justifying grounds. Thus, geographical indications with a particular reputation are also protected against the so-called danger of dilution.

Pursuant to § 127 para 4 MarkenG, also the use of names, indications or signs is forbidden which are similar to the protected geographical indications; complements aimed at “delocalising” the geographical indication may not be used either, provided that such complement does not, in case of simple geographical indications, eliminate the risk of the public being misled, or, in case of geographical indications with a particular reputation, the danger of exploiting or negatively affecting their reputation or distinctive power.
Whether a use of elements of a specification can be objected – provided that such specification, i.e. a precisely established description of the geographical indication’s quality, exists – depends in each individual case upon whether such use is misleading or affects the reputation of the geographical indication. Insofar, principles of trademark law may be considered to the extent that similar provisions apply to a reputed trademark (§ 14 para 2 No. 3 MarkenG). The rights conferred by a geographical indication may also be enforced if the product is destined for export only. This results from general principles of law, i.e. from a recourse to the principle of § 14 para 4 No. 3 MarkenG, or from the general provision of § 1004 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), pursuant to which the rightholder may be entitled to injunctive relief already if there are reasons to expect an infringement of the right to materialize.

6) Can a GI be registered as individual trademark? If so, under what conditions?

Geographical indications cannot be registered as individual trademarks. § 8 para 2 No. 2 MarkenG excludes trademarks from registration which exclusively consist of marks or indications that may serve in commerce to designate the geographical origin of the goods or services included in the application.

The application of this ground for refusal in court practice underwent several changes. Earlier judgments applied the prohibition to register geographical indications as trademarks in a relatively strict manner. According to this doctrine, such indication was excluded from registration as a trademark not only in cases where the goods or services claimed were indeed produced and offered for sale in the designated area and the geographical indication was used and needed. Registration was also refused when a respective development of economic conditions seemed possible, i.e. could not be excluded. Accordingly even rather unknown geographical denominations or denominations which, though being known in commerce, were not known in connection with the goods or services claimed faced such obstacle to protection. Based on these principles, e.g. registration of the designation “Samos” as a trademark for electronic data processing equipment was refused (BGH GRUR 1970, 311, 314 – Samos; cf. also BGH GRUR 1963, 469, 470 – Nola).

As from the 1980s, the registration practice changed as absolute grounds for refusal were interpreted in a more restrictive manner. Courts began to require secure and concrete clues for the fact that the location or the area concerned could be seriously taken into consideration as a geographical indication for the goods or services included in the application (BGH GRUR 1983, 768, 769 – Capri–Sonne). This led to registration of numerous geographical indications as individual trademarks.

In contrast, the European Court of Justice, in its “Chiemsee” judgment concerning Art. 3 para 1 lit. c of the trademark Directive No. 89/104 EEC, issued on 4 May 1999, pointed out that, besides the current circumstances, the fact had to be taken into account whether or not a descriptive use of the geographical indication could be reasonably expected in the future. The Court of Justice expressly ruled that the liberal German practice according to which – as described above – a registration was only refused if a concrete, current and serious need to keep the designation free for another use could be evidenced, was not compatible with the Directive No. 89/104 (ECJ, Case C–108, GRUR 1999, 723, 726 [Nos. 31, 35] – Chiemsee). This is why current registration practice again comes closer to the earlier case law mentioned before [cf. e.g. BGH GRUR 2003, 882 – Lichtenstein [not registrable for pharmaceutical products]; Federal Patent Court [Bundespatentgericht – BPatG] GRUR 2005, 677 – Newcastle [not registrable for tea]; BPatG GRUR 2000, 149 – Wallis [not registrable for cosmetic products]].
Therefore, apart from exceptional cases, geographical indications may be registered as individual trademarks only if the applicant can evidence – in particular by means of a market survey – that the indication has become known in commerce as the trademark of the applicant (§ 8 para 3 MarkenG). So, for instance, the geographical names “Warsteiner” and “Jever” were registered as trademarks having acquired secondary meaning as trademarks for beer.

7) Do your country’s laws provide for collective or certification marks? If so, under what conditions can a GI be registered as a collective mark or a certification mark?

German law provides for the registration of collective marks (§§ 97 f. MarkenG). Particular provisions for certification marks do not exist. However, the legal definition of a collective mark is so broadly drafted that it may also include certification marks. Only incorporated associations or public corporations may be holders of a collective mark.

A particular provision deals with geographical indications. According to § 99 MarkenG, collective marks may, divergent from the rule of § 8 para 2 No. 2 (cf. question No. 6), exclusively consist of signs which in commerce may serve to designate the geographical origin of these goods or services. Insofar German law has made use of the option of Art. 15 para 2 1st Sent. of the Directive No. 89/104. The other absolute grounds for refusal, however, also apply to collective marks representing a geographical indication. So, for instance, the required distinctiveness must be given (§ 8 para 2 No. 1 MarkenG). But it cannot be required that the collective mark individualizes the goods or services claimed according to their origin of a specific trader. It suffices that the collective mark is capable to distinguish the goods or services of the holder’s members as to their commercial or geographical origin, type, quality or other characteristics from the goods or services of other companies (BGH GRUR 1996, 270, 271 – Madeira). Registration of a collective mark is also excluded if the geographical indication has become a generic term (§ 8 para 2 No. 3 MarkenG).

The application for a collective mark must include a statute setting out, among others, the conditions for the use of the collective mark (§ 102 para 1, para 2 No. 5 MarkenG). If the collective mark consists of a geographical indication, the statute must provide in addition that any person whose goods or services originate from that specific area and meet the conditions for use of the mark may become a member of the association and must be admitted to use the mark (§ 102 para 3 MarkenG).

8) Does inclusion of a protected GI as part of a trademark qualify as legal bar to the registration of such trademark?

It is not rare that trademark applied for contain a geographical indication. In principle, this does not exclude registration as long as it can be assumed that the trademark does not “exclusively” contain such an indication (within the meaning of § 8 para 2 No. 2 MarkenG, cf. question 6). There are exceptions to this principle:

a) § 8 para 2 No. 6 MarkenG prohibits the registration of trademarks “containing” a national coat of arms, national flags or other emblems of sovereignty or the coat of arms of a national town or association of municipalities or the imitation of such sign. Since the aforementioned signs are simultaneously (indirectly) geographical indications, this proviso constitutes a ground for refusal over and above § 8 para 2 No. 2 MarkenG for signs which, though not exclusively consisting of such an indirect geographical indication, contain such a designation.

b) Furthermore, § 8 para 2 No. 9 MarkenG excludes signs from registration the use of which can be obviously forbidden in the public interest under other regulations. Such regulations can be found in particular in bilateral agreements on the protection of geographical indications concluded by Germany with certain other states (Cuba, France,
Greece, Italy, Spain and Switzerland). The prohibition of use provided in these agreements may also apply if a protected geographical indication is only part of a trademark.

c) Finally, Art. 14 para 1 Regulation (EC) No. 510/2006 (formerly Art. 14 para 1 Regulation (EEC) No. 2081/92) must be mentioned. Pursuant to this (directly applicable) Regulation, trademarks may not be registered which infringe a geographical indication or indication of origin that has an earlier priority and is protected on European level pursuant to said Regulation. A case of infringement under the Regulation may be given if the protected indication is only one part of the trademark.

9) Do your country’s laws, e.g. trade or merchandise legislation, require the application of correct designations of origin/source on agricultural products and food-stuffs?

Apart from the general provisions of §§ 126 f. MarkenG there are numerous special regulations, in particular for agricultural products and foodstuff which are meant to ensure that geographical indications are used in a correct and not misleading manner. However, these regulations only stipulate “how” geographical indications are allowed to be used and not “if” they may be used at all. A general obligation to designate the geographical origin of such products is only given to the extent that, without such an indication, an error of the consumer on the actual or true origin of a foodstuff would be possible (Art. 3 para 1 No. 8 Labelling Directive 2000/13/EC). In addition, the geographical origin must always be indicated for specific goods, e.g. for wine, pursuant to Annex VII to Regulation (EC) No. 1493/1999, in certain cases for honey or also for hop pursuant to the relevant law of the German states (Bundesländer).

10) How are conflicts between trademarks and GIs resolved under your country’s laws? Do they co-exist or does either the trademark or GI prevail? Is there a rule for determining whether the trademark or GI should prevail, and what are the criteria to take into account (e.g. the “first in time, first in right”-rule, the reputation of the geographic region or the reputation of the trademark, the length of time that the name has been used to indicate the geographic region and the extent of such usage, the length of time that the trademark has been used and the extent of such usage)?


a) Pursuant to § 13 para 1, para 2 No. 5 MarkenG, geographical indications are (besides constituting absolute grounds for refusal, cf. questions 6 and 8) relative grounds for refusal of trademarks. Such relative obstacles to protection must be enforced by means of an action for cancellation before civil courts, and not in cancellation proceeding with the Patent and Trademark Office (§§ 51, 55 MarkenG). The competitors of the trademark owner, certain associations promoting commercial and industrial interests, qualified consumer associations as well as certain corporations under public law are entitled to bring such an action.

The substantive prerequisite for the cancellation claim is that such right of action has been acquired before the date of priority of the trademark (prior rank in time) and entitles the rightholder to prohibit the use of the trademark in the whole territory of Germany. Whether the use of the trademark infringes a geographical indication depends upon the provisions of §§ 126 and 127 MarkenG (cf. question 5). If this is the case, § 128 para 1 MarkenG confers to the rightholder an injunctive relief that can be enforced throughout the country.
What is problematic in this connection is the law’s requirement that the geographical indication must have a prior rank in time to the trademark. Since protection of geographical indications has been designed as a protection against misuse under competition law and not as a subjective right (cf. question 2), geographical indications basically have no rank in time at all. In order to prevent such cancellation claim from being unenforceable, it must be assumed that the priority of the geographical indication has been established by virtue of its first legitimate use in domestic commerce (Ingerl/Rohnke, Markengesetz, 2nd edition 2003, § 13, Note 11; Ströbele/Hacker, Markenrecht, 8th edition 2006, § 13 Note 29). In the case of unused geographical indications, a cancellation claim may also be based on the provisions of the laws against unfair competition.

Further provisions concerning the relation between trademarks and geographical indications can be found in § 23 No. 2 MarkenG which, to the extent as it deals with registered trademarks, is based on Art. 6 para 1 lit. b of Directive 89/104 EC. Pursuant to these provisions, the holder of a trademark is not entitled to forbid third parties to use in commerce signs indicating the geographical origin of goods or services which are identical with or similar to that trademark, if such use is not contrary to honest practices. In such a case, however, the user of the geographical indication must refrain from doing anything which would be unfairly contrary to the legitimate interests of the trademark owner (ECJ, Case C–100/02, GRUR 2004, 234, 235, No. 24 – Gerolsteiner/Putsch; Case C–245/02, GRUR 2005, 153, 157 (No. 82) – Anheuser Busch/Budvar). The simple fact that the user of the geographical indication uses it like a trademark does not mean that this is contrary to fair practices. Neither does the existence of a risk of confusion cause the use of the geographical indication to be contrary to honest practices.

In this connection, § 100 para 1 MarkenG (cf. Art 15 para 2 phrase 2 Directive 89/104 EC) must be mentioned as well. Pursuant to this provision, the registration of a geographical indication as a collective mark does not confer its holder – in addition to the limitations of § 23 MarkenG – the right to forbid third parties to use such indication in commerce, if such use is not against honest practices and contrary to § 127 (cf. question 5).

b) Diverging regulations on the relationship between trademarks and geographical indications can be found in Regulation (EC) No. 510/2006 (formerly Regulation (EEC) No. 2081/92) for the designations of origin and geographical indications protected under this Regulation.

As already mentioned, under European law a geographical indication constitutes an absolute ground for refusal of a trademark which has a later priority (Art. 14 para 1 Regulation 510, cf. question 8c).

As far as trademarks with an earlier priority are concerned, the following distinction applies: under specific, rather tight prerequisites, trademarks with an earlier priority can be a mandatory obstacle to the protection of geographical indications under EU law. Pursuant to Art. 3 para 4 of Regulation 510 (formerly Art. 14 para 3 of Regulation 2081), a geographical indication must be refused protection under EU law if the reputation that the earlier trademark enjoys or the degree of recognition of its name and the duration of its use could lead to consumers being misled as to the true identity of the product to be designated by the geographical indication. However, the high requirements of this Regulation may hardly avoid conflicts with earlier trademarks.

In addition, trademarks enjoying an earlier priority may also be invoked in the registration procedure of geographical indications both at the national level and by means of an opposition (Art. 7 para 3 Regulation 510). Apart from the mentioned cases of Art. 3 para 4 Regulation 510/2006, this does not mandatorily lead to the protection of geographical indications being refused (cf. Art. 7 para 5 Regulation 510/2006).
If a geographical indication collides with an earlier trademark under these provisions, the collision rule of Art. 14 para 2 Regulation 510/2006 will apply. Diverging from the priority principle, this rule assumes that the geographical indication prevails over an earlier trademark which is now deemed to infringe the geographical indication. However, Art. 14 para 2 Regulation 2081/92 provided for a far-reaching right of owners of earlier trademarks acquired in good faith to continue the use of their trademarks. The new version of Art. 14 para 2 510/2006, effective as from 1 April 2006, limits this right to continued use to those trademarks which were applied for, registered or acquired by use in good faith before 1 January 1996. This limitation probably also concerns trademarks which were applied for after 1 January 1996 but had the right to co-exist with the conflicting geographical indication before 1 April 2006.

II) Proposals for adoption of uniform rules

The Groups are invited to put forward any proposals for adoption of uniform rules regarding the relationship between trademarks and GIs. More specifically, the Groups are invited to respond to the following questions:

11) Should countries provide for registration systems dealing specifically with GIs? If so, what should the key features of such system be? Should a multilateral system of registration of GIs be established? If so, what should the key features of such multilateral system be? Specifically, which international body should be tasked with establishing such system? How should the application for or registration of a GI be notified/made public (either in your country or at a multilateral level) in order to avoid that a trademark may conflict with a GI previously unknown to the trademark owner?

The protection of geographical indications may be used as an instrument to pursue and promote interests of economic policy. This creates the risks that registration systems solve conflicts between geographical indications and trademarks and tradenames, in particular with respect to their rank in time, to the detriment of holders of private exclusive rights in signs. For this reason, an unfair competition approach to the protection of geographical indications aimed at preventing the public to be misled and enabling the judge to consider all circumstances of the individual case seems to be appropriate. The experience made in Germany shows that the competition law approach also allows to take the particular need of protection for specific geographical indications – of qualified geographical indications and appellations of origin – into account. The protection available under competition law may be completed by offering to producers interested in the protection of their geographical indication the registration as collective marks.

For the same reason, the creation of a multilateral registration system does not seem desirable. In may be mentioned in this context that earlier efforts to strengthen the protection of geographical indications at the international level failed during the last negotiations on a revision of the Paris Convention at an early stage and that the TRIPS Agreement seems to reflect the Members’ reservations as to a strengthening of the international protection of geographical indications.

12) Do you have any suggestions as to the acquisition, maintenance, scope and enforcement of GI protection? What should the scope of protection of a GI be? Should the legal rules established for appraising the acquisition, maintenance, scope and enforcement of trademark protection apply to the appraising of the acquisition, maintenance, scope and enforcement of GI protection?

In the case of a protection of geographical indications under competition law, beginning, end and scope of protection depend upon consumer expectation. The application of principles governing trademark law is, as a matter of principle, justified for the geographical indications protected as collective marks only.
13) Should a protection of GIs by individual and/or collective or certification marks be possible?

German law allows a protection of geographical indications by collective marks (cf. above No. 7). German law does not provide for a special protection of certification marks; however, such marks may meet the prerequisites for registration as collective marks.

The protection of geographical indications by collective marks has proved itself in Germany and should be maintained.

Geographical indications may be registered as individual trademarks as well. In principle, however, the registration of geographical indications as individual trademarks is prevented by an absolute statutory obstacle to registration (§ 8 para 2 No. 2 MarkenG, Art. 3 para 1 lit. c Directive 89/104). However, this obstacle may be overcome if the sign has acquired distinctiveness through use (§ 8 para 3 MarkenG, Art. 3 para 3 Directive 89/106 EC).

This protection, too, has proved itself in German practice and should be maintained.

14) How should conflicts between trademarks and GIs be resolved? Please propose a specific rule for determining whether trademark or GI should prevail, which is likely to be broadly accepted. If co–existence is contemplated, should such co–existence be limited to the country of origin or relate to the relevant markets?

a) Under German law, a conflict between a trademark and a geographical indication is solved according to the priority rule (§§ 13 para 2 No. 5, 6 MarkenG). Priority is given to the earlier right.

Co–existence in the sense of an equal ranking is possible between a trademark and a geographical indication if both rights have the same date of origin (§ 6 para 4 MarkenG). Cases of an indirect co–existence are conceivable in similarity conflicts which may be solved by limiting the scope of protection by agreement or by law.

The priority rule governs the whole field of law; Art. 4 para 2, Art. 6 para 2 Directive 89/104 and Art. 16 para 1 p. 3, Art. 24 para 5 TRIPS are based on this principle (ECJ, Case 245/02, Nos. 97 s. – Anheuser–Busch/Budvar). Therefore, any other rule on the collision of trademarks and geographical indications which would grant the priority either to the trademark or to the geographical indication, is not conceivable.

b) The TRIPS Agreement does not prevent bilateral and multilateral agreements aimed at extending the territorial area of protection of geographical indications (Art. 24 para 1 TRIPS). The Members of the Agreement are prepared to consider the applications of this priority rule to such agreements as well (Art. 24 para 1 p. 3 TRIPS).

In the Member States of the European Convention on Human Rights, trademark rights are protected as property pursuant to Art. 1 of Protocol No. 1 to the Convention (ECHR, Case No. 73049/01 – Anheuser–Busch/Portugal). It is justified to claim that the priority rule should apply also for any extension of protection of geographical indications under bilateral or multilateral agreements.

Summary

Unless special regulations of national or European law or bilateral agreements apply to specific product categories, German law grants to geographical indications an essentially unfair competition protection which has been entered into the Trademark Act in force since 1 January 1995. Simple geographical indications are protected against misleading use as to their geographical origin. Qualified geographical indications are protected in addition against misleading use as to the quality of the designated goods or services. The protection of geographical indications with a particular reputation (appellations of origin) extends to all cases of exploitation of and prejudice to such reputation.
Geographical indications may also be protected under trademark law, i.e. as collective marks and, in case they have acquired secondary meaning through use, as individual trademarks.

The German Group believes that conflicts between geographical indications and trademarks or protected signs should be solved according to the priority rule, both at the national and the international level.

The German Group is of the opinion that for the legal protection of geographical indications preference should be given to systems based on unfair competition rules rather than to registration systems.

Résumé

Le droit allemand accorde traditionnellement aux indications géographiques une protection contre la concurrence déloyale. Depuis le 1. janvier 1995 cette protection est réglée dans le cadre de la loi des marques. Pour certains groupes de produits s'appliquent des règles spéciales du droit national, communautaire ou des traités bilatéraux. Les indications géographiques simples sont protégées contre la tromperie sur l'origine géographique. Les indications géographiques qualifiées sont en plus protégées contre la tromperie sur la qualité. La protection d'indications géographiques de haute renommée (appellations d'origine) s'étend aux cas d'exploitation et de nuisance à la renommée.

Les indications géographiques peuvent aussi être protégées sous la loi des marques, à savoir comme marques collectives et comme marques individuelles si elles se sont imposées dans le commerce.

Le Groupe Allemand estime que les conflits entre les indications géographiques et les marques et tout autre signe distinctif doivent être résolu sur la base du principe de priorité dans le cadre national tant que dans le cadre international.

Le Groupe Allemand est d'avis que pour la protection des indications géographiques un système basé sur les principes de la protection contre la concurrence déloyale est préférable à un système d'enregistrement.

Zusammenfassung


Geographische Herkunftsangaben können auch markenrechtlich geschützt werden, nämlich als Kollektivmarken und, im Falle nachgewiesener Verkehrsdurchsetzung, als Individualmarken.

Die Deutsche Landesgruppe ist der Ansicht, dass Konflikte zwischen geographischen Herkunftsangaben und Marken oder sonstigen Kennzeichnungsrechten sowohl im nationalen als auch im internationalen Bereich nach dem Prioritätsprinzip gelöst werden sollten.

Die Deutsche Landesgruppe ist der Ansicht, dass wettbewerbsrechtlichen Schutzsystemen gegenüber Registrierungssystemen der Vorzug zu geben ist.