

Protecting GIs through EU collective marks

Worldwide Perspectives on Geographical Indications

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Overview

- I. EU collective mark protection for geographical indications
- II. Shortcomings of the EU collective mark system
 - a. Associations of producers
 - b. No causal link required
 - c. Function of collective marks
 - d. Distinctive geographical collective marks
- III. Recommendations

Part I

EU collective mark protection for GIs



EU geographical collective marks

- Art. 74.2 EUTMR: collective marks
 - Derogation from absolute ground of refusal Art. 7.1.c EUTMR (indications that designate geographical origin)
- Very **limited** number (ECTA 2021)
- Protection of **figurative signs**
- Goal: enhanced protection against counterfeit products in markets beyond the EU (Wirsig, Heisrath 2021)



Part II

Shortcomings of EU collective mark systems



Associations of producers

- **Art. 74.1. EUTMR:** “associations of manufacturers, producers, suppliers of services, or traders [...] as well as legal persons governed by public law”
- **Guidelines** Part B Chapter 15:
 - private associations with a common purpose or interest
 - own legal personality and capacity to act
 - private companies cannot be the owner of an EU collective mark unless it shows that its **internal structure is of an associative nature**
- **Consequence**
 - No guarantee that applicant group represents the entire producer group of the product/services concerned

No causal link required

- Regulations governing use ([Art. 75.1 EUTMR](#), [Art. 16 EUTMIR](#)) do not require establishing link with origin
 - “given quality, **reputation** or other characteristic is **essentially attributable** to geographical origin” ([Art. 5 Reg 1151/2012](#))
- **Consequences**
 - Collective marks cannot guarantee a close link between the product and geographic origin
 - Non-compliance with [TRIPS Agreement](#) (definition of the link) and [Geneva Act](#) (protection against evocation, prohibition for GIs to become generic)

Function of collective marks

“a Community collective mark is a sign allowing goods or services to be distinguished according to which association is the proprietor of the mark and not according to their geographical origin”

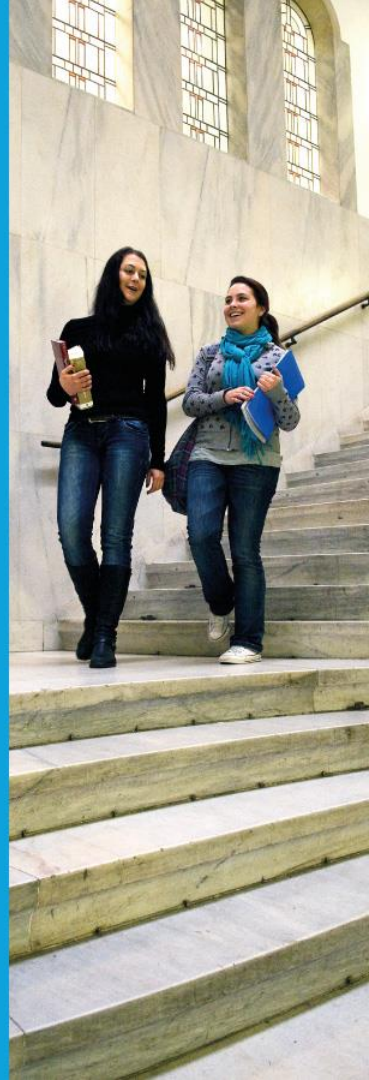
(CJEU Darjeeling para. 41)

- **Scope of protection** limited to confusion against commercial origin
 - Gls: guarantee to consumers geographic origin and qualities inherent in them
 - Collective marks: distinguish goods from members of association from those of other association or members
- **Genuine use** in relation to trade marks function – not to certify certain standards (CJEU Grüne Punkt)

Distinctive geographical collective marks

- CJEU *Darjeeling, Halloumi v Bbqloumi*: a geographical collective mark has weak distinctive character
- Important **determining factors**
 - “elements which enable the consumer to distinguish the goods or services of its members from those of other” (*Halloumi v Bbqloumi*)
 - Distinctive character **through use** (where applicable)
 - Need for **composite** marks
- **Consequences** for scope of protection
 - CJEU: all factors including similarity of goods/services need to be taken into account
 - Weak distinctive character nevertheless reduces likelihood of confusion

Recommendations



Recommendations

- Collective marks currently do not serve as an alternative to GI protection but as **additional protection**
 - Focus on figurative and composite marks
 - Protection for geographical names instead of causal link
- **For alternative protection**, changes would be needed:
 - Require **evidence** of representation of entire producer group
 - Add requirement for geographical collective marks to show **link** with origin
- Otherwise, allow **certification marks** for geographical indications
 - Guarantee **function** – different from collective marks

Thank you for your attention!



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