The enforcement of Geographical Indications

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European Observatory on infringements of IPR
Alicante – 30.10.2018
www.ipkey.eu
1 Economic impact of fake GIs in the EU
2 The EU rules to protect GIs
3 The national enforcement of GIs
4 Border protection of GIs and the role of Customs
5 Enforcement of GIs and exchange of information
1 ECONOMIC IMPACT OF FAKE GIs IN THE EU

<table>
<thead>
<tr>
<th>GI SPIRITS</th>
<th>Registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>PDO</td>
<td>1781</td>
</tr>
<tr>
<td>PGI</td>
<td>1167</td>
</tr>
<tr>
<td>TSG</td>
<td>59</td>
</tr>
<tr>
<td>total</td>
<td>3345</td>
</tr>
</tbody>
</table>

Source: QUALIGEO.EU, the food, wine and spirits GI database
https://www.qualigeo.eu
Value of GI infringing products (2014)

<table>
<thead>
<tr>
<th>VALUE (€billion)</th>
<th>% OF GI PRODUCT MARKET</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3</td>
<td>9.0%</td>
</tr>
</tbody>
</table>

Data from 17 MS representing approximately 82% of the EU GI product market
Infringement rates vary considerably by GI product

<table>
<thead>
<tr>
<th>Product</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPIRITS</td>
<td>12.7%</td>
</tr>
<tr>
<td>FRUITS, VEGETABLES AND CEREALS</td>
<td>11.5%</td>
</tr>
<tr>
<td>FRESH MEAT AND MEAT PRODUCTS</td>
<td>11.0%</td>
</tr>
<tr>
<td>CHEESES</td>
<td>10.6%</td>
</tr>
<tr>
<td>WINES</td>
<td>8.6%</td>
</tr>
<tr>
<td>BEERS</td>
<td>0.1%</td>
</tr>
</tbody>
</table>
### «INFRINGEMENTS OF GEOGRAPHICAL INDICATIONS»

**Impact on spirits and wines sector**

**2012-2015**

<table>
<thead>
<tr>
<th></th>
<th>DIRECT LOST SALES (€billion)</th>
<th>% OF SALES</th>
<th>TOTAL LOST SALES (€billion)</th>
<th>DIRECT EMPLOYMENT LOSS</th>
<th>TOTAL EMPLOYMENT LOSS</th>
<th>GOV. REVENUE LOSS (€billion)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2.7</td>
<td>6.9%</td>
<td>6.3</td>
<td>7,100</td>
<td>41,000</td>
<td>2.2</td>
</tr>
</tbody>
</table>
2 THE EU RULES TO PROTECT GIs

• Approach to protection
  o **GI as «sui generis» IP rights**
  o EU/national collective marks or national certification/guarantee marks
  o under other legal framework (e.g.: competition laws, consumers protection, etc.)
• 2 level organisation

common framework

controls implementation & reporting

national implementation
• Protected products: foodstuff and agricultural, wines, spirits and aromatised wine drinks

• **EU products** and **GI protected products from third Countries**
  - upon registration in the EU – special scheme provided
  - based on bilateral/multilateral agreements
• Scope of the protection

  o any direct or indirect commercial use of the registered name
  o any misuse, imitation or evocation
  o any other false or misleading indication as to the origin, provenance, nature or essential qualities
  o any other practice liable to mislead the consumer as to the origin of the product
• Scope of the protection
  
  o «Ex officio» measures: a qualifying tool  
  Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of the name of products that are produced or marketed in the State

  - open category of measures
  - independently of prior claims
  - support to small producers
  - for all GI products across the EU
• controllers

National central authority

designated competent authorities (CA)
- impartial and objective
- qualified staff
- necessary resources

delegated control bodies (CB)
- usually private entities
- operating as certification bodies
- ISO/IEC 17065:2012
- only on production
Control bodies – Spanish practice: the Consejos Reguladores

Example in Aragon (Law No 9/2006):
- Public corporation with autonomous legal status and finance
- Tasks
  - administration
  - proposal of minimum requirements for each associated producer
  - can act as control body (ISO/IEC 17065:2012 compliant):
    - via a control structure integrated in the Consejo
    - the Consejo itself upon authorisation of the Community
- under the Community’s supervision (incompliances and control of legality of acts)
• Control bodies – Italian practice: the **Consorzio di produzione**

Administrative entity created by the producers – legal framework in the civil code

- common organisation of enterprises
- composition:
  - representation
  - rules against conflicts of interest
- tasks include **special surveillance on the market through the “agenti vigilatori”**
  - production-transformation-trade, at all levels
  - can act as “public security agents”
  - directly supporting the national control authority – **ex officio** protection
• Official controls
  o it’s a voluntary system of control on all operators in the group of producers
  o compulsory for all operators once they use the name
  o based on a national plan of controls shared with the Commission
• Official controls

**PRODUCTION**
- Technical compliance with product specifications
- usually upon a plan agreed with the g.o.p.
- costs

**MARKET**
- Surveillance of the use of the name
- risk analysis based/systematic in the whole supply chain

**Methodology:**
- sampling
- analytic and/or organoleptic tests
3 THE NATIONAL ENFORCEMENT OF GIs

- A good enforcement largely depends on an equivalent level of protection ensured across all the territory of the Union

- Different approaches in MSs to high quality food products for historical and traditional reasons

- Different economic weight of GI in MSs

Need to monitor...
• 2017: EUIPO’s Study on national enforcement

The scope:
- 4 product categories
- IP: strictly GI in the TRIPP definition
- infringements

The structure:
- Inventory of organisations and procedures
- Practical Guide: contact data for networking and information on legal redresses

The methodology:
- data collection from Member States
- open sources and field research
• 2017: EUIPO’s Study on national enforcement

- National systems are diverse
- Procedures and resources not always specifically for GI - general food controls apply
- Criminal Law
  - majority with specific GI criminal provisions
  - other covered by IP crime law
- Civil law remedies
  - trade mark law
  - unfair competition
  - consumer protection
• 2017: EUIPO’s Study on national enforcement

- «Ex officio» protection, a weak point
- ...but some have very good practices
  - Italy, France, Germany, Spain, Latvia, Croatia, Poland, Romania, Hungary bigger respondents
  - Italy best practices:
    - central c.a. ICQRF legally designated for ex officio measures
    - MoUs with e-commerce platforms eBay, Alibaba and Amazon – take down of listing – very quick reply after request
4 BORDER PROTECTION OF GIs AND ROLE OF CUSTOMS

- 2017: EUIPO’s Study on national enforcement
  - What is the real involvement of law enforcement authorities (Police and Customs) on GIs?
  - Customs: is there a sufficient protection at the borders?
Fake food products in international trade is a reality

Source: DG TAXUD Report on EU customs enforcement of IPR – results at the EU border 2017
26 January 2017: The Italian Prosecutor Office of Reggio Calabria (Anti-Mafia District Directorate) announces an operation (including collaboration of Italian Customs) against Organized Criminal Group with basis in Italy and connections with the USA.

Money laundering
Drug trafficking
Agri-food counterfeiting
The criminal activities included illegal import-export operations of olive oil and agricultural products:
- influencing the regional agri-food production
- establishing a network for export to USA of counterfeited olive oil
- US commercial and retail network infiltrated with illegal Italian olive oil products
- and much more...

46 million euro seized at the time of the operation
EU Customs role in IPR enforcement

- IPR holders proactive role: an «application for action» needed with all info
- IP rights in % of articles seized in 2017: 0.04% of GI

Source: DG TAXUD Report on EU customs enforcement of IPR – results at the EU border 2017
5 ENFORCEMENT OF GIs AND EXCHANGE OF INFORMATION

- Information provided by the IPR holder is key:
  - product description – authentic and fake
  - IP information
  - legal supply chain
  - black list of infringers
  - contact data of the company

«application for action»
<table>
<thead>
<tr>
<th>12 (*). Goods details</th>
</tr>
</thead>
<tbody>
<tr>
<td>IP right no:</td>
</tr>
<tr>
<td>Goods description:</td>
</tr>
<tr>
<td>CN tariff number:</td>
</tr>
<tr>
<td>Customs value:</td>
</tr>
<tr>
<td>European average market value:</td>
</tr>
<tr>
<td>National market value:</td>
</tr>
</tbody>
</table>

- **Authentic goods**
- Including get-up and graphic symbols as well as images of the goods.

<table>
<thead>
<tr>
<th>13 (*). Goods distinctive features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Position on the goods:</td>
</tr>
<tr>
<td>Description:</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- Such as markings, labels, security threads, holograms, buttons, hangtags and bar-coding.

<table>
<thead>
<tr>
<th>14 (*). Place of production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country:</td>
</tr>
<tr>
<td>Company:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Town:</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___

<table>
<thead>
<tr>
<th>15 (*). Involved companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Role:</td>
</tr>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Town:</td>
</tr>
<tr>
<td>Postal Code:</td>
</tr>
<tr>
<td>Country:</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___
- **Authorised importers, suppliers, manufacturers, carriers, consignees or exporters**

<table>
<thead>
<tr>
<th>16 (*). Traders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
<tr>
<td>Postal Code:</td>
</tr>
<tr>
<td>Country:</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___
- Persons or entities authorised to trade in products involving the use of the IPR(s)

<table>
<thead>
<tr>
<th>17. Goods clearance details and distribution information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Channels of distribution (central warehouses, dispatch departments, means of transport, transport routes and delivery) and customs procedures and offices</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___

<table>
<thead>
<tr>
<th>18. Packages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kind of packages:</td>
</tr>
<tr>
<td>Number of items per package:</td>
</tr>
<tr>
<td>Description (incl. distinctive features):</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___
- Kind of packages, typical features of the packages (markings, labels, security threads, holograms, buttons, hangtags, bar-coding, ...), special package designs (colour, shape), images

<table>
<thead>
<tr>
<th>19. Accompanying documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of document:</td>
</tr>
<tr>
<td>Description:</td>
</tr>
</tbody>
</table>

- **Restricted handling**
- See enclosed annex no ___
- Documents accompanying the authentic goods, such as brochures, operating instructions, warranty documents, ...
20. **Goods details**
   - **IP right no:**
   - **Goods description:**

   **Restrict handling**

   - **CN tariff number:**
   - **Minimum value:**

   **See enclosed annex no.**

21. **Goods distinctive features**
   - **Position on the goods:**
   - **Description:**

   **Restrict handling**

   **See enclosed annex no.**

22. **Place of production**
   - **Country:**
   - **Company:**
   - **Address:**
   - **Town:**
   - **Postal Code:**

   **Restrict handling**

   **See enclosed annex no.**

23. **Involved companies**
   - **Role:**
   - **Name:**
   - **Address:**
   - **Town:**
   - **Postal Code:**
   - **Country:**

   **Restrict handling**

   **See enclosed annex no.**

24. **Traders**
   - **Name:**
   - **Address:**
   - **Town:**
   - **Postal Code:**
   - **Country:**

   **Restrict handling**

   **See enclosed annex no.**

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**Including get-up and graphic symbols as well as images of the goods**

**such as markings, labels, security threads, holograms, buttons, hangtags and bar-coding**

**Known or suspected place of origin, provenance and delivery of the infringing goods**

**Importers, suppliers, manufacturers, carriers, consignees or exporters who are suspected of being involved in infringements of the relevant intellectual property rights**

**Persons or entities not authorized to trade in products involving the use of the IPR(s) for which enforcement is sought and who have been trading the products in the Union in the past**
### Goods distribution information

Information on channels of distribution of the infringing goods (warehouses, dispatch departments, means of transport, transport routes, places of delivery, ...) and on customs procedures and offices where the clearance of the infringing goods is carried out.

- Box: Restricted handling
- See enclosed annex no: ___

### Packages

- Box: Restricted handling
- See enclosed annex no: ___

#### Kind of packages:
- Number of items per package:
- Description (incl. distinctive features):

#### Typical features of the packages:
- Markings, labels, security threads, holograms, buttons, hangtags, bar-coding, ...
- Special package designs (colour, shape, images of the goods)

### Accompanying documents

- Box: Restricted handling
- See enclosed annex no: ___

#### Documents accompanying the suspected infringing goods, such as:
- Brochures, operating instructions, warranty documents, ...

### Additional information

- Box: Restricted handling
- See enclosed annex no: ___

Any other information relevant to the customs authorities' analysis and assessment of the risk of infringement of the IPR(s) concerned such as specific information concerning planned deliveries of suspected infringing goods, including specific and detailed information on means of transport, containers and persons involved.

- See enclosed annex no: ___
For information exchange the Observatory has developed EDB for Customs and Police (i.e., borders and market controls)
Product information
Electronic application for action