



CHINA

EXCHANGES IN THE CONTEXT OF THE EU-CHINA BILATERAL AGREEMENT ON GIs EXAMINATION AND PROTECTION 中欧双边协定框架下地理标志的审查与保护

Katarina Kompari, Legal Department, EUIPO | Alicante, Spain | 26/05/2021
卡特琳娜·康帕里，欧盟知识产权局法务部 | 西班牙·阿利坎特 | 2021/5/26

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EU Experience in the examination of trade marks

Coexistence of GIs and trade marks

欧盟在商标审查方面的经验：地理标志与商标共存

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1. EU Legal Framework

1、欧盟法律框架



LEGAL FRAMEWORK 法律框架

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中华人民共和国政府与欧洲联盟地理标志保护与合作协定

AGREEMENT BETWEEN THE EUROPEAN UNION AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON COOPERATION ON, AND PROTECTION OF, GEOGRAPHICAL INDICATIONS

THE EUROPEAN UNION, of the one part,
and
协定双方（以下简称为“双方”）：中华人民共和国政府以及欧洲联盟，
鉴于双方同意就《与贸易有关的知识产权协定（TRIPS）》第二十一条第一款定义的地理标志促进双方
之间的协调合作和发展，同意促进原产自双方领土并带有此类地理标志的产品的贸易；
特缔结本协定：

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, of the other part,
hereinafter jointly referred to as the "Parties",

CONSIDERING that the Parties agree to promote between them harmonious cooperation and the development of geographical indications as defined in Article 22(1) of the Agreement on Trade-related Aspects of Intellectual Property Rights (the "TRIPS Agreement") and to foster the trade of products carrying such geographical indications originating in the territories of the Parties;

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:



LEGAL FRAMEWORK 法律框架

ARTICLE 6(1) – Relationship with trade marks 第6 (1) 条 – 与商标的关系

The Parties shall, **ex officio or at the request of an interested party, refuse or invalidate the registration of a trade mark** which consists of a geographical indication or its translation or transcription, with respect to **identical or similar products** not having the origin indicated by that geographical indication, **in accordance with their respective rules**, provided that the application for registration of the trade mark has been submitted after the date of protection for the geographical indications [...]

如果某商标包括某一地理标志或其意译或音译，而此等相同或相似产品并不源自该产地，并且该商标注册申请于[.....]地理标志受保护之日之后提交，**双方应根据其相关规则，依职权或依某一利益相关方的申请，[.....]拒绝注册该商标或使该商标的注册无效。**



LEGAL FRAMEWORK 法律框架

EU LEGISLATION ON GIs 欧盟地理标志法条

- Regulation (EU) No 1308/2013 -wines; 欧盟第1308/2013号法规—葡萄酒;
- Regulation (EU) No 251/2014 - *aromatised wines*; 欧盟第251/2014号法规 —芳香酒;
- Regulation (EU) 2019/787 - *spirit drinks*; 欧盟第2019/787号法规—烈酒;
- Regulation (EU) No 1151/2012 -*agricultural products and foodstuffs*. 欧盟第1151/2012号法规—农产品与食品。

REGULATION (EU) 2017/1001 ON THE EU TRADE MARK – ARTICLE 7(1)(J)

欧盟商标条例 (EU) 2017/1001–第7 (1) (J) 条

(1) The following shall not be registered: (1) 以下情形不予注册:

(j) trade marks which are excluded from registration, pursuant to Union legislation or national law or to **international agreements** to which the Union [...] is party, providing for protection or designation of origin and GIs (j) 根据欧盟法规、国内法或欧盟 [.....] 为缔约方的**国际协定**, 相关原产地和地理标志受保护或经指定不予注册的



COEXISTENCE OF GIS AND TRADE MARKS 地理标志与商标共存

BILATERAL AGREEMENT CHINA-EU – ARTICLE 6(4) 中欧双边协定—第6（4）条

The protection provided to the geographical indications listed in Annexes III and IV, under this Agreement, is without prejudice to the **continued use and renewal of a trade mark** which, **in good faith**, has been **applied for, registered or established through use** if such possibility is provided for in the legislation of the Party concerned, **prior to the date of protection for the geographical indications** listed in Annex III or IV, or prior to the date of application for protection for the geographical indications referred to in Article 3 of this Agreement. 本协定对附录三和附录四所列地理标志的保护，不损害在本协定附录三或附录四所列地理标志受保护之日之前、或在本协定第三条所提及的地理标志申请保护之日之前**已被善意申请、注册或通过使用确立的商标**（如果相关一方在其法律中规定了此种可能性）的**继续使用和续展**。

The trade marks referred to in the first subparagraph of this paragraph may continue to be used and renewed[...] [.....] 第六条第四款第一项中所指的商标仍可继续使用或续展。



COEXISTENCE OF GIs AND TRADE MARKS 地理标志与商标共存

	GIs 地理标志	Individual TM 普通商标	Collective TM 集体商标	Certification TM 证明商标
Definition 定义	Name or indication which identifies a product with specific geographical origin 标识具有特定地理来源的产品的名称或标志	Distinguishing the goods or services of one undertaking from those of other undertakings 区分一家企业的产品或服务与其他企业的产品或服务	Distinguishing the goods or services of the members of an association from those of other undertakings 区分组织成员的产品或服务与非组织成员的产品或服务	Distinguishing goods or services certified by the proprietor from those not so certified 区分经权利人证明的产品或服务与未经证明的产品或服务
Essential Function 主要功能	Geographical Origin 地理原产地	Commercial Origin 商业原产地	Collective Commercial Origin 集体商业原产地	Compliance with Certification Scheme 符合证明相关规范
Geo Terms 地理术语	YES 是	NO 否	YES 是	NO (EU) 否 (欧盟) YES (National) 是 (国家)
Right To Use 使用权	Any operator complying with specifications 任何遵循产品规范的经营 者	Proprietor and Licensees 权利人和被许可人	Association Members 组织会员 Bona Fide Third Parties 善意第 三方	Certified Users 经证明使用者 Bona Fide Third Parties* 善意 第三方* Not the Proprietor 非权利人



EUIPO's PRACTICE 欧盟知识产权局的做法

EX OFFICIO EXAMINATION

依职权审查

Conflict with, among others,
protected geographical indications
Article 7(1)(j) EUTMR

INTER PARTES PROCEEDINGS

当事人间诉讼

Protected geographical indication invoked
as an earlier right by
opponent/cancellation applicants
Article 8(6) EUTMR

异议人/撤销申请人援引受保护
地理标志为在先权利
《欧盟商标条例》第8(6)条

与受保护地理标志等发生冲突
《欧盟商标条例》第7(1)(j)款



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2. Absolute grounds for refusal of trade marks related to GIs

2、驳回与地理标志冲突的商标：绝对事由

ABSOLUTE GROUNDS FOR REFUSAL OF TRADE MARKS in conflict with GIs 驳回与地理标志冲突的商标：绝对事由

Three cumulative conditions for Article 7(1)(j) EUTMR to apply:
适用《欧盟商标条例》第7 (1) (j) 条的三个累加条件：

- registered GI 注册地理标志
- conflict with GI 地理标志发生冲突
- identical/comparable goods 相同/可比产品



GIview

<https://www.tmdn.org/giview/>



ABSOLUTE GROUNDS FOR REFUSAL OF TRADE MARKS in conflict with GIs 驳回与地理标志冲突的商标：绝对事由

Product Areas 产品领域	EU law* 欧盟法律*	National law** 国内法**
Foodstuffs, Agricultural products, Wines, Spirit drinks and Aromatised wines 食品、农产品、葡萄酒、烈酒和芳香酒	Yes 是	No 否
Non-agricultural field (e.g. handicraft) 非农业领域（如手工艺品）	n/a 不适用	Yes 是

*Including international agreements concluded by the EU

*包括欧盟缔结的国际协定

**Including international agreements concluded by MS

**包括成员国缔结的国际协定



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ABSOLUTE GROUNDS FOR REFUSAL OF TRADE MARKS in conflict with GIs 驳回与地理标志冲突的商标：绝对事由

REGULATION (EU) 1308/2013 ARTICLE 103(2) 法规 (EU) 1308/2013第103 (2) 条

A protected designation of origin and protected geographical indications, as well as the wine using that protected name in conformity with the product specification, shall be protected against: 受保护原产地名称和受保护地理标志，以及按照产品规范使用该受保护名称的葡萄酒，应免受下列情形的侵犯：

- (a) any direct or indirect commercial use of that protected name: 为任何直接或间接商业目的使用该受保护名称：
 - (i) by comparable products not complying with the product specification of the protected name; or 且可比产品不符合受保护名称产品规格的; 或
 - (ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication; 且攀附原产地或地理标志知名度的;
- (b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar; 误用、模仿或暗示 (即使注明真实原产地) 受保护名称, 翻译、意译或音译受保护名称, 或对受保护名称附带 “风格”、“类型”、“方法”、“生产方式”、“模仿”、“风味”、“类似” 或类似的表述;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packaging of the product in a container liable to convey a false impression as to its origin; 在与相关葡萄酒产品的内外包装、广告文案或文件上, 就产品来源、原产地、性质或基本品质展示任何其他错误或误导性标志, 或将葡萄酒灌装于易于传达关于原产地错误印象的容器内;
- (d) any other practice liable to mislead the consumer as to the true origin of the product. 任何在产品真实原产地方面可能误导消费者的其他做法。



ABSOLUTE GROUNDS FOR REFUSAL OF TRADE MARKS in conflict with GIs

驳回与地理标志冲突的商标：绝对事由

Use 使用

(direct or indirect)
(直接或间接)Misuse 误用
Imitation 模仿
Evocation 暗示False or
Misleading
Indications
or practices
错误或误导性
标志或做法

- Graduated list of prohibited conducts 禁止行为分级表 (from least to most subtle link with GI) (根据与地理标志从最直接到最微妙的关联性分级)
- Apply in situations of registration or commercial use (*ex officio* / opposition / cancellation). 适用于商标注册申请或商业使用等情形 (依职权/异议/撤销)。
- EUIPO interprets them to set a high degree of protection of GIs 欧盟知识产权局将之解读为对地理标志的高度保护
- BUT balance of rights: effective protection GIs vs rights of bona fide trade mark applicants 但是需掌握权利的平衡：有效保护地理标志 vs. 善意商标申请人的权利

Art. 13 R1151/2012
第1151/2012号法规 第13条
Art. 103 R1308/2013
第1308/2013号法规第103条
Art. 20 R252/2014
第252/2014号法规 第20条
Art. 21 R2019/787
第2019/787号法规 第21条



CASE LAW 判例

- **C-44/17 SCOTCH WHISKY/GLEN BUCHENBACH, 07.06.2018**
- **C-44/17 苏格兰威士忌/GLEN BUCHENBACH, 2018年6月7日**
 - The Scotch Whisky Association contested the marketing (via website) of whisky – not Scotch whisky – sold under the designation ‘Glen Buchenbach’.
 - 苏格兰威士忌协会对以 “Glen Buchenbach” 名义通过网络销售威士忌（非苏格兰威士忌）的行为提出异议。
 - ECJ addressed the conducts under Article 16(a) to (c) of R110/2008 (commercial use, evocation base on conceptual proximity, misleading indications and context of use).
 - 欧洲法院依R110/2008第16 (a) 至 (c) 条（商业使用、相近概念联想、误导性标志和使用背景）对该行为作出了判决。
- **C-614/17 QUESO MANCHEGO/ ROCINANTE, 02.05.2019**
- **C-614/17 蒙切哥乳酪/ROCINANTE, 2019年5月2日**
 - Queso Manchego Foundation invoked Article 13(1)(b) of R510/2006 against labels bearing the word ‘Rocinante’ & including pictorial elements typical of the region of “La Mancha”, used to market cheese not conforming with the specifications of the PDO ‘Queso manchego’.
 - 蒙切哥乳酪基金会援引R510/2006第13 (1) (b) 条对下列行为提出异议：将 “Rocinant” 字样及包含 “La Mancha” 地区典型图案元素印制于产品标签，销售不符合PDO “蒙切哥乳酪” 规范的乳酪产品。
 - ECJ: a registered PDO may be evoked through the use of figurative signs (such as the image of the literary character Don Quixote de La Mancha), irrespective of whether the goods originate from a producer established in that region, but whose (similar or comparable) products do not comply with the PDO.
 - 欧洲法院：已注册的受保护原产地名 (PDO) 可由象征性符号（如小说人物唐吉珂德的形象）产生联想，无论产品是否原产于该地。然而，相似或可比产品不符合PDO规范。



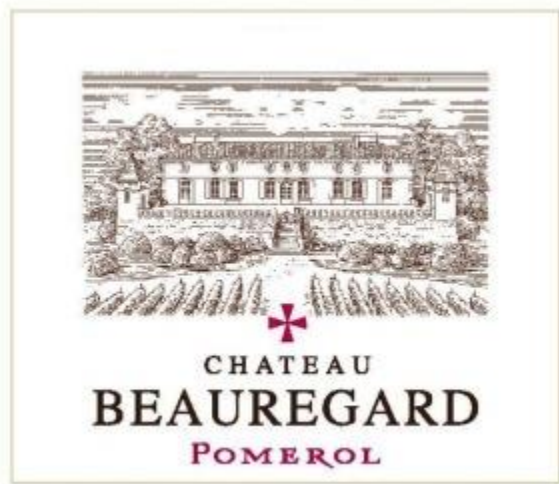
EUIPO's PRACTICE 欧盟知识产权局的做法

Use 使用 (direct or indirect) (直接或间接)

- Trademark contains/consists of the GI (logical separation)
- 商标包含地理标志或由地理标志构成（逻辑分隔）
- High degree of visual and aural similarity
- 视觉和听觉上高度相似
- Identical products, also covers:
 - 相同产品，同时包括：
 - commercially relevant ingredient (may determine the choice of the main product e.g. *apples* vs *jam*)
 - 与商业相关的成分（可能决定主产品的选择，如 *苹果* vs. *果酱*）
 - the specific object and services (e.g. *honey* vs *retail of honey*)
 - 具体对象与服务，（如 *蜂蜜*与*蜂蜜零售*）
- ‘Comparable products’ – restrictive, independent of ‘similarity’ concept in relative grounds “可比产品” ——受限制、独立于“相似性”概念的相对事由
- (dissimilar in relative grounds) （相对事由的差异）



EXAMPLE 实例



EUTM No 17 889 185
欧盟商标第17 889 185号



Goods and Services 产品与服务

Wines 葡萄酒



Potential issues 潜在问题

Possible conflict with geographical indication

POMEROL (PDO-FR-A0273)

可能与地理标志波美侯 (PDO-FR-A0273) 构成冲突



Result 结论

Application registered (after limitation)

商标已获注册 (且满足限制条件)



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EXAMPLE 实例

LEMBERGERLAND

EUTM No 11 134 947
欧盟商标第11 134 947号



Goods and Services 产品与服务

Cl. 33 'alcoholic beverages (except beers)'
第33类 “酒精饮料（啤酒除外）”



Potential issues 潜在问题

Possible conflict with geographical indication
LEMBERG – Annex II Agreement between EU and the
Republic of South Africa 可能与地理标志构成冲突
LEMBERG – 载于欧盟与南非协定附件II

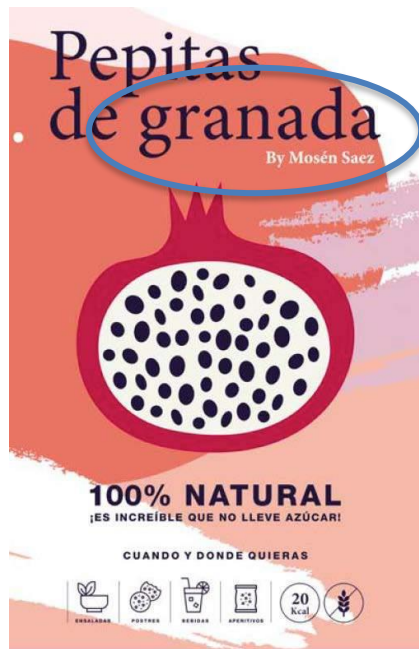


Result 结论

Registration after deletion of Class 33
准予除第33类外的产品申请商标注册



EXAMPLE 实例



EUTM No 18 080 466
欧盟商标第18 080 466号

Goods and Services 产品与服务

Inter alia, *agricultural products, non-alcoholic and alcoholic beverages*

除其他外，农产品、非酒精饮料和酒精饮料

Potential issues 潜在问题

Conflict with geographical indication GRANADA (PDO-ES-A1475) for wine? 是否与葡萄酒地理标志GRANADA (PDO-ES-A1475) 构成冲突?

Result 结论

GRANADA in Spanish refers both to “pomegranate” and to the geographical place in Andalucía. In the sign, the reference to “granada” is clearly to the fruit. No conflict GRANADA在西班牙语中既指“石榴”，又指安达卢西亚的地理位置。在标志中提到的“granada”显然指水果，不构成冲突。



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EXAMPLE 实例

Cavalcade

EUTM No 17 929 998

欧盟商标第17 929 998号



Goods and Services 产品与服务

Wines 葡萄酒



Potential issues 潜在问题

Conflict with geographical indication CAVA (PDO-ES-A0735)? 是否与地理标志CAVA (PDO-ES-A0735) 构成冲突?



Result 结论

The public will not dissect artificially the sign, perceive the term CAVA and link it to the wine. No conflict 公众不会有意从标志中解析出“CAVA”一词并联想到葡萄酒。不构成冲突。



EUIPO's PRACTICE 欧盟知识产权局的做法

Misuse 误用
Imitation 模仿
Evocation 暗示

- Misuse: false indications
- 误用：错误标志
- Imitation and evocation: overlapping terms
- 模仿与暗示：用词相似
- Evocation: the public establishes a sufficiently clear and direct link between the term in the TM and the GI (*Verlados*)
- 联想：公众在商标和地理标志之间建立了充分清晰和直接的联系 (*Verlados*)
- Visual, aural or conceptual similarity e.g. terms share characteristic beginning or ending, conceptual proximity (*Scotch Whisky*)
- 视觉、听觉或概念上的相似性，例如用词含类似开头或结尾，或概念上接近 (*苏格兰威士忌*)
- Not cumulative conditions: mere conceptual proximity enough, e.g. via use of figurative signs (*Queso Manchego*)
- 非累加条件：仅概念上接近即符合条件，如：通过使用象征性符号 (*蒙切哥乳酪*)
- Indicators of the true origin of the product not to be taken into account (*Scotch Whisky*)
- 不考虑对产品真实产地的指示 (*苏格兰威士忌*)
- Proximity of the goods concerned is a factor but EUIPO in AG does not go into dissimilarity.
- 产品接近程度是考察因素之一，但在绝对事由中的欧盟知识产权局不会考察产品差异程度。



EXAMPLE 实例



EUTM No 15 420 607
欧盟商标第15 420 607号



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Goods and Services 产品与服务

Whisky; Blended whisky; Whisky liqueurs
威士忌; 调配型威士忌; 威士忌酒

Potential issues 潜在问题

Possible conflict with geographical indication
SCOTCH WHISKY (PGI-GB-01854) 可能与地理标志“苏格兰威士忌” (PGI-GB-01854) 构成冲突

Result 结论

Application registered after limitation to “all aforementioned goods complying with the specifications of the PGI Scotch Whisky”

商标注册满足“所有上述产品符合苏格兰威士忌PGI规范”的限制条件

EXAMPLE 实例



EUTM No 18 015 193
欧盟商标 第18 015 193号



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Goods and Services 产品与服务
Inter alia, tomatoes 除其他外，西红柿



Potential issues 潜在问题

Possible conflict with geographical indication
POMODORINO DEL PIENNOLO DEL VESUVIO (PDO-IT-0576) 可能与地理标志POMODORINO DEL PIENNOLO DEL VESUVIO (PDO-IT-0576) 构成冲突



Result 结论

Application registered after limitation to products complying with the specification of the GI 商标注册满足“产品符合地理标志规范”的限制条件

EUIPO's PRACTICE 欧盟知识产权局的做法

False
Misleading
Indications
or practices
错误或误导性
标志或做法

- Test: whether or not an indication (an element in the trade mark, word, image, container) is 'liable to convey a false impression as to [the product's] origin' or to the nature or essential qualities of the product" (*Scotch Whisky*)
- 测试：一项标志（商标、文字、图像、容器中的元素）是否“易于传达关于[产品]原产地、产品性质或基本品质的错误印象”（*苏格兰威士忌*）
- Does it extend to reproduction of the shape or the appearance which are characteristic of a product?
- 是否可扩展到对产品特有形状或外观的复制？
- The context in which the possible misleading indication is used is not to be taken into account (*Scotch Whisky*)
- 不考虑潜在误导性指示的使用场景（*苏格兰威士忌*）
- The Office relies on third party observations
- 欧盟知识产权局会采信第三方观察结论



EXAMPLE 实例



EUTM No 018 022 404

欧盟商标第018 022 404号

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Goods and Services 产品与服务

Inter alia, non-alcoholic beverages, beer

除其他外，非酒精饮料、啤酒

Potential issues 潜在问题

Conflict with the PGI TEQUILA (PGI-MX-01851) 与PGI “龙舌兰酒” 构成冲突

If the mark has ‘tequila’ on it, it must actually contain real tequila in a determined percentage, so it cannot be applied for goods in Class 32 商标包含“龙舌兰酒”，则产品必须含有确定百分比的真龙舌兰酒。因此，不得以第32类商品申请商标。



Result 结论

Application withdrawn after being objected by EUIPO

欧盟知识产权局驳回后，注册申请被撤回

EUIPO's PRACTICE 欧盟知识产权局的做法

Term 用语	Products 产品	Example 实例	Relevant PGI/PDO 相关PGI/PDO	Outcome 结果
Different 不同	Identical 完全相同	RIOJA RIBERA DE DUERO 里奥哈 Wine 葡萄酒	Rioja (PDO) Ribera de Duero (PDO)	No limitation possible 不可能有限制
Identical or similar 相同或相似	Identical 完全相同	MARIOLA MODENA 马里奥拉·摩德纳 Vinegar 醋	Aceto Balsamico di Modena (PGI) Aceto Balsamico Tradizionale di Modena (PDO)	Limitation (either, or for both) 限制 (二者之一或二者兼有)
Identical or similar 相同或相似	Different 不同	MALLORCA SUN Meat, bread, pastry 肉类、面包、糕点	Sobrasada de Mallorca (PGI) Ensaimada de Mallorca (PGI)	Limitation (for both) 限制 (二者兼有)
Identical or similar 相同或相似	Comparable 有可比性	AXN MODENA Meat 肉类	Prosciutto di Modena (PDO) Zampone Modena (PGI) Cotechino Modena (PGI)	Limitation (either or for all, deceptive goods deleted) 限制 (一个或全部，删除欺骗性产品)
Homonyms 异物同名	Identical 完全相同	PISCO MISTRAL GRAN NOBEL (fig) Pisco 皮斯科白兰地酒	PISCO (Peru) 皮斯科白兰地 (秘鲁) PISCO (Chile) 皮斯科白兰地 (智利)	Limitation (one or the other) 限制 (二者之一)



3. Relative grounds for refusal of trade marks in conflict with GIs

3、驳回与地理标志冲突的商标：相对事由



LEGAL FRAMEWORK 法律框架

REGULATION (EU) 2017/1001 ON THE EU TRADE MARK – ARTICLE 8(6)

欧盟商标条例 (EU) 2017/1001—第8 (6) 条

(6) Upon opposition by any **person authorised under the relevant law** to exercise the rights arising from a designation of origin or a geographical indication, the trade mark applied for shall not be registered where and to the extent that, pursuant to the **Union legislation or national law** providing for the protection of designation of origin or geographical indications:

(6) 依法获得授权、行使原产地名或地理标志权利的任何如提出异议，符合以下情形的，相关商标不得在**欧盟法或国家法**规定保护的原产地名或地理标志的范围和限度内予以注册：

- (i) an application for a designation of origin or geographical indication had already been submitted, in accordance with Union legislation or national law, **prior to the date of application for registration of the EU trade mark** or the date or the priority claimed for the application, subject to its subsequent registration; 根据欧盟法或国家法，**在申请注册欧盟商标之前**或申请所要求的日期或优先权生效之前，原产地名或地理标志已递交申请并受限于后续程序的；
- (ii) that designation or origin or geographical indication **confers the right to prohibit the use** of a subsequent trade mark. 该原产地名或地理标志**授权对后续商标禁止使用的**。



LEGAL FRAMEWORK 法律框架

REGULATION (EU) 2018/625– ARTICLE 7(2)(e) 欧盟法规2018/625–第7 (2) (e) 条

the opposing party shall also file evidence of the existence, validity and scope of protection of its earlier mark or right, as well as evidence proving its entitlement to file the opposition. In particular, the opposing party shall provide the following evidence: 对方当事人还应提交其在先商标或权利存续、效力和保护范围的证据，以及证明其有权提出异议的证据。特别地，对方当事人应当提供下列证据：

where the opposition is based on an earlier designation of origin or geographical indication within the meaning of Article 8(6) of Regulation (EU) 2017/1001, evidence of its acquisition, continued existence and scope of protection including, where the earlier designation of origin or geographical indication is invoked pursuant to the law of a Member State, a clear identification of the content of the national law relied upon by adducing publications of the relevant provisions or jurisprudence; 如异议基于欧盟法规2017/1001号第8 (6) 条关于原产地或地理标志的在先指定有关规定，且援引成员国法规中对原产地名或地理标志的在先指定的，则证明在先商标或权利的取得、存续和保护范围的证据包括成员国法规中的相关明确内容（需举出相关法规或判例出版物）。

Substantiation
GI
实证地理标志

Entitlement 权益
Opponent 异议人



Funded by the European Union
受欧盟资助



EUIPO's PRACTICE 欧盟知识产权局的做法

Exploitation of Reputation 攀附知名度

- Exploitation of reputation can only be put forward if there is 'use' of the GI
- 只有在地理标志被“使用”时，才能就攀附知名度提出异议
- Unlike TMs, where reputation is quantitatively assessed, the reputation of a GI is linked only to the quality of the product that it designates; EUIPO considers that GIs are intrinsically reputed
- 商标知名度可定量评估，而地理标志的知名度只与其指定产品的质量相关；欧盟知识产权局认为，地理标志具备内在知名度
- Opponent do not have to submit evidence of the GI reputation
- 异议人无需提交关于地理标志知名度本身的证据
- But they must submit convincing arguments and/or evidence regarding the exploitation of the reputation of the GI
- 异议人必须提交关于攀附地理标志知名度的有力论据和/或证据



EUIPO's PRACTICE 欧盟知识产权局的惯例



EUTM No 17 192 899 欧盟商标第17 192 899号

B 3 060 646 PERÚ PISCO BAR (FIG)/PISCO
B 3 060 646 秘鲁PISCO酒吧 (图) /PISCOFunded by the European Union
受欧盟资助

Contested goods and services 系争产品和服务

Services in Class 43 (e.g. bar services; catering services; provision of food and drinks) 第43类服务
(如: 酒吧服务、住宿服务、餐饮服务)

Opposition 异议

Opponent argued that the sign exploited the reputation of PISCO (PGI-PE-01825) protected for *fruit spirit drink* 异议人认为, 该标志攀附了受保护的PISCO (PGI-PE-01825) 在果酒饮料方面的知名度

Result 结论

In light of the evidence and arguments of the opponent, the opposition was upheld under Article 8(6). Solid evidence of INDECOPI investment in promoting PISCO and arguments linking the product with the contested services and the potential exploitation of reputation 根据第8 (6) 条及异议证据和论据, 支持异议。有力证据显示, INDECOPI (秘鲁国家竞争和知识产权保护局) 通过投资宣传, 将系争服务与PISCO产品相关联, 涉嫌攀附PISCO产品知名度。

GROUNDS FOR REFUSAL OF TRADE MARKS in conflict with GIs – RECAP

驳回与地理标志冲突的商标：总结

Use 使用

(direct or indirect)
(直接或间接)

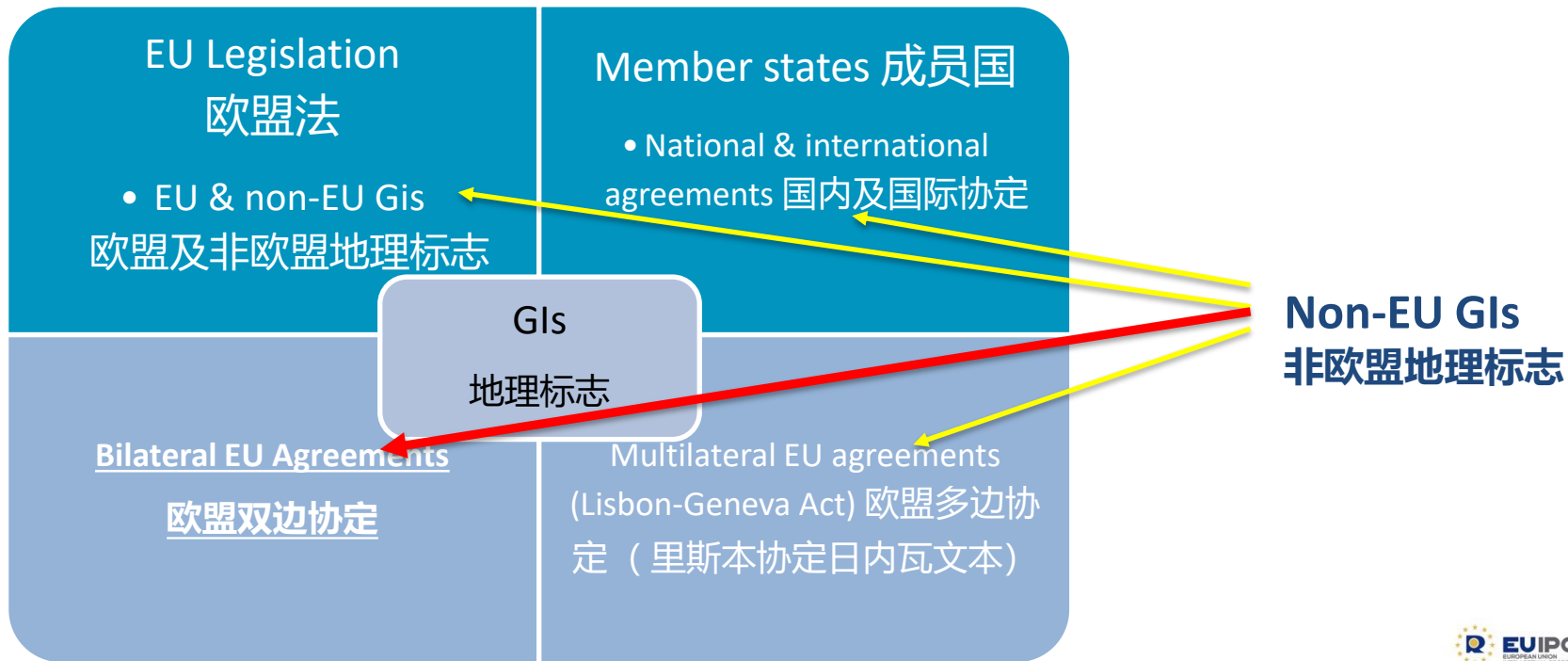
- Trade mark contains/consists of the GI 商标包含地理标志或由地理商标构成
- High degree of visual and aural similarity (*Scotch Whisky*)
视觉和听觉高度相似 (*苏格兰威士忌*)
- Scope of protection extended to dissimilar goods and services if **exploitation of reputation** of GI proven 如果确认**攀附地理标志知名度**，则保护范围扩大至相异产品和服务

Exploitation of
Reputation
攀附知名度Misuse 误用
Imitation 模仿
Evocation 联想

- Public establishes a sufficiently clear and direct link between TM and GI (*Verlados*) 公众在商标与地理标志之间建立了充分清晰和直接的联系 (*Verlados*)
- Visual, aural or conceptual similarity e.g. terms share characteristic beginning or ending, conceptual proximity (*Scotch Whisky*) 视觉、听觉或概念上的相似性，例如用语含类似开头或结尾，或概念上接近 (*苏格兰威士忌*)
- Indicators of the true origin of the product not to be taken into account (*Scotch Whisky*) 不考虑对产品真实产地的指示 (*苏格兰威士忌*)
- Whether or not an indication (an element in the trademark, word, image, container) is 'liable to convey a false impression as to [the product's] origin or to the nature or essential qualities of the product' (*Scotch Whisky*) 一项标志 (商标、文字、图像、容器中的元素) 是否“易于传达关于[产品]原产地、产品性质或基本品质的错误印象” (*苏格兰威士忌*)

False or
Misleading
Indications
or practices
错误或误导性
标志或做法Funded by the European Union
受欧盟资助

GROUND FORS FOR REFUSAL OF TRADE MARKS RELATED TO GIs – RECAP 驳回与地理标志冲突的商标：总结



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-

Authors 作者

KK

Katarina Kompari 凯蒂·康帕里

LMC

Lorena Martínez Carrión 洛雷娜·马丁内斯·卡里翁

Contributors 参与人员

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