



CHINA

EUIPO experience in the examination of trade marks in conflict with geographical indications (GIs)

欧盟知识产权局：地理标志（GI）冲突商标的审查经验

Marisa Aranda Sales, Legal Department, EUIPO | Alicante, Spain | 08/09/2021

Marisa Aranda Sales, 欧盟知识产权局法务部

2021年9月8日

www.ipkey.eu



Funded by the European Union
受欧盟资助



OVERVIEW 概览

1. EU legal framework and EUIPO's *ex officio* workflow in the examination of trade marks in conflict with GIs 欧盟在地理标志冲突商标审查方面的立法框架和欧盟知识产权局的工作流程
2. Absolute Grounds for refusal of trade marks in conflict with GIs 驳回地理标志冲突商标的绝对理由
3. Relative Grounds for refusal of trade marks in conflict with GIs 驳回地理标志冲突商标的相对理由

1. EU legal framework and EUIPO's *ex officio* workflow in examination of trade marks in conflict with GIs 欧盟在地理标志冲突商标审查方面的立法框架和欧盟知识产权局的工作流程

EUIPO OPERATIONS DEPARTMENT WORKFLOW

欧盟知识产权局运营部工作流程



EU LEGAL FRAMEWORK 欧盟法律框架

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

有关欧盟商标的2017/1001号(EU)条例——第7(1)(J)条

(1) The following shall not be registered 以下商标不得予以注册

(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 of designation of origin and GIs. 依据**欧盟立法、国家法**或**欧盟【...】为缔约方的国际协定**，为保护原产地名称和地理标志，不予注册的商标。

EU LEGISLATION ON GIs 有关地理标志的欧盟立法

- Regulation (EU) No 1308/2013 - *wines*; 1308/2013号(EU)条例——葡萄酒;
- Regulation (EU) No 251/2014 - *aromatised wines*; 251/2014号(EU)条例——加味葡萄酒;
- Regulation (EU) 2019/787 - *spirit drinks*; 2019/787号(EU)条例——烈酒;
- Regulation (EU) No 1151/2012 - *agricultural products and foodstuffs*. 1151/2012号(EU)条例：农产品和食品。

EU LEGAL FRAMEWORK – EUIPO PRACTICE AS REGARDS INTERNATIONAL AGREEMENTS

欧盟法律框架——欧盟知识产权局涉及国际协定的做法

International Agreements 国际协定

- Directly applicable if contains a **clear, precise and unconditional obligation** 若包含**清楚、精确且无条件的义务**，则直接适用
- Scope of Protection is defined through their substantive provisions 通过国际协定的实质性规定，界定保护范围
- Examined on a **case-by-case basis** in accordance with the specific substantive provisions on the refusal of conflicting trade marks 依据驳回冲突商标的具体实质性规定，**逐例审查**

EXAMPLE OF INT'L AGREEMENT – EUROPEAN UNION & PEOPLE'S REPUBLIC OF CHINA 国际协定示例——中华人民共和国与欧洲联盟(I)

4.12.2020

EN

Official Journal of the European Union

LI 408/3

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

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:

ARTICLE 7(1)(j) EUTMR 《欧盟商标条例》第7(1)(j)条

trade marks which are excluded from registration, pursuant to **Union legislation or national law or to international agreements** to which the Union or the MS concerned is party, providing for protection of **designations of origin and geographical indications**
依据**欧盟立法、国家法**或欧盟为缔约方的**国际协定**，为保护**原产地名称和地理标志**，不予注册的商标。



If an application is in conflict with a **PGI or PDO** protected under the relevant laws → **objection**
如果商标申请与相关法律保护的**PGI或PDO**冲突→**予以驳回**

ARTICLE 7(1)(j) EUTMR – CHECKLIST FOR EX OFFICIO OBJECTION 《欧盟商标条例》第7(1)(j)条——驳回商标注册申请的检查清单

Checklist for objecting to a TM registration 驳回商标注册申请的检查清单 (Classes 29 to 33 agricultural GIs) (第29至33类农业地理标志)



1. **Check if GI/DO registered/applied for: relevant databases 检查地理标志/原产地名称是否已经注册/申请：相关数据库**
2. **Check if conflict: set the scope of protection of GI per the relevant legal instruments 检查是否冲突：根据相关法律工具，设定地理标志的保护范围**
3. **Apply specialty principle: only object to identical products or, when relevant comparable or contain GI as ingredient 运用特定原则：仅驳回相同产品，或在具备相关性与可比性 / 包含地理标志作为成分的情况下驳回**
4. **Decide if possibility to overcome objection: suggest limitation 决定是否可以解决驳回意见：建议使用限制条件**

1. CHECK DATABASES 检查数据库



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

eAmbrosia

the EU geographical indications register



eAmbrosia is a legal register of the names of agricultural products and foodstuffs, wine, aromatised wine products and spirit drinks that are registered and protected across the EU.

It provides a direct access to information on all registered geographical indications, including the legal instruments of protection and product specifications. It also displays key dates and links for applications and publications before the geographical indications are registered.

You can also find information about the traditional terms for wine and the traditional specialities guaranteed in the section [Related links](#) below.

Wine register

Food register

Spirit drinks

Aromatised wine register

2. CHECK IF THERE IS A CONFLICT 检查是否存在冲突

Situations covered by EU Regulations 欧盟条例涉及的情形

1. EUTM application **uses** the PDO /PGI, that is, it **consists** solely of a whole PDO/PGI or **contains** a whole PDO/PGI in addition to other word or figurative elements. 欧盟商标申请**使用**受保护原产地名称/受保护地理标志；即，申请仅由完整的受保护原产地名称/受保护地理标志**构成**，或在其他文字或图形元素之外，还**包含**完整的受保护原产地名称/受保护地理标志。
2. EUTM application contains or consists of a **misuse, imitation or evocation** of a PDO/PGI. 欧盟商标申请包含或组成要素为对受保护原产地名称/受保护地理标志的**滥用、模仿或联想**。
3. Other **misleading** indications and practices. 其他**误导性**标志和做法。

3. APPLY SPECIALITY PRINCIPLE 运用专门原则

- Goods are classified as: 商品分类:
 - **Identical** to those protected by the GI (*white wine* vs Rioja wine) 与地理标志保护商品**相同** (白葡萄酒与里奥哈葡萄酒)
 - Commercially relevant **ingredient** (*sangria* vs Rioja wine) 商业相关**成分** (桑格利亚汽酒与里奥哈葡萄酒)
 - **Comparable** (*grape must* vs Rioja wine) 与地理标志保护商品**可比** (葡萄汁与里奥哈葡萄酒)
 - **None** of the above (*whisky* vs Rioja wine) **以上皆否** (威士忌与里奥哈葡萄酒)
- Criteria of similarity of G&S in trade marks **DO NOT** apply to decide if a good is comparable. 商标涵盖的商品与服务的相似性标准**不适用于**确定商品是否具有可比性
- The nature of the **goods applied for** has to be taken into account within the assessment of the type of conflict identified (e.g. a sign may evoke a PDO but there is no conflict if goods are *different*) 评估所识别的冲突类型时, 必须考虑**申请商品的性质** (例如, 某标志可能会让人联想到受保护原产地名称, 但如果商品不同, 则无冲突)

4. SUGGEST LIMITATION 建议限制

- Applicant may overcome the objection by **limiting** the **identical goods and/or goods with ingredients** to make sure that the goods comply with the product specifications of the PDO/PGI → **In the deficiency letter the examiner suggests such limitations**
- 申请者可以通过**限制相同产品和/或含有相关成分的产品**，确保商品符合受保护原产地名称/受保护地理标志的产品规范，以解决驳回意见→**审查员在补正通知书中建议此类限制**
 - **XYZ RIOJA** applied for *wines; cocktails* → Wines complying with the specifications of the PDO Rioja; cocktails containing wine complying with the specifications of the PDO Rioja.
 - 针对葡萄酒和鸡尾酒申请的**XYZ RIOJA** 商标→葡萄酒符合受保护原产地名称Rioja的规范；鸡尾酒包含符合该规范的葡萄酒。
- No limitation is possible for **comparable** goods as they cannot comply with the product specifications → **they have to be deleted**
- **可比商品**因无法符合产品规范，所以无法限制→**必须予以删除**
 - **XYZ PORTO** applied for *sparkling wine*. It cannot comply with the product specifications of the PDO Porto which is a liqueur wine.
 - 针对起泡葡萄酒申请的**XYZ PORTO**商标，无法符合利口葡萄酒受保护原产地名称Porto的产品规范。

2. Absolute grounds for refusal in examination of trade marks in conflict with GIs

驳回地理标志冲突商标的绝对理由

EUIPO REGISTRATION PROCESS 欧盟知识产权局注册流程

EX OFFICIO EXAMINATION

审查

Conflict with, among others,
protected geographical indications

Article 7(1)(j) EUTMR

与受保护的地理标志等冲突
《欧盟商标条例》第7(1)(j)条

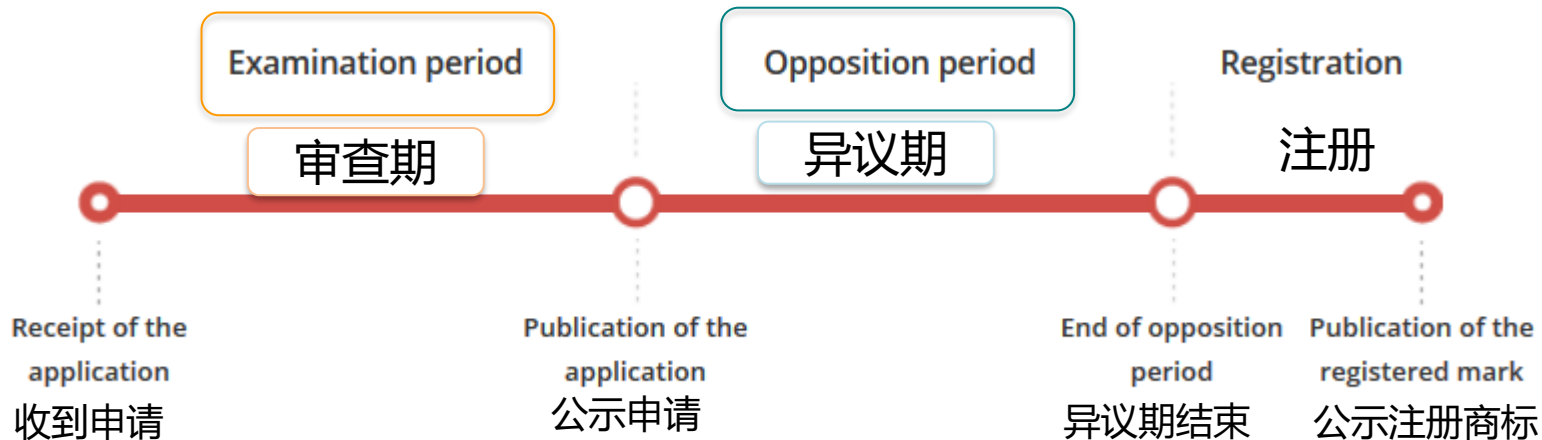
INTER PARTES PROCEEDINGS

当事方之间的程序

Protected geographical indication invoked as an
earlier right by opponent/cancellation applicants

Article 8(6) EUTMR

异议者/撤销申请者援引受保护的地理标志作为
在先权利
《欧盟商标条例》第8(6)条



GEOGRAPHICAL INDICATIONS – ABSOLUTE GROUNDS 地理标志——绝对理由

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

- The GI must be registered 地理标志必须已注册
- Trade mark application must be in conflict with a GI 商标申请必须与地理标志冲突
- Goods applied for must be identical/‘comparable’ to those covered by the GI 所申请的商品必须与地理标志涵盖的商品相同/可比

GEOGRAPHICAL INDICATIONS AND ABSOLUTE GROUNDS 地理标志和绝对理由

<u>Product Areas</u> 产品领域	EU law* 欧盟法*	National law** 国家法**
Foodstuffs, Agricultural products, Wines, Spirit drinks and Aromatised wines 食品、农产品、葡萄酒、烈酒和加 味葡萄酒	Yes 是	No 否
Non-agricultural field (e.g. handicraft) 非农业 (例如, 手工品)	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

ABSOLUTE GROUNDS SITUATIONS FORESEEN BY EU REGULATIONS

欧盟条例预见的绝对理由情况

REGULATION (EU) 1308/2013 ARTICLE 103(2) 1308/2013号(EU)条例第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: 对于受保护原产地名称和受保护地理标志以及根据产品规范使用该受保护名称的葡萄酒，打击下列行为：

- (a) any direct or indirect commercial use of that protected name: 对受保护名称的任何直接或间接商业使用：
 - (i) by comparable products not complying with the product specification of the protected name; or
 - (ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;
 - (i) 不符合该受保护名称产品规范的可比产品所发生的相关使用；或者，(ii) 攀附原产地名称或地理标志知名度的相关使用；
- (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; 滥用、模仿或联想，即便指明产品或服务的真实原产地或者对受保护名称加以意译、音译或字译，或者同时使用了“种类”“品种”“风格”“仿制”等字样；
- (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; 在内部或外部包装、广告材料或相关文件中，对产品起源、原产地、性质或主要品质做出的任何其他虚假或误导性标注；容器内产品之包装所传达的对原产地的虚假印象；
- (d) any other practice liable to mislead the consumer as to the true origin of the product. 就产品的真实原产地误导消费者的任何其他做法。

HOW TO INTERPRET THESE CONCEPTS? CASE-LAW 如何解读这些概念? 判例法

- **C-44/17 SCOTCH WHISKY/GLEN BUCHENBACH, 07.06.2018**
- **C-44/17号 SCOTCH WHISKY诉GLEN BUCHENBACH案 (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’.
 - 苏格兰威士忌协会起诉 (通过电商网站) 销售 “Glen Buchenbach” 名称威士忌 (非苏格兰威士忌) 的行为
 - 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)
 - 欧洲法院依据110/2008号条例第16(a)-(c)条 (商业使用、基于概念相近性的联想、误导性标志和使用语境) 规定, 解决了相关问题
- **C-614/17 QUESO MANCHEGO/ ROCINANTE, 02.05.2019**
- **C-614/17号QUESO MANCHEGO诉ROCINANTE案 (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’.
 - Queso Manchego基金会援引510/200号条例第13(1)(b)条规定, 起诉被告采用体现 “Rocinante” 一词且包含 “La Mancha” 地区典型图形元素的标签, 销售不符合受保护原产地名称 “queso manchego” 规范的奶酪。
 - 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: 无论产品是否源于该地区的生产者, 使用图形标识 (例如文学人物堂吉珂德Don Quixote de La Mancha的图片) 可能会让公众联想到已注册的受保护原产地名称, 而生产者的 (相似或可比) 产品并不符合该受保护原产地名称的规范。



ABSOLUTE GROUNDS SITUATIONS FORESEEN BY EU REGULATIONS 欧盟条例预见的绝对理由情形

Use 使用

Misuse
Imitation
Evocation

滥用、模仿、联想

False
Misleading
Indications
or practices

虚假、误导性
标志或做法

- Graduated list of prohibited conducts (from least to most subtle link with GI) 禁止行为分级清单（与地理标志的联系程度最低到最高）
- Apply in situations of registration or commercial use (ex officio/opposition/cancellation). 适用于注册或商业使用情形（依职权/异议/撤销）
- EUIPO interprets them to set a high degree of protection of GIs 欧盟知识产权局对其进行解释，确保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 权利平衡：地理标志的有效保护与善意商标申请的权利

Art. 13 R1151/2012
Art. 103 R1308/2013
Art. 20 R252/2014
Art. 21 R2019/787
1151/2012号条例第13条
1308/2013号条例第103条
2019/787号条例第21条

EUIPO PRACTICE – USE 欧盟知识产权局做法——使用

Use 使用

- Trademark contains/consists of the GI 商标包含地理标志, 或由地理标志组成
- High degree of visual and aural similarity 高度的视听相似性
- Identical products, also covers: 相同产品, 同时涵盖:
 - commercially relevant ingredient (may determine the choice of the main product e.g. *apples v jam*) 商业相关成分 (可能确定对主产品的选择, 例如: 苹果与果酱)
 - the specific object of services (e.g. *honey v retail of honey*) 服务的具体对象 (例如: 蜂蜜与蜂蜜零售服务)
- ‘Comparable products’ – restrictive, independent of ‘similarity’ concept in relative grounds. “可比产品” ——具有限制性, 在相对理由中独立于“相似性”概念
- Dissimilar goods will not be objected *ex officio* 对不相似商品无需依职权驳回

EXAMPLE – USE - CONTAINS EQUIVALENT ADJECTIVE/NOUN 使用示例——包含等效形容词/名词

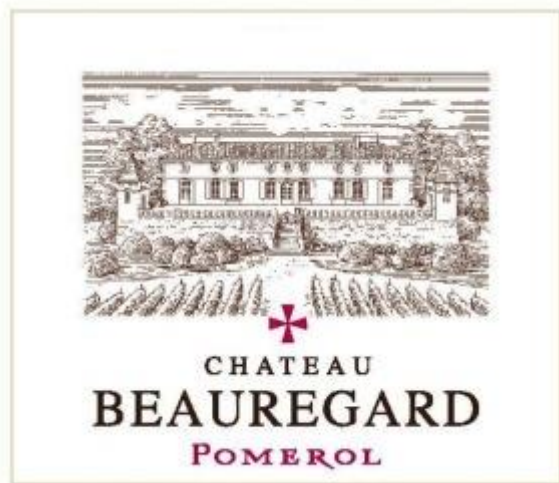


PDO受保护原产地名称
‘Mel do Alentejo’
→ **‘Mel alentejana’**

SICILIANO

PDO受保护原产地名称: **Sambuca di Sicilia**
PDO受保护原产地名称: **Sicilia**
PGI受保护地理标志: **Terre Siciliane**

EXAMPLE OF USE – CONTAINS GI 使用示例——包含地理标志



EUTM No 17 889 185
第17 889 185号欧盟商标



Goods and Services 商品和服务
Wines 葡萄酒

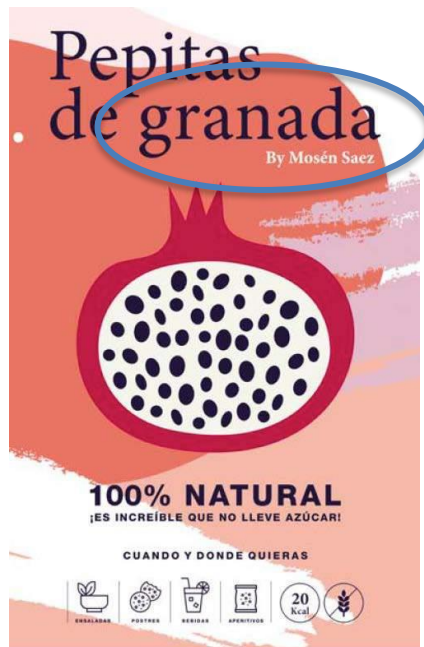


Potential issues 潜在问题
Possible conflict with geographical indication
POMEROL (PDO-FR-10273)
可能与地理标志POMEROL (PDO-FR-10273)
冲突



Result 结果
Application registered (after limitation)
予以注册（附限制条件）

EXAMPLE OF USE – CONTAINS GI (NO CONFLICT) 使用示例——包含地理标志（不存在冲突）



EUTM No 18 080 466
第18 080 466号欧盟商标



Goods and Services 商品和服务

Inter alia, agricultural products, non-alcoholic and alcoholic beverages 农产品、非酒精和酒精饮料



Potential issues 潜在问题

Conflict with geographical indication GRANADA (PDO-ES-A1475) for wines? 与葡萄酒地理标志GRANADA (PDO-ES-A1475) 冲突?



Result 结果

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在西语中既指石榴，又指安达卢西亚的地理区域。在该标志中，对“Granada”的引述清楚指示石榴。不存在冲突。

EXAMPLE OF USE – CONTAINS GI (NO CONFLICT) 使用示例——包含地理标志（不存在冲突）

Cavalcade

EUTM No 17 929 998
第17 929 998号欧盟商标



Goods and Services 商品和服务
Wines 葡萄酒



Potential issues 潜在问题
Conflict with geographical indication CAVA (PDO-ES-A0735)? 与地理标志CAVA (PDO-ES-A0735) 冲突?



Result 结果
The public will not dissect artificially the sign, perceive the term CAVA and link it to the wine. No conflict
公众不会人为“拆分”这个标志，将其解读为“CAVA”，继而联系到葡萄酒。不存在冲突。

EXAMPLE OF USE – CONTAINS AN ADJECTIVE 使用示例——包含形容词



EUTM No 17919241
第17919241号欧盟商标



Goods and service 商品和服务

Class 30 'coffee; cocoa; artificial coffee; chocolate' 第30类：咖啡；可可；人造咖啡；巧克力



Potential issues 潜在问题

Conflict with geographical indication
Café de Colombia (PGI-CO-0467) as regards
coffee. Deceptiveness as regards the rest of
products 与涉及咖啡的地理标志 (PGI-CO-0467)
冲突。其他产品则具有欺骗性。



Result 结果

The application was entirely refused
驳回所有申请

EUIPO PRACTICE – MISUSE, IMITATION, EVOCATION

欧盟知识产权局做法——滥用、模仿、联想

Misuse
Imitation
Evocation
滥用、模仿、
联想

- Misuse: false indications 滥用：虚假标志
- Imitation and evocation: overlapping terms 模仿和联想：具有重叠含义的术语
- Evocation: the public establishes a sufficiently clear and direct link between the term in the TM and the GI (*Verlados*) 联想：公众在商标术语和地理标志(*Verlados*)术语之间建立起足够清晰且直接的联系
- Visual, aural or conceptual similarity e.g. terms share characteristic beginning or ending, conceptual proximity (*Scotch Whisky*) 视觉、听觉或概念相似性，例如术语的开始或结束特征相同，或者概念相近 (*Scotch Whisky*)
- Not cumulative conditions: mere conceptual proximity enough, e.g. via use of figurative signs (*Queso Manchego*) 非累积性条件：仅概念相近即可；例如，通过使用图形标志 (*Queso Manchego*)
- Indicators of the true origin of the product not to be taken into account (*Scotch Whisky*) 不考虑是否标志了产品的真实原产地 (*Scotch Whisky*)
- Proximity of the goods concerned is a factor but EUIPO does not go into dissimilarity in absolute grounds assessment. 所涉产品的相近性是因素之一，但欧盟知识产权局在绝对理由评估中对“不相似性”不予考虑。

EXAMPLE – EVOCATION 示例——联想



EUTM No 15 420 607
第15 420 607号欧盟商标



Goods and Services 商品和服务

Whisky; Blended whisky; Whisky liqueurs
威士忌; 混合威士忌; 威士忌利口酒



Potential issues 潜在问题

Possible conflict with geographical indication
SCOTCH WHISKY (PGI-GB-01854) 可能与地理标志SCOTCH WHISKY (PGI-GB-01854)冲突



Result 结果

Application registered after limitation to “all
aforementioned goods complying with the
specifications of the PGI Scotch Whisky”
“在符合受保护地理名称Scotch Whisky规范
的产品范围内” 予以注册

EXAMPLE – EVOCATION 示例——联想



EUTM No 18 015 193
第18 015 193号欧盟商标



Goods and Services 商品和服务

Inter alia, tomatoes 番茄等



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) 冲突



Result 结果

Application registered after limitation to products
complying with the specification of the GI
在符合该地理标志规范的产品范围内予以注册

EUIPO PRACTICE – MISLEADING PRACTICES 欧盟知识产权局——误导性做法

False
Misleading
Indications
or practices
虚假、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*) 检验方法：标识（商标中的要素、文字、图形、容器）是否“就【产品】原产地、产品性质或主要品质，传达虚假印象”
- Does it extend to reproduction of the shape or the appearance which are characteristic of a product? 是否延伸至复制构成产品特征的形状或外观？
- The context in which the possible misleading indication is used is not to be taken into account (*Scotch Whisky*) 不考虑潜在误导标识所在的语境
- The Office relies on third party observations 欧盟知识产权局采信第三方观察

EXAMPLE – MISLEADING PRACTICES 示例——误导性做法



EUTM No 018 022 404
第018 022 404号欧盟商标



Goods and Services 商品和服务
Inter alia, non-alcoholic beverages, beer 非酒精饮料、啤酒等



Potential issues 潜在问题
Conflict with the PGI TEQUILA (PGI-MX-01851)
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
与受保护地理标志TEQUILA (PGI-MX-01851) 冲突。商标如果有“tequila”字样，则必须实际包含确定百分比的龙舌兰，所以无法为第32类商品申请该商标。



Result 结果
Application withdrawn after being objected by EUIPO
被欧盟知识产权局驳回后撤回申请

LIMITATION WILL RESOLVE THE PROBLEM, EXCEPT... 限制条件的使用可解决问题，除非.....

Trade marks in conflict with two or more GIs 商品与多个地理标志冲突

Term 术语	Products 产品	Example 示例	Relevant PGI/PDO 相关受保护地理标志/受保护原产地名称	Outcome 结果
Different 不同	Identical 相同	RIOJA RIBERA DE DUERO <i>Wine 葡萄酒</i>	Rioja (PDO) (受保护原产地名称) Ribera de Duero (PDO) (受保护原产地名称)	No limitation possible 无法限制
Identical or similar 相同或相似	Identical 相同	MARIOLA MODENA <i>Vinegar 醋</i>	Aceto Balsamico di Modena (PGI) (受保护地理标志) Aceto Balsamico Tradizionale di Modena (PDO) (受保护原产地名称)	Limitation (either, or for both) 限制 (任一个或两个)
Identical or similar 相同或相似	Different 不同	MALLORCA SUN <i>Meat, bread, pastry 肉、面包、油酥饼</i>	Sobrasada de Mallorca (PGI) (受保护地理标志) Ensaïmada de Mallorca (PGI) (受保护地理标志)	Limitation (for both) 限制 (两个)
Identical or similar 相同或相似	Comparable 可比	AXN MODENA <i>Meat 肉</i>	Prosciutto di Modena (PDO) (受保护原产地名称) Zampone Modena (PGI) (受保护地理标志) Cotechino Modena (PGI) (受保护地理标志)	Limitation (either or for all, deceptive goods deleted) 限制 (任一个或全部，删除欺骗性商品)
Homonyms 同音	Identical 相同	PISCO MISTRAL GRAN NOBEL (fig) (图形) <i>Pisco 皮斯科酒</i>	PISCO (Peru) (秘鲁) PISCO (Chile) (智利)	Limitation (one or the other) 限制 (一个)

SITUATIONS COVERED BY EU REGULATIONS – RECAP ABSOLUTE GROUNDS 欧盟条例涵盖的情形——关于绝对理由的总结

SITUATIONS COVERED BY EU REGULATIONS 欧盟条例涵盖

AND ASSESSED BY EUIPO IN ABSOLUTE GROUNDS
且欧盟知识产权局在绝对理由中评估的情形

Use
使用

Imitation
Evocation
Misuse
模仿、联想、
滥用

False,
misleading
indications or
Practices
虚假、误导性
标志或做法

Protection limited to 保护范围:

- Goods which are IDENTICAL or COMPARABLE to the GI product (also if goods are the specific object of services) 与地理标志产品相同或可比的商品（如果商品是服务的具体对象，也受保护）
- Goods in which the GI product is a commercially relevant ingredient 包含地理标志产品作为商业相关成分的商品

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

驳回地理标志冲突商标的相对理由

LEGAL FRAMEWORK - RELATIVE GROUNDS FOR REFUSAL OF TMs IN CONFLICT WITH GIs 法律框架——驳回地理标志冲突商标的相对理由

REGULATION (EU) 2017/1001 ON THE EU TRADE MARK – ARTICLE 8(6) 有关欧盟商标的2017/1001号(EU)条例——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: 在**依法授权**行使原产地名称或地理标志相关权利的**任何人**提出异议后，依据规定原产地名称或地理标志的**欧盟法或国家法**，凡符合下列条件的，对申请商标不予注册：

- (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; **在欧盟商标注册申请日期之前**，依据欧盟法律或国家法律，已提交原产地名称或地理标志申请的；
- (i) that designation or origin or geographical indication **confers the right to prohibit the use** of a subsequent trade mark. 该原产地名称或地理标志**授权禁止使用**在后商标的。

EXAMPLE – EVOCATION 示例——联想

REGULATION (EU) 2018/625– ARTICLE 7(2)(e) 2018/625号(EU)条例——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:

异议方还应提交证明其在先标志或权利存续且有效的证据、有关在先标志或权利保护范围的证据，以及证明其有权提出异议的证据。异议方应尤其提供下列证据：

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;

以2017/1001号(EU)条例第8(6)条对在先原产地名称或地理标志的定义为依据提出异议的，应提交关于在先权利的取得、存续及保护范围的证据；依据成员国法援引该在先原产地名称或地理标志的，应引证相关法条的出版物，明确指出所涉成员国法相关内容；

Substantiation

GI
证实
地理标志

**Entitlement
Opponent**
权利
异议方

EUIPO PRACTICE – EXPLOITATION OF REPUTATION 欧盟知识产权局做法——攀附知名度

Exploitation of Reputation 攀附知名度

- Exploitation of reputation can only be put forward if there is ‘use’ of the GI 只有当地理标志遭到“使用”时，才能提出攀附知名度标准
- 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 与商标不同。商标的知名度可量化评估，而地理标志的知名度仅与地理标志命名产品的质量相关；欧盟知识产权局认为，地理标志存在固有知名度。
- Opponents do not have to submit evidence of the GI reputation 异议方无需提交关于地理标志知名度的证据
- BUT they must submit convincing arguments and/or evidence regarding the exploitation of the reputation of the GI 但是，异议方必须就地理标志攀附知名度提交令人信服的论证和/或证据

EXAMPLE – OPPOSITION 示例——异议



EUTM No 17 192 899

B 3 060 646 PERÚ PISCO BAR (FIG)/PISCO

第17 192 899号欧盟商标
B 3 060 646 号秘鲁皮斯科酒吧（图片）诉普
皮斯科（PISCO）案



Contested goods and services 涉争商品和服务

Services in Class 43 (e.g. *bar services; catering services; provision of food and drinks*) 第43类服务
(例如，酒吧服务；餐饮服务；提供食品和酒水饮料)



Opposition 异议

Opponent argued that the sign exploited the reputation of PISCO (PGI-PE-01825) protected for *fruit spirit drink*
异议方认为该标志利用了果酒受保护地理标志PISCO的声誉



Result 结果

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
鉴于异议方提出的证据和论据，依据第8(6)条规定支持异议。INDECOPI投资推广PISCO证据确凿，产品与涉争服务存在联系，涉嫌攀附地理标志知名度的论据详实

SITUATIONS COVERED BY EU REGULATIONS – RECAP RELATIVE GROUNDS 欧盟条例涵盖的情形——关于相对理由的总结

SITUATIONS COVERED BY EU REGULATIONS 由欧盟条例涵盖
AND ASSESSED BY EUIPO IN RELATIVE GROUNDS
且欧盟知识产权局在相对理由中评估的情形

Use 使用

**Exploitation of
Reputation
攀附知名度**

**Imitation
Evocation
Misuse
模仿、联想、
滥用**

**False,
misleading
indications or
Practices
虚假、误导性
标志或做法**

Protection limited to 保护范围:

- IDENTICAL or COMPARABLE goods 相同或可比商品
- Scope of Protection may be extended if **exploitation of reputation** is proved 如果证实存在攀附知名度的情形, 可以扩展保护范围
- Goods where the GI product is a commercially relevant ingredient 将地理标志产品用作相关原料的商品

THANK YOU
感谢聆听

 @IPKey_EU