



INSTITUT NATIONAL
DE L'ORIGINE ET DE
LA QUALITÉ



The French perspective

Panel : regulator's panel on enforcement strategies

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The french perspective

The differences in the institutional arrangements of each state reflect the constitutional differences between USA and France. One is a federal state and the other is a central state.

The american institutional arrangement is a no unified system where hierachy of responsibility for adminstering and overseeing the system is not clear, by example, between the Alcohol and Tobacco Tax and Trade Bureau (TTB) part of the US Treasury Department, the Alcoholic Beverage Contrôle, an agency of the californian State and also the Wine Institut.

The french institutionnal arrangement is more easy : it's an unified system and a single window for producers.





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A modern tool based on an old concept

- 1905 : recognition of the first AOs (Appellations of origin)
- 1935 : creation in France of the INAO and the AOC (Controlled appellation of origin)
- 1992 : First European Regulation on PDO and PGI for agricultural products and foodstuffs
- 1994 : Marrakesh Agreement and coming into effect of the TRIPS Agreement in 1996
- 2013 and 2008 : latest European Regulations on PDO and PGI





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European Regulations regarding Gis

Wine :

Regulation (EU) n° 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products (Single CMO Regulation)

=>Articles 92 to 113 refer to PGIs and PDOs in the wine sector

Spirits :

Regulation (EC) n° 110/2008 of the European Parliament and the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks

The French perspective



Agricultural products and foodstuffs

Regulation (EU) n° 1151/2012 of the European Parliament and of the Council of 21 November 2012

on quality schemes for agricultural products and foodstuffs

Protection against any **direct or indirect use** of protected names for **comparable products** or in so far as using the name exploits the reputation of the protected name (= **non-comparable products**)





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The french perspective

Protected designation of origin PDO for european level or AOC for national level and Protected geographical indication have common characteristics :

“the **name of a region**, a specific place or, in exceptional cases, a country, **used to describe** an agricultural product or a foodstuff **originating** in that region, specific place or country,”

DIFFERENCE : THE LINK TO THE ORIGIN

PGO

the **quality or characteristics** of the product are **essentially or exclusively** due to a particular geographical environment with its inherent **natural and human factors**
the **production, processing and preparation** of the product take place in the defined **geographical area**

PGI

The product presents a **specific quality, reputation or other characteristics** attributable to that geographical origin

the **production and/or processing and/or preparation** of the product take place in the defined geographical area.





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The french perspective

The features of the French GI system

- Geographical Indications are part of an official quality signs policy as a strong economic tool in the agricultural sector.
- Association of producers and Administration in the monitoring of the system.
- Existence of a specific public body (INAO).
- Involvement of the State in the protection of GIs.





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The french perspective

French institutional system

Ministry of Agriculture

Ministry of Economy

INAO	INPI	DGCCRF	DGDDI
(National Institute of Origin and Quality)	(National Institute of Industrial Property)	(Directorate-General for competition, consumers and repression of frauds)	(Directorate-General for Customs and Indirect Duties)
Geographical indications	Patents, trademarks,	Control of fraudulent products	Control of fraudulent products





The law specifies the missions of the INAO : article L. 642-5 rural and maritime fishing code

- Recognizing GIs
 - Defining the geographical area of production
 - Defining the product specifications

- Determining a system of controls of the products

- Contributing to the protection of GIs



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The french perspective

Statute and organization of the INAO

- A governmental body related to the Ministry of Agriculture
- Head office in Montreuil
- regional offices all over the French territory
- 280 employees (70% in regions)

Budget 20 M €

(72% State, 28% professional fees)





The french perspective

The principles

- Voluntary and collective action by a group of professionals (farmers, processors, distributors...), called defence and management bodies ;
- A strict product specification written by the producers with the help and check of the INAO ;
- Procedures of control to check the respect of the product specification = guarantee of the quality and origin of the product.



The french perspective

Procedure of recognition

- **1/Application by a group of producers**
Voluntary and collective action by a group of professionals (farmers, processors, distributors...), called defence and management bodies. Drafting of a product specification and application for recognition
- **2/INAO**
checking, national procedure of opposition then proposal
- **3/GOVERNMENT**
decision of recognition and forwarding to the UE
- **4/EUROPEAN COMMISSION**
formal examination + publication and european procedure of opposition (2 months for wine), then registration



The french perspective

Legal effects of the registration: Protection of GIs in the EU

Registered names are protected against:

- any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar;
- 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 product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product.

=> Protected names cannot become generic



The french perspective

What kind of misuse :

- Misuse by similar product = usurpation
- Exploitation of the notoriety or reputation by non-comparable products
- Use of name slightly different (part of the name, translation...)

Relations PDO/PGI - Trademarks

1) WHERE THERE IS A PREVIOUS EXISTING TRADEMARK

- Well-known trademarks prevail:

A DO or GI shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

- Coexistence trademarks - GIs :

A trademark the use of which corresponds to one of the situations in article 13 -namely, exploits the reputation, misuse, imitation or evocation, false or misleading any other practice liable to mislead... - has been applied for, registered, or established by use, if that possibility is provided for by the legislation concerned, in good faith within the Community, before the date of protection of the DO or GI in the country of origin or before 1 January 1996 and no grounds for its invalidation or revocation exist as specified by the First Directive 89/104 (now 2008/95 of 22 October) or CTMR 40/94.

2) WHERE THERE IS A PREVIOUS REGISTERED PDO/PGI

PDO/PGI prevails



The french perspective

Enforcement of rights

Member States must ensure the protection

➤ Pre litigation stage :

In France, there is a continuous monitoring by the legal and international department of INAO of the trademark application on international, european and national levels, that induce a lot of letters of formal notice.

➤ Litigation stage :

Criminal proceedings : non-respect of specification (fine and prison sentence)

Civil proceedings (INAO) : misuse of the name/relations with trademarks (invalidity or revocation)

- A large protection of the GI's :
 - ➔ for a similar product : forbidden
 - ➔ for a different kind of product : excluded if risk of weakening or altering the notoriety of the appellation



The french perspective

Criminal Proceedings : sanction of frauds !

➤ 2 provisions in the Consumer Code:

General offence on deception of consumers (art. L213-1 of the Consumer Code)

Anyone, whether or not they are party to the contract, who may have deceived or attempted to deceive the contractor ... either in respect of the nature, species, origin, essential qualities, composition or content ... of any merchandise, shall be punished by two years imprisonment and a € 37,500 fine

Specific offences related to GIs (art. L115-16 and L115-22 of the Consumer Code)

= fraudulent use of GIs

➤ 1 provision in the Rural Code (art. L643-1) :

use of the name of an appellation of origin for similar or different kind of product

Public procedure mainly based on the initiative of Fraud services

Fine (37 500 €) and prison sentence of 2 years

+ posting of the judgement or publication in newspapers, all at the expense of the convicted person.



Non-respect of name :

Civil proceedings : misuse of the name/relationship with trademarks (invalidity or revocation) on the basis of:

art. L.643-1 rural and maritime fishing code : The name constituting the appellation of origin or any other mention that refers to it, may not be used for any similar products. They may not be used either for any business and for any product or service, in so far as such use is likely to misappropriate or weaken the notoriety of the appellation.

Article L.711-4 of the Intellectual Property Code:

Signs may not be adopted as marks where they infringe earlier rights, particularly:

d) A protected appellation of origin

Proceedings by INAO and/or GI representatives

Civil code **Art. 1382**

Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.



The french perspective

Non respect of name : Civil proceedings : misuse of the name/relationship with trademarks (invalidity or revocation) on the basis of

- **Another part of the litigation stage:**
 - **In legal proceedings** we go to the support of ministries of Agriculture and the Finances. In fact, more and more operators don't hesitate to dispute decisions of recognition or modification of geographical indication.
 - **The European proceedings** are more and more important. The Court of Justice of the European Union, ensures that the EU respects its own rules and remains an organisation based on the rule of law. Article 267 of the Treaty on functioning of european union :The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:(a)the interpretation of the Treaties;(b)the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.



The french perspective

The case law of CJUE is important to defend an high level of protection of GI's. The french gouvernement interviened in the following cases :

- Affaire C-75/15 Viiniverla Oy the judgment has been delivered in this case.
- Affaire C-393/16 CIVC Champagner Sorbet, the judgment has been delivered in this case.
- Affaire C-44/17 - The Scotch Whisky Association, the case is pending.
- Affaire C-614/17, Queso Manchego, the case is pending.



The french perspective

PROTECTION IN THIRD COUNTRIES

- Multilateral Conventions on intellectual on intellectual property rights Mainly
 - Lisbonne agreement (1958)
 - *TRIPS* (1994)
- Bilateral agreements
 - Between EU and third country
: objective =
« TRIPS + »
- National regulations
 - Specific rules related to Gis
(even through registration)
 - Unfair competition law
 - Consumers' Protection law
 - Rules of labelling or trademark
law (deceptivity)



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Thank you for your attention !