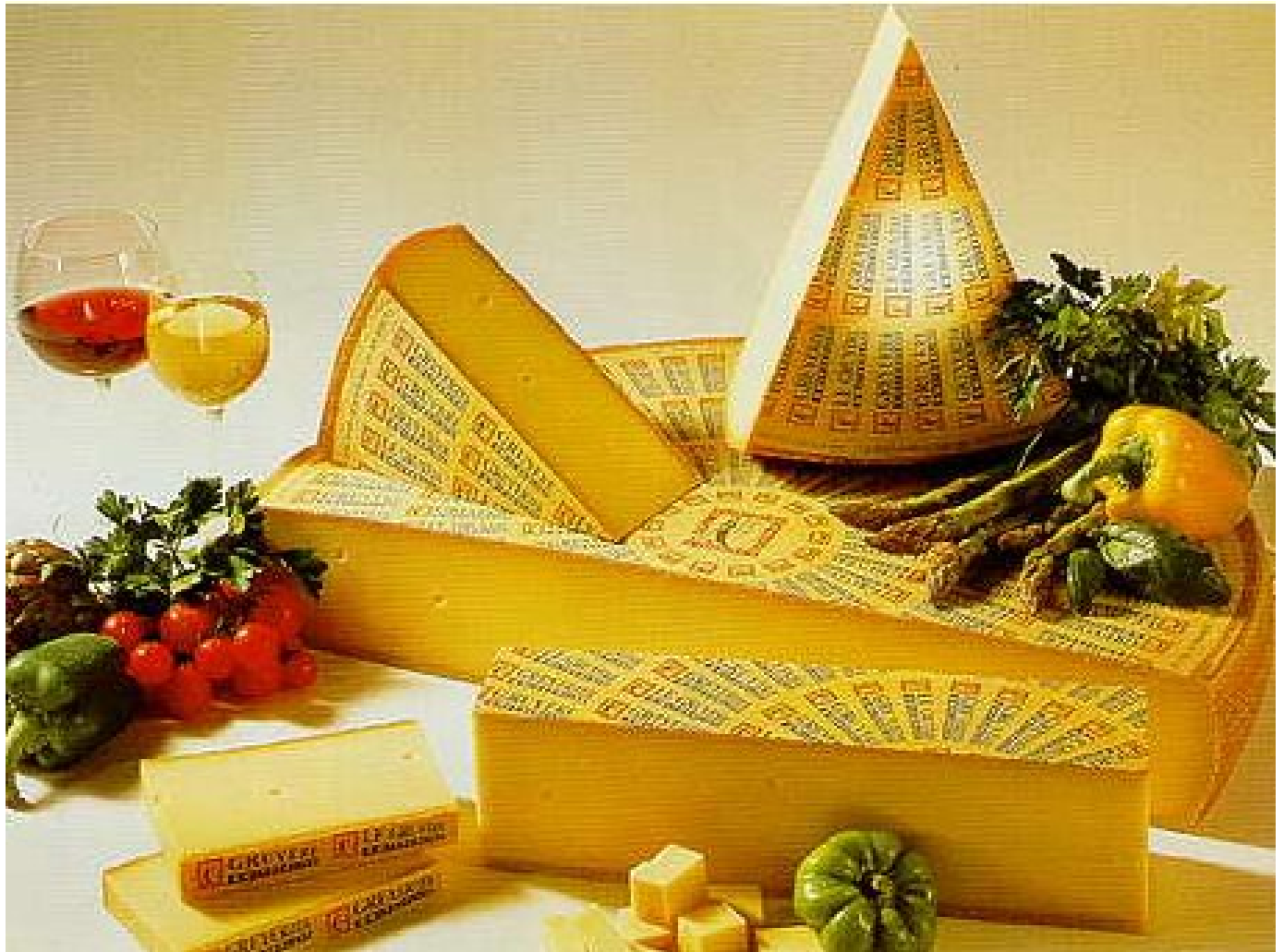


Protection of Geographical Indications

An Introduction

WHAT DO THE
FOLLOWING PRODUCTS
HAVE IN COMMON?



TOBLERONE



*Assortiment
Grandeurs
Achats*



*Toblerone –
le chocolat suisse
le plus connu*



The Indication “Switzerland”

AND WHAT MAKES THEM
DIFFERENT FROM EACH
OTHER?

QUALITY?

ORIGIN?

- cheese
- chocolate
- knives
- watches

Which ones do not belong to the group?

- Cognac
- Cabernet
- Scotch
- Vodka
- Havana
- Basmati
- Grappa
- Porto
- Champagne
- Bacardi
- Feta
- Darjeeling

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Geographical Indication

In a non-technical sense:

an indication that a given product originates in a given place (country, region, town, etc)

Direct Reference

- Cognac
- Scotch
- Havana
- Grappa
- Porto
- Champagne
- Darjeeling

Indirect reference



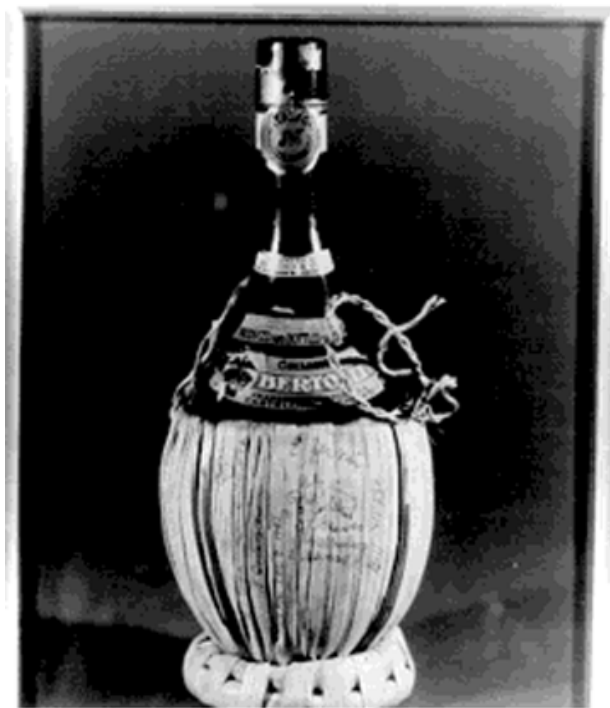
Indirect reference



Indirect reference



Indirect reference



Acquired Geographical Meaning

- Muscadet (?)
- Basmati (?)
- Vodka (?)

TERMINOLOGY

Indication of Source

“Indication referring to a country or to a place situated therein as being the country or place of origin of a product”

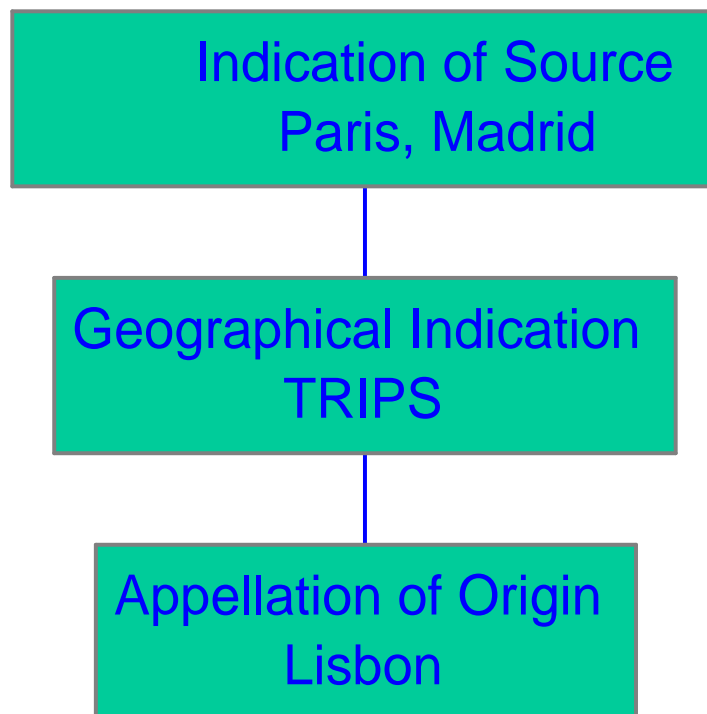
Appellation of Origin

“The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors” (Lisbon)

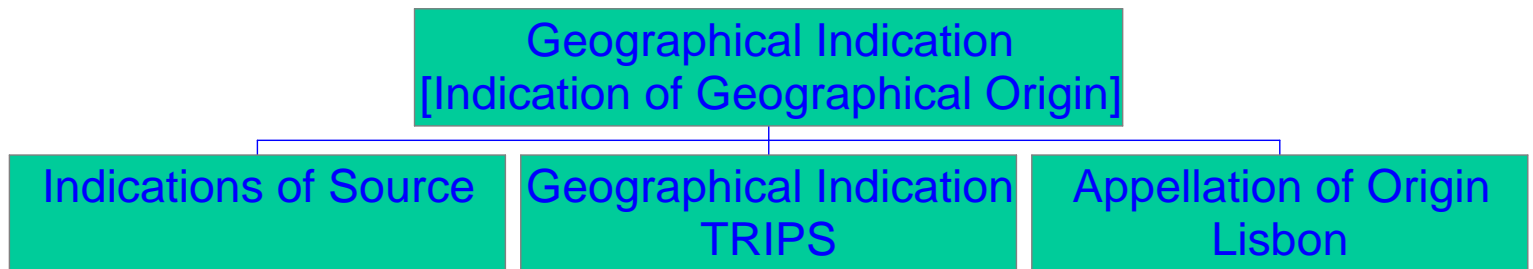
Geographical Indication

“Indication which identifies a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin” (TRIPS)

Relationship (i)



Relationship (ii)



Generic Designation

An indication of a place where a given product was originally produced, and which has become the common name of that product.

Determination under national law.

National Protection

- in the absence of any international agreement
- appreciation in accordance with national law and perception by the local consumers
- geographical indication may be
 - distinctive
 - generic

Types of Protection

- protection against unfair competition (passing off)
- Collective or certification marks
- sui generis protection
- administrative systems of protection

Unfair Competition Passing Off

- showing of an acquired reputation
- likelihood of confusion
(misappropriation of reputation)
- damage

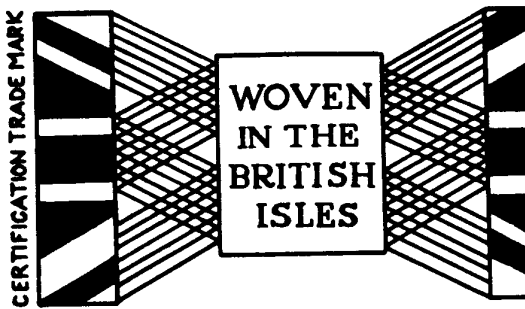
Trademark Law

- Collective Mark
- Certification Mark

Collective Mark



Certification Mark



STILTON

CERTIFICATION TRADE MARK



CERTIFICATION TRADE MARK

Sui Generis Systems

- Protected Appellations of Origin
 - e.g., France
- Registered Geographical Indications
 - e.g., EU, Australia, Switzerland

Administrative Systems

E.g., U.S. (labeling requirements of BATF for wines and spirits)

Geographical Indications

- Collective rights
- No individual owner
- No assignment
- Enforcement

Scope of Protection

- Non-authorized use that is misleading
 - GI is understood as such
 - goods are identical or similar
 - use depends on prior regulatory approval
- Any non-authorized use
 - famous GIs
 - dilution

International Protection

International Treaties:

- bilateral treaties
- multilateral treaties

Bilateral International Treaties

- long tradition (e.g., France since 1895)
 - exchange of lists with protected g.i.
 - conditions for protection
- bind only contracting countries

Multilateral International Treaties

- Paris Convention (1883)
- Madrid Agreement (1891)
 - for the Repression of False or Deceptive Indications of Source on Goods
- Lisbon Agreement (1958)
 - for the Protection of Appellations of Origin and their International Registration
- TRIPS Agreement (1994)

Conflicts

Typical scenario:

“generic designation *vs.*
geographical indication”

Conflicts

- Point of view of TM Law
- Point of view of Law on Geographical Indications

Trademark Law

- Geographical signs cannot constitute trademarks, unless
 - secondary meaning
 - arbitrary

Unfair Competition

“Swiss Chalet Chocolate”

Collective or Certification Marks

- Rocquefort Cheese”
- Darjeeling Tea

Sui Generis Systems

- Protected Appellations of Origin
- Registered Geographical Indications
- Different possible solutions
 - priority to TM
 - priority to GI
 - co-existence

Administrative Systems

Regulate use of geographical indications

Lisbon Agreement

- **No Co-existence** between TMs and geographical indications.
- Refusal of Protection (Article 5(3)) or invalidation, or prevention of use in a form different from an aao.

TRIPS Agreement

- Exclusive TM rights (Article 16)
 - exception (Article 17)
- Exclusive GI rights (Article 22 & 23)
 - exceptions referring to TMs (Article 24)
 - 24.5 (prior TM rights)
 - 24.7 “preclusion”