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## Trademark and GI : complementary assets

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### Pernod Ricard, worldwide presence but local roots

▶ The company :

Founded in 1975 (merger of 2 French companies)

Today the 3<sup>rd</sup> biggest player in wines & spirits

Turnover : 3.4 billion Euros

▶ The corporate strategy :

Concentrating on main brands, and

Developing strong local or regional brands and wholly-owned distribution networks in all major markets



## Some of our main brands (1/2)

### ► Whiskies :

#### Chivas Regal



#### Jameson



## Some of our main brands (2/2)

### ► Martell



### Jacob's Creek



### Havana Club



## Some of our local brands

▶ Ouzo Mini



Wild Turkey



Viuda de Romero



## Our brands bear GIs

- ▶ Chivas Regal = Scotch Whisky
- ▶ Jameson = Irish Whiskey
- ▶ Martell = Cognac
- ▶ Jacob's Creek = Australian Wine
- ▶ Havana Club = Ron de Cuba
- ▶ Mini = Ouzo
- ▶ Wild Turkey = Straight Kentucky Bourbon Whiskey
- ▶ Viuda de Romero = Tequila



## The Wines & Spirits industry

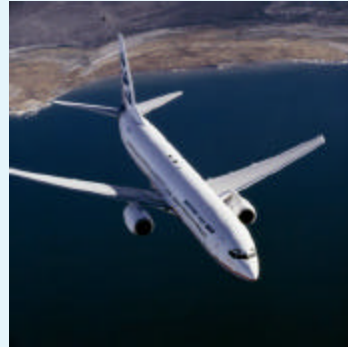
- ▶ The wines & spirits industry, very much export-oriented :

Australian exports of wines reach 1,4 billion Euros / year

European exports of spirits = 5,5 billion Euros / year

European exports of wine = 4,2 billion

Together they represent 21% of the EU's overall exports, i.e. worth 130 Boeing planes



## Trademark and GI : Mutually Supportive

Commercially speaking, a GI helps promoting a brand / trademark

The case of Wild Turkey Bourbon :  
*"Not the latest thing, the genuine thing"*



## Trademark and GI : Mutually Supportive

The commercial effect of the geographical origin is not necessarily linked to its legal status.

The case of Jacob's Creek :  
"Australia's Top Drop"



## Trademark and GI : Mutually Supportive

The staggering cost of counterfeiting :

For spirits only, the industry assessed the cost of counterfeiting at 5 to 8% of overall sales, i.e. about 543 million US\$ for the entire industry

For Pernod Ricard, counterfeiting represents :

- 7,6 million liters of counterfeit versions of Pernod Ricard's products are sold every year
- our annual loss is about 50 million US\$



## Trademark and GI : Mutually Supportive

GIs can help to protect trademarks against counterfeiting

Protecting Royal Salute, 21 year-old Scotch Whisky,  
against a look-alike called "Royal Cross"



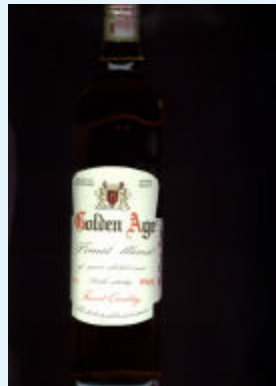
VERSUS



## Trademark and GI : Mutually Supportive

Sometimes, the GI is the only way to address bogus  
products, when the trademark is not directly usurped

Against this fake, the  
only remedy is the  
infringement on the GI  
« Scotch Whisky »



## Trademark and GI : Mutually Supportive

Some GIs help reassure consumers about a high standard of quality, thus reinforcing brands bearing GIs

Spirits can only be called « Tequila » if they comply with a strict set of requirements : Tequila is NOT made with random ingredients



## How to protect GIs (1/4)

The great principles enshrined in TRIPs are all fine and nice, but they won't do if they are not EFFECTIVELY implemented

We want a multilateral system to provide for a worldwide harmonized protection of GIs.

A string of bilateral agreements would not be able to deliver this and would take ages anyway.





## How to protect GIs (2/4)

Protection of GIs should afford legal certainty :

- To know which GIs can be protected in each country
- To have a guarantee that GIs will be protected locally, before committing resources / investing in a given country



## How to protect GIs (3/4)

This multilateral protection mechanism should be efficient :

- Presumption of validity of an internationally recognized GI
- Reversing the burden of proof towards anyone challenging that the GI is entitled to protection
- Making this mechanism a mandatory reference for local courts





## How to protect GIs (4/4)

The TRIPs agreement lays down that a register shall be established (art.23-4). We don't care about the exact name and features of this register, as long as it fulfills our needs.

However, for the moment, only the EU's proposal for a binding register seems to address our concerns for effective protection.

We don't understand why others have not done the same : how to protect GIs is not a political issue, but a technical one, i.e how to fight against counterfeiting.



## Conclusion : implementation is the essence

Our experience in protecting trademarks abroad tells us that having nice principles in TRIPs is not sufficient :

these principles need to be implemented on the ground.



## Conclusion : implementation is the essence

Section 211 was adopted in 1998, thanks to the successful lobbying of our competitor Bacardi. S.211 made it impossible for us to oppose counterfeiting of our Havana Club trademark



## Conclusion : implementation is the essence

The “Havana Club” case shows 2 major problems in the level of protection offered by TRIPs :

- The weakness of TRIPs when it has not been enshrined into national law
- The fairly restrictive approach taken by the WTO arbitrators in this case, narrowing TRIPs to mere issues of procedure. Basically, TRIPs does not lay down any rules on substance !



## Conclusion : implementation is the essence

Pernod Ricard is not here to support unconditionally the EU : we also have problems to secure adequate protection of GIs within the EU

Lately, there has been a non-sensical controversy about the possibility of using the term « Sherry Wood finish » for some Scotch Whiskies matured in casks initially filled with Sherry



## Conclusion : implementation is the essence

We would like to avoid the same kind of misfortune with GIs, as we had with trademarks.

This is why we want a strong & efficient protection for GIs multilaterally.

**Thank You for your attention**

