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WORLD INTELLECTUAL  
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## **WIPO MILAN FORUM ON INTELLECTUAL PROPERTY AND SMALL AND MEDIUM-SIZED ENTERPRISES**

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FOSTERING THE INNOVATION POTENTIAL OF SMES IN THE GLOBALIZATION  
ERA: THE ROLE OF TRADEMARK AND INDUSTRIAL DESIGN SYSTEMS

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SMEs in transition economy countries. Peru

1. In Peru, a microenterprise or small enterprise is the classification that has been given to those enterprises which lie within fixed parameters established by law, taking into consideration the number of workers and volume of annual sales of the enterprises.
2. Accordingly, Legislative Decree No. 705 states the following:

	<b>No. of workers</b>	<b>Annual sales</b>
Microenterprise	10	12 UIT
Small enterprise	20	25 UIT

1 UIT = US\$ 830.00

Source: Market Business

3. In addition, the Finance and Development Corporation of Peru (COFIDE) categorizes SMEs as follows:

	<b>Annual sales (US \$)</b>	<b>Assets or investments (US \$)</b>
Microenterprise	40 000	20 000
Small enterprise	750 000	300 000

Source: Market Business

4. In Peru and the various transition economy countries, there is an ever-increasing recognition of the impact and relevance of medium-sized, small and microenterprises in the mobilization of national economies, since they undoubtedly generate employment and serve as fundamental components of the production mechanism of each country.
5. Consequently, for governments “progress in this sector is essential for achieving development in our countries and guaranteeing that the benefits of growth reach the majority of the population.”<sup>1</sup>
6. It is interesting to see that in Peru 99 per cent of all institutions are enterprises with fewer than ten workers. 78.2 per cent of the Peruvian population work in medium-sized, small and microenterprises, and this situation demonstrates an important part of the phenomenon of underemployment, “insofar as many of them, primarily microenterprises, originate as result of the population’s efforts to “invent” their own occupations with limited levels of income and productivity. The sustainable way of improving income and enhancing the quality of employment is to promote the market competitiveness of smaller-scale enterprises, by continuously increasing their productivity, significantly improving the skills of their workforce and strengthening their entrepreneurial vocation.”<sup>2</sup>

<sup>1</sup> Franco Temple, Agnes. “Peru’s experience in promoting enterprise development services for small and medium-sized enterprises.” In: Conference “Forging a modern and effective enterprise development services sector in Latin America.” Brazil, 1999.

<sup>2</sup> *ibidem*.

Statistics from the small and microenterprise sector in Peru

Source and preparation: MITINCI

Importance in employment :

7. Small and microenterprises provide 74 per cent of employment and generate around five million jobs.

Number of SMEs :

- 97.65 per cent with fewer than ten workers
- There are more than three million microenterprises

8. However, for the reasons outlined above SMEs must deal with a series of problems related to their market interaction and their own corporate development, which may be considered to be “internal limitations and barriers to access to financial, training, corporate development and technological services.”

9. Moreover, within this process of interaction limitations are also present which affect competition, such as:

- lack of information on competition tools, for example industrial property (trademarks, designs, patents)
- lack of qualified staff
- inefficient use of staff resources
- lack of quality controls for processes and products

10. The economic sector of medium-sized, small and microenterprises is clearly a focus of necessary attention for the State, if opportunities for competitiveness and a dynamic approach are to be generated in the country. The conditions are in place and it is merely necessary to establish clear strategies allowing employers to use the requisite tools appropriately so as to

generate added value for their products and/or services in the struggle for domestic and foreign markets.

11. As part of this major task, the industrial property system must play a very important role.

The promotional role: towards a change in culture by means of creativity and corporate success

12. Industrial property is an excellent tool for generating economic development. We are, however, always faced with the following questions:

In a developing country, how can the population be made to believe in the industrial property system?

How is it possible to *convince* people with meager economic resources that piracy serves no purpose?

How is it possible to *guarantee* respect for industrial property rights?

13. This is where the difficult task lies since it is necessary to introduce a whole new enabling strategy for ordinary citizens and small employers, whereby the intellectual property protection system generates economic well being.

14. If any corporate effort fails to end up in the pocket of the inventor or employer concerned and if the tangible benefit cannot be demonstrated, the whole system is simply reduced to one of oversight.

15. In that sense, the challenges for the administration and protection of intellectual property can be based on the following:

- How to broaden registration coverage:
  - incorporating new economic products and sectors
  - formalizing informal aspects
  - fostering creativity
  - proactively disseminating
- How to facilitate a situation whereby registration helps to generate economic value
  - how to transform ideas into business
  - economic enhancement of IP
  - system vision: IP and competition

Foundations for competitive development. Value generation as a strategy for making the economic activities of SMEs in Peru competitive

16. Employers, whether small, medium-sized or large, must consider that being competitive consists in developing and maintaining comparative advantages in relation to the competition, while constantly seeking to create an advantageous difference in the goods produced or services provided, thereby making those goods or services more valuable than those against which they are competing.

17. The competitiveness of an enterprise is based on the choice of two strategies:
  - Competing on the basis of cost: this is possible only where a favorable price ratio, a beneficial competitive environment and appropriate quantities exist.
  - Competing by means of differentiation: a choice must be made as to where and how to compete, based on an analysis of the enterprise's capacities in the face of competition.
18. However, in the same way as developing countries Peru is dependent on basic factors, and its enterprises compete primarily with "commodities," by using strategies based on advantages stemming from raw materials.
19. Nevertheless, Peruvian employers have excellent opportunities to compete on the basis of differentiation by type of product, service, innovation capacity or other variables that are as yet undeveloped.
20. Taking into account only three sectors or economic activities fundamental to regional or local development in our country in which SMEs play a significant role- agrobusiness, craftsmanship and tourism – it can be pointed out that in Peru, as in other parts of the world, there are certain products which have more important features than others: what is their origin? how are they made? what is their secret? how long have they existed?
21. Also, in the field of tourism certain services may have more important features than others in terms of quality, adventure, sustainability, exoticism-mysticism, ecology, exclusiveness and so on.
22. Highlighting these elements in an appropriate, creative and strategic manner will imply providing added value for products and services which will enter the market under better conditions, in search of customers and a suitable niche.
23. Although there is a trend towards the standardization of agricultural and food products, we should not lose sight of an important sector where consumers prefer home-grown or local products, and particular tastes and smells.
24. In many cases, price is not the fundamental factor when deciding to buy something, rather aspects which were previously irrelevant are becoming important, for example satisfaction as a result of pleasure, or attraction to what looks nice and pleasant, or is nutritional, natural, environmentally friendly and exotic.
25. What we must seek is a range of products or the provision of services with an identity, i.e. products or services with soul.
26. Instruments making it easier for consumers to perceive differences should be incorporated in the added value chain and in the actual offer of services.
27. In that sense, the added value which is associated with a differentiated product or service can only be achieved if it is perceived and considered as such by the customer.
28. For that reason, two instruments are used to convey differences to customers:

(a) Quality Certificates as an instrument of differentiation

- They are not subject to exclusive appropriation.
- They define and characterize in generic terms different attributes that determine the quality of a process or product/service
- They represent a fixed technical standard.

International accreditations (CST)

Certificates of specific conditions (Green Globe)

ISO 9000 quality management standards

ISO 14000 environmental standards

Organic product certificates

Special features certificates

(b) Industrial property as an instrument of differentiation

- They allow the appropriation of differentiation as an intangible asset
- They provide legal security for differentiation (origin, quality, preparation, tradition and so on)
- National and international trademark, supported by a legal system
- Collective marks and certification or guarantee marks and appellations of origin

Distinctive signs in the market:

- A trademark promotes and fosters trade in differentiated products or services by providing information on their features and corporate source.
- It provides the consumer with information on relatively constant clarity of the product or service and facilitates its entry into and foothold in the market.
- It is a suitable mechanism for consumers to condense the possible goodwill or positive reputation enjoyed by a product or service.
- From being a corporate source indicator, it has become an affirmation of quality and a highly effective advertising mechanism.

Proposed strategies

(i) Agro-food/agrobusiness proposal

29. The proposal is based on the use of distinctive signs and is structured so as to transform “commodities” into “specialities,” on the basis of their origin, quality and other specific features.

30. When distinctive signs are transformed into an intangible asset that is recognized and paid for by the consumer, the concepts of origin, quality, composition, preparation and so on are internalized as assets of value.

(ii) Proposal for crafts

31. In accordance with Law No. 24052, the Law on Promotion of Crafts, craft activities are the production of goods or provision of services in which manual labor predominates, as the result of knowledge or skill in any art or occupation, and which can be carried out either inside or outside the craftsman’s place of residence.

32. With that in mind, commercial decisions in a craft-based market should be based on strategies that reflect the following considerations:

- Preserving origin and tradition;
- Industrial production;
- Mixed activity.

33. It is important to highlight the fact that in Peru craft production activities are acquiring special features, as a result of which a significant percentage of the craft products that are exported are produced in Lima; craft production centers have been set up in the different areas of the capital. Consequently, the local and original nature of craft-related activities is disappearing.

34. The proposal made is intended to establish, through the use of distinctive signs in crafts, mechanisms for directly preserving origin, culture, production, raw materials, qualities and specific features, and indirectly promoting the retention of craft activities in the appropriate original locations.

35. The main aim of the use of distinctive signs in this activity is to add value to the resulting product, as compared with similar products, basically in terms of the possible significance and content of a collective mark or appellation of origin that distinguishes the crafts, without prejudice to the protection that might, as appropriate, be generated by the intellectual property in the protected feature.

(iii) Proposal for tourist services

36. The first question that we must ask, as regards a strategy in the regional or local tourist sector, is whether our country is a unique tourist destination and whether we are exploiting it effectively by means of competitive strategies.

37. The proposal put forward is that differentiated tourist services should be developed, on the basis of their quality, sustainability, safety and other specific features; these are internalized by consumers or customers through the use of trademarks which eventually turn into intangible assets and generators of income.

(iv) Main aims in developing the proposals

- Creation of economic value for certain regional and local products and services in which participation of SMEs is important.
- Differentiation of products and services according to identified demand.
- Promotion and development of SMEs.
- Promotion of regional and local economies.
- Promotion of exports and adaptation to international standards for developing export activity, learning to work collectively on common quality parameters.
- Preservation of the environment and local culture.
- Legal system, legal security.

(v) Theoretical considerationsa) Collective mark

38. A collective trademark is, as its name suggests, a trademark that is the property of a large number of people, or rather of an organization or cooperative for example, whose members may use it. Such use is governed by the extent to which the members respect the conditions established for use by the organization in question.<sup>3</sup>

39. A collective mark serves to distinguish the origin or any other common feature of services of different enterprises using the mark under the holder's supervision.

40. A collective mark is adopted by a collective body, for example a producers' or manufacturers' association or other organization of legally established persons, that serves to distinguish the products or services produced or provided by the members of the association or group.

41. This makes the collective mark an important mechanism for protecting names of original products as, given its nature, the exclusive right granted by its registration is exercised by a collective or group of persons, subject to specific rules approved by those persons.

42. The conditions for monitoring and regulating the use of a collective mark represent the foundations for the mark to generate value and obtain benefits that a duly exploited trademark offers.

The collective use of the mark:

- Need to form an association or group so as to offer products or provide joint services
- Mechanism for learning to work together, with common tasks and aims "Associative activity."
- Private "organization" chart with rules imposed by actual association or union members.
- Systems for verifying and monitoring common levels and conditions, system of penalties for non-compliance.

Regulations for use:

- Internal standards, basis for development of common objectives (quality, uniformity and so on).
- Rules that unify/standardize the product/service on offer.
- A self-monitoring system is generated.
- The State does not participate directly in the system. Indirect participation.
- Protection of holder's rights. Consumer protection.

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<sup>3</sup> Otamendi, Jorge. Trademark Law. Abeledo-Perrot, Buenos Aires, 1995.



Need to position a trademark:

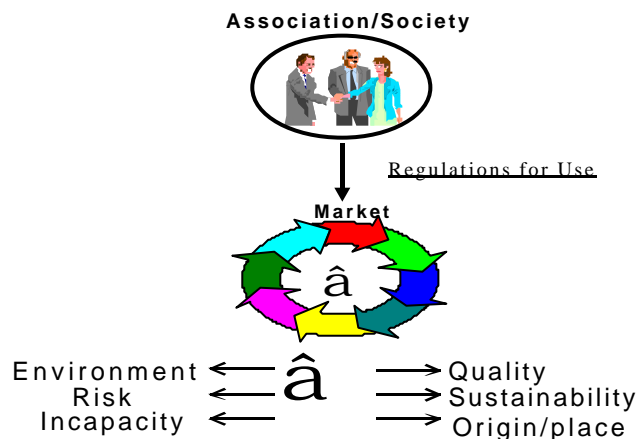
43. The effectiveness of the desired function of a trademark (information on the features of the product or service) requires the prior dissemination to the consuming public of the underlying principles of the trademark.

What lies behind a trademark?

- The work done to position the trademark is the responsibility of the association or union members. Joint effort.

Advantages of using a collective trademark:

- A joint market approach can be adopted, thereby requiring a common strategy.
- The trademark is used and promoted by several people.
- The joint use of a trademark makes it necessary to unify the quality and features of the products or services bearing the trademark. The product or service is “standardized” on the basis of quality criteria.
- Mechanism for developing regions or localities. Local and regional trademarks.
- Using a collective mark does not prevent the use of individual or specific trademarks.

**Collective Mark**b) Certification or guarantee mark

44. This is the mark or medium that certifies the common features of the products or services prepared or distributed by duly authorized persons other than the holder and whose use is subject to supervision by the actual trademark holder.

45. Its function is to show that a particular feature and a certain level of quality are common to such products and services, with the guarantee that they have been subject to direct prior and continued supervision by the trademark holder.

Ownership of the mark and certification function:

- The owner of the certification or guarantee mark may be an individual or legal entity, either private or public (State body).

- The holder assumes responsibility for certification, in accordance with specific or adopted assessment and auditing criteria (Technical Standards – ISO - other international accreditations).
- The potential success of the mark centers on the supervision systems devised by the owner (credibility, guarantee and consistency).
- The certification or guarantee mark cannot be used by the owner himself.
- Marks are used under license. Use by third parties.
- Licenses for use conform to the certification plan of the enterprise owning the mark and its corresponding supervision and auditing.

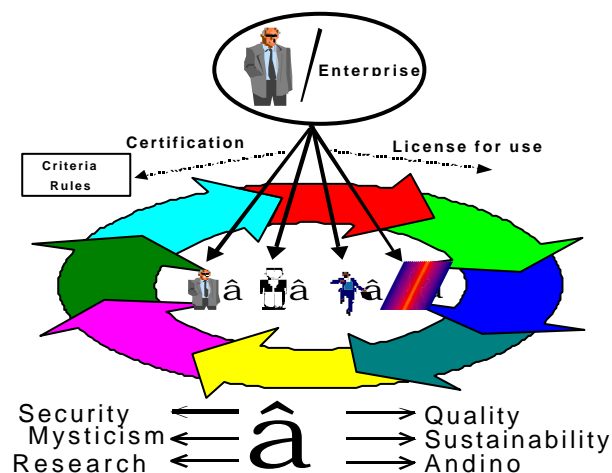
#### Need to position the mark:

- The effectiveness of the combined information and quality certification function of certification or guarantee marks requires the prior dissemination to the consuming public of the underlying principles of the trademark.
- The promotion of a trademark is in the hands of the owner. However, it may be done jointly with authorized users, who will refer to the certification mark and connect it with the specific product or service mark.

#### Advantages of using a certification mark:

- It generates market confidence as regards particular service conditions.
- It establishes technical specifications of and standardizes the product/service, subject to rigorous supervision. Care is taken not to harm the prestige enjoyed by the mark.
- Broad acceptance at the international level, insofar as the owner of the mark makes himself known.

### **Certification or Guarantee Mark**



(c) Appellation of origin

46. An appellation of origin is understood to be that which uses the name of a region or geographical location of the country which serves to designate a product originating therefrom and whose quality or features are due exclusively or essentially to natural and human factors in that place.

47. The use of an appellation of origin constitutes an effective means of informing consumers of the geographical origin of such products and of their features or qualities implicit in that geographical origin.

48. All the experiments in progress at the international level show that appellations of origin represent an effective agricultural and food strategy that can attract customers easily (for example wines and cheeses).

49. Appellations of origin necessarily have two types of connection:

50. Geographical connection. The appellation of origin is an attribute that reflects the link existing between the place and a product. It represents the name of the country, region, place or particular geographical location which is adopted by a product that necessarily comes from the area in question.

51. Qualitative connection. The product designated by an appellation of origin must necessarily include specific qualities and features which are due to the geographical environment and comprise human and natural factors including tradition, form of preparation, manual labor, composition of soil and water, climate, flora, fauna and so on.

52. In the same way as a trademark, an appellation of origin represents an instrument for differentiating between types of goods in relation to their origin and, just as a trademark specifies the corporate source, an appellation of origin also expresses the geographical origin of the products prepared by all the enterprises or individuals based in the area whose name constitutes the appellation.

Advantages of having appellations of origin:

- Broad acceptance by consumers.
- Guarantee of origin, tradition and features of the product.
- Such denominations constitute economic development mechanisms for countries, towns and villages.

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