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# Reinforcement of the protection of geographical indications and of geographical names in France

## EUROPE

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In October 2014, the General Court issued an opinion on a widely publicised French dispute over the use of the term ‘Laguiole’ (T-453/11, *Szajner v OHIM/Forge de Laguiole*, 21 October 2014). The case stemmed from an application for invalidity filed by a proprietor who claimed prior rights in its trade name, ‘Forge de Laguiole’, against the owner of a Community Trade Mark (CTM) registration for ‘Laguiole’. The General Court opinion upheld the CTM for a wide range of goods and services (a

similar decision was reached in a French court between the two parties, see Paris Court of Appeal decision of 4 April 2014). In France, where the Laguiole village is famous for its cutlery, the decision elicited public outcry among both business owners who use the Laguiole term as an indication of geographical origin and consumers who view Laguiole as a geographical indication.

Following these concerns, in June 2015, the French government introduced new legislation broadening the scope of

protected French geographical indications beyond agricultural products and non-foodstuffs. The French government issued two Application Decrees concerning intellectual property rights enacted under Article 73 of the Consumer Protection Law No 2014-344 (the 'Loi Hamon') of 17 March 2014. Among other changes to consumer protection law, such as the introduction of class actions into French law, the Loi Hamon contains provisions aimed at reinforcing the protection of geographical indications and of geographical names to promote the development of French territories, in addition to local know-how and traditions.

### **The recent implementation of French industrial and artisanal geographical indications**

The Loi Hamon creates industrial and artisanal geographical indications that are defined as 'the name of a geographical area or of a specific place used to designate a product – other than agricultural, forestry, food or seafood products – which originates from such area and which possesses a given quality, a reputation or other characteristics attributable mainly to this geographical origin' (Articles L 721-2 *et seq* of the French Intellectual Property Code).

Pursuant to the Application Decree No 2015-595 dated 2 June 2015, applications for industrial and artisanal geographical indications have to be filed with the French National Institute of Intellectual Property (Institut national de la propriété industrielle (INPI)). This is different from geographical indications for agricultural and foodstuffs, which are administered by the National Institute for Quality and Origin in charge of designations of origin (Institut national de l'origine et de la qualité (INAO)).

According to a recent survey, more than 200 applications for industrial and artisanal geographical indications are expected to be filed in the coming months. A special logo to identify industrial and artisanal geographical indications was created and may only be used by the operators fulfilling the relevant criteria. The use of such a logo on a product by an unauthorised operator constitutes a counterfeit.

### **The creation of a new trademark watch service for geographical names**

In addition to the creation of the industrial and artisanal geographical indications,

the French government issued Decree No 2015-671 on 15 June 2015, creating a new trademark watch system provided by the French National Institute of Intellectual Property to regional entities. Pursuant to this decree, these entities may subscribe to a trademark watch system for all trademark filings containing the name of the regional entity at issue. This watch system is conducted among French trademark applications, CTM applications and international trademark registrations designating France.

The system is handled by the INPI and is free for regional entities. This new system seems likely to result in a greater number of oppositions filed with the INPI. Indeed, given that no prior right search is performed *per se* by the INPI on filing a trademark application, this watch service shall provide regional entities with the ability to police their names effectively and give them the opportunity to file timely oppositions against conflicting trademark applications.

### **French opposition procedure: expansion of relative grounds**

Under the Loi Hamon, a French trademark application or an international registration designating France can now be challenged on new relative grounds, that is, that there exists a prior industrial and/or artisanal geographical indication or that there is a name of a regional entity whose ability to use its name will be adversely affected by the registration of the trademark.

Trademark practitioners should beware of this new type of intellectual property right when conducting prior right searches in France and when filing French trademarks (or international registrations designating France), as it could present obstacles to the use and registration of similar marks.

### **European community opposition procedure: an extended category of 'signs used in the course of trade'**

Although it has yet to be tested, a CTM application could also be challenged based on an industrial and artisanal geographical indication. Article 8(4) of the CTM Regulation indeed provides that a CTM shall not be registered if it is identical or confusingly similar to a non-registered trademark or 'another sign used in the course of trade of more than mere local significance', when – based on the governing



laws of the Member State – that sign confers on its proprietor the right to prohibit the use of the subsequent trademark. Geographical indications protected under national law can thus be a basis for opposition, provided that there is no uniform European protection for geographical indications for the category of goods at issue.

Indeed, owners of French appellations of origin have been successful in using their rights to oppose CTM applications. For example, in 2013, the owner of the French appellation of origin for champagne successfully relied on its French national right as the basis for an opposition against a CTM application for Rita & Champagne (OHIM Opposition Decision No B 2 010 398, *Comité Interprofessionnel du Vin de Champagne v Walter Hugo Blanco Romero*, 12 March 2013; see also OHIM Opposition Decision No B 2320/2004, *Bureau National Interprofessionnel du Cognac v Arne Burmeister*, 15 July 2004).

A provisional political agreement was reached recently on proposed legislation to modernise the CTM system. The draft

regulation explicitly provides that a designation of origin or a geographical indication protected under the law of a Member State can constitute grounds for opposition, thereby integrating the aforementioned case law.

#### **A possible extension of geographical indication protection to non-agricultural products in the European Union?**

After inventing geographical indications in the first half of the 20th century, will France play a pioneering role and influence the evolution of European protection of geographical indications? The European Commission conducted a public consultation on the subject in 2014, which clearly showed some interest in industrial and artisanal geographical indications on a European level (see draft report dated 21 April 2015 on a possible extension of European Union geographical indication protection to non-agricultural products).