

THE LEGAL NATURE OF GEOGRAPHICAL INDICATIONS & APPELLATIONS OF ORIGIN

Dr Delphine Marie-Vivien
Researcher in Law
UMR Innovation, Montpellier France
delphine.marie-vivien@cirad.fr

Rejection of property

- French Revolution: property as the most absolute right,
 - property, including IP = one of the human rights
- Concept of ownership:
 - rejected in France by jurisprudence and doctrine
 - not used in ADPIC, Lisbon System, EU Reg etc...
- Because GIs are:
 - inalienable, non-transferable and unavailable
- Better to use the concept of ‘intellectual rights’:
 - exclusive rights conferred to intellectual productions

An intellectual right to a place name

- GIs are generally place names
- Place names are *common things (choses communes – res communes)* (Art. 714 French C.Civil

*“things that belong to no one
and whose use is common to all;
legislation in the public interest
governs how they are enjoyed”*

- The authority decides to allocate common things for public use
 - according to the rules of use that it determines
 - possible restrictions to preserve the common thing.
 - examples: air, sea, ideas, scientific discoveries, information...
- French Doctrine (C.Le Goffic):
 - “GIs are common things”: Is that so sure? What are the consequences?

A place name becoming reputed

- not all place names are GIs: only name of product having **reputation** from that place
- reputation:
 - due to human factors and/or natural factors
 - distinguishes the place name used by all the inhabitants from the place name that has become a GI
 - is an intellectual creativity = justifies the exclusive right to the name, with infringement action

Rules of use of the place name drawn up by producers

- Rules of use = GI specifications
- C. Le Goffic, N. Olszak: specifications are legislations in the public interest
- But specifications are primarily drawn up by producers:
 - based on their long-standing and shared practices
 - even if recognised by a regulatory act

A use common to all?

- French rural Code: no indication as to the persons benefiting from the right of use, but only as to the products
- EU Regulation: AO/IG may be used by any operator marketing products that comply with the corresponding specifications
- Ccl: use of the GI is only for a particular collective: the group of operators respecting the specifications
- A right of use associated to a right to fight against infringement

Distinction between users?

- Users involved in production:
 - subject to specific controls before marketing the GI product individually identified
- Users affixing the GI on the packaging or sales items
 - subject to post-marketing controls, generally by the market control authorities and are not individualised
 - Or should also be individually identified?

The legal nature of the GI

A dismemberment of the common thing

- GI is not a property right but is not the common thing either
- GI is a dismemberment of the common thing = a specific use of the common thing allocated to a specific collective
- use of the place name only for a limited and individualised number of users: is not common to all, contrary to the use of the place name by all inhabitants
- users benefit from an exclusive right of use via infringement action, not the case for users of a common thing
 - intellectual right solely for the benefit of the producers/operators involved in the production of the product, and therefore at the origin of the product's reputation.
- rules of use, the specifications, are drawn up by the users of the GI:
 - the collective of producers at the origin of the intellectual creation of the reputation,
 - at least are based on their practices if public authority draws up the specifications on their behalf

Consequences of the legal nature of the GI

- Not a property right: no owner, the applicant is only the representative of the users
- Not the common thing :
 - GI's function of conferring an monopoly on the name is reaffirmed, justified by creation of the reputation
 - No common use to all: GI name cannot be used by all in the territory, with only the control of the use of the logo, which is an increasing trend in some countries
 - Trend due to lack of involvement of producers who should be the one drafting the rules of use



Thank you for following this presentation

delphine.marie-vivien@cirad.fr