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Information

on the protection of geographical indications and designations of origin for agricultural products and foodstuffs pursuant to Council Regulation (EC) No. 510/2006 (formerly Council Regulation (EEC) No. 2081/92)

Protection of indications of geographical origin at Community level was established in 1992 by the introduction of the Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. This system of protection is on principle applicable in addition to the protection granted under the national legislation of the member states and in addition to the applicable provisions of multilateral and bilateral treaties. However, where a geographical indication of origin was entered in the register of the Commission it cannot claim additional protection under national or international provisions (cf. ECJ, European Court reports 1998, p. I-03315 "Chiciak").

The Community system of protection is also available to geographical indications from a third country, provided that they are also protected in the country of origin.

With effect from 31 March 2006, Council Regulation (EEC) No. 2081/92 was replaced by **Council Regulation (EC) No. 510/2006** of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (EU Official Journal, L 93 of 31 March 2006, p. 12, hereafter called "Regulation").

New detailed **rules of implementation** are laid down in the **Commission Regulation (EC) No. 1898/2006** of 14 December 2006 (EU Official Journal, L 369 of 23 December 2006, p. 1, hereafter called "Rules of Implementation").

The national provisions of procedure in Sections 130 et seq. of the German Trade Mark Law and Sections 47 et seq. of the Trade Mark Ordinance were harmonised with the new European rules by the *Gesetz zur Verbesserung der Durchsetzung von Rechten des geistigen Eigentums* of 7 July 2008 (BGBl. I p.1191) and the *Verordnung zur Änderung der Markenverordnung und anderer Verordnungen* of 15 October 2008 (BGBl. I p. 1995).

This information leaflet aims at providing guidance to interested circles, particularly, on preparing and filing an application for the registration of a geographical indication or designation of origin in the register kept by the Commission of the European Communities and, beyond that, an overview of the registration procedure and protection of registered names.

I. What is protectable?

Regulation (EC) No. 510/2006 applies only to certain agricultural products and foodstuffs (Article 1(1) of the Regulation; see also classification in Annex II to the Rules of Implementation), not to wines and spirit drinks to which special rules apply. Likewise, this Regulation does not apply to mineral waters.

Protection is provided for "**Designations of Origin**" (Article 2(1)(a) of the Regulation) and "**Geographical Indications**" (Article 2(1)(b) of the Regulation).

The indication or designation must be the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country.

Certain traditional geographical or non-geographical names can also be considered as designations of origin or geographical indications (Article 2(2) of the Regulation). These are denominations that are otherwise no longer customary, or indirect references to geographical indications.

In both categories, the main requirement for protection is that there is a link between properties of the product in question and its production in the region of origin.

This link must be specifically close for products to qualify for the label "Designation of Origin": the quality or characteristics of a product must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation must take place in the defined geographical area. This means that all stages of production must be performed in that area.

For a "Geographical Indication" it is sufficient that one of the manufacturing stages, ie. production, processing or preparation, takes place in the defined geographical area and that the product possesses a specific quality, reputation or other characteristics attributable to that geographical origin.

Protection is not available for generic names that have become the common name of an agricultural product or foodstuff and are no longer considered to identify a product

as originating from a particular geographical origin (Article 3(1) of the Regulation).

Likewise, names conflicting with the name of a plant variety or an animal breed or with previously registered homonymous names and well-known trade marks can be excluded from registration (Article 3(2)(3)(4) of the Regulation).

II. Application requirements

An application for registration must be filed with the Member State in whose sovereign territory the relevant geographical area is situated (Article 5(4) of the Regulation) in order to obtain protection. In Germany, the German Patent and Trade Mark Office (DPMA) is competent for receiving these applications (Sec. 130(1) Trade Mark Law).

The application has to be filed using form W 7007 provided by the DPMA ("Antrag auf Eintragung einer geografischen Angabe/Ursprungsbezeichnung").

Please note the following regarding fields (2), (7), (9) and (10) of the form:

(2) Applicant

An application for registration can only be filed by an association of producers and/or processors of the relevant agricultural product or foodstuff, or - in exceptional cases - by a natural or legal person (Article 5(1) of the Regulation) provided that the requirements of Article 2 of the Rules of Implementation are met.

(7) Type of agricultural product/foodstuff

Registration can only be requested for agricultural products or foodstuffs produced or obtained by the applicant (Article 5(2) of the Regulation). The type of agricultural product/foodstuff must be designated in accordance with Annex II to the Rules of Implementation.

(9) Fee

The fee to be paid with the application is **EUR 900** (fee no. 336 100, cf. Annex to Sec. 2(1) Patent Costs Law).

(10) Specification

The application must **always** be accompanied by a specification which must contain the details specified in Article 4(2) of the Regulation. In this context, the notes provided on page 3 of the application form concerning the content and structure of the specification must be observed.

III. Procedure after filing

Within the scope of the examination of the application the DPMA asks expert bodies to issue opinions and **publishes the application** in part 7 of the Trade Mark Journal ("Markenblatt") (Sec. 130(4) Trade Mark Law).

Any person having a legitimate interest, established or resident in the Federal Republic of Germany, may lodge an **objection** to the application at the DPMA, within four months after the publication (national objection - form W 7010 "Nationaler Einspruch"). This objection may only be based on the reasons set out in the first subparagraph, points (a) to (d) of Article 7(3) of the Regulation (see below).

If the final examination of the application leads to the result that the application meets the requirements set out in the Regulation and the Rules of Implementation, the DPMA takes a **favourable decision**, which will also be **published** in the Trade Mark Journal. If not, the application will be rejected.

If the specification was significantly amended after the publication of the application, these amendments are

published together with the favourable decision (Sec. 130(5), fourth sentence, Trade Mark Law).

Appeals against decisions taken by the DPMA may be lodged with the Federal Patent Court (Bundespatentgericht). The right to lodge an appeal against a decision granting an application for registration lies with the person having filed an objection to the application within the prescribed time limit or whose legitimate interests are affected by the favourable decision due to the amended details of the specification that were published (Sec. 133 Trade Mark Law).

When the favourable decision has become final, the application is forwarded to the Federal Ministry of Justice that transmits it to the Commission of the European Communities (Sec. 130(6) Trade Mark Law). In addition, the DPMA publishes the version of the specification on which the favourable decision is based.

The next step is a **scrutiny procedure at Community level** (Article 6 of the Regulation). If the Commission deems the name to be eligible for protection, it publishes in the Official Journal of the European Union the so-called "single document" containing the main points of the specification (Article 5(3)(c) of the Regulation) and the reference to the publication of the complete specification by the country of origin.

If no objections are lodged pursuant to Article 7 of the Regulation, the name will be entered in the register of protected designations of origin and protected geographical indications and published in the Official Journal of the European Union.

Any other Member State or third country and all persons having a legitimate interest, established or resident in another Member State or a third country, may **object to** the proposed registration (Article 7(1) and (2) of the Regulation).

Objections can only be based on the reasons specified in Article 7(3) of the Regulation, namely:

1. the conditions referred to in Article 2 of the Regulation for designations of origin or geographical indications are not complied with;
2. the proposed name conflicts with the name of a plant variety or animal breed or with a registered name or well-known trade mark pursuant to Article 3(2), (3) or (4) of the Regulation;
3. the registration of the proposed name would jeopardise the existence of an entirely or partly homonymous name or trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 6(2) of the Regulation; or
4. the name whose registration has been requested is a generic name.

If the objection is admissible, the Commission will invite the parties concerned, in a first step, to reach an agreement (Article 7(5) of the Regulation). If no agreement is reached, the Commission will take a decision, within the scope of a regulatory committee procedure, whether or not the name shall be entered in the register of protected names.

Persons residing in Germany can file **objections to applications originating from other Member States or third countries** at the German Patent and Trade Mark Office within four months from the publication in the Official Journal of the European Union (Sec. 131(1) Trade Mark Law). Form W7011 should be used for this purpose. An objection fee amounting to EUR 120 must be paid within the specified time limit (fee no. 336 200, cf. Annex to Sec. 2(1) Patent Costs Law).

If the conditions of Article 9 of the Regulation apply, associations having a legitimate interest can apply for approval of an **amendment to the specification** of a registered name.

The Commission can **cancel** a registration if the conditions of the specification for an agricultural product or foodstuff covered by a protected name are no longer met (Article 12(1) of the Regulation).

Furthermore, any natural or legal person having a legitimate interest may request cancellation of a registration, giving reasons for the request (Article 12(2) of the Regulation).

Requests under Articles 9 and 12(2) of the Regulation must also be filed at the DPMA. Forms W 7008 and W 7444 are available for this purpose.

The fee for the request for cancellation is EUR 120 (fee no. 336 300, cf. Annex to Sec. 2(1) Patent Costs Law). A request for the amendment of a specification is not subject to a fee.

IV. Protection conferred by the registration

A name registered under the Regulation may be used by any operator marketing agricultural products or foodstuffs that comply with the corresponding specification (Article 8(1) of the Regulation). From 1 May 2009 onwards, it will be obligatory to use the indications "protected designation of origin" ("PDO") or "protected geographical indication" ("PGI") or the corresponding Community symbols on the labelling of products originating in the Community and marketed under a registered name (Article 8(2) in conjunction with Article 20, 2nd sentence, of the Regulation).

Compliance with the specification is verified by control bodies of the Member States (Article 10 of the Regulation). Any producer of a relevant product must adhere to the (fee-based) control system.

The use of protected names for products having a different origin or other properties is not admissible (Article 13 of the Regulation). Protection is also directed against the use of a registered name for other products, if by doing this the reputation of the protected name is exploited. Likewise, it is not admissible to accompany the name by delocalising expressions or expressions such as "style", "type", "method", "as produced in", "imitation" and the like, to use translations of the name or any other misleading practices.

Under Article 13(2) of the Regulation, protected names cannot become generic.

The rights conferred by earlier marks remain valid, whereas trade mark protection cannot be obtained if any of the situations referred to in Article 13 of the Regulation applies (Article 14 of the Regulation).