

VII. Concluding remarks

This study aims at explaining the characteristics and functions of the existing signs used for distinguishing products, for promoting their values and helping protecting the goodwill of the producing undertakings in the marketplace. Points of reference are the provisions for collective marks, certification marks and GIs in the law of the European Union.

A. Summary of the findings

It has been demonstrated that Community collective marks in their present form are intended to also accommodate marks certifying a product's or service's certain characteristics, in the sole case when the applicant for the mark is an association of traders which conditions use of the mark upon membership in that union. The existing literature based on the legislative history reveals that this situation has arisen out of necessity and not due to systematic overlap. Looking at the results, it can be contended that the impact of such a choice in the CTMR was not carefully measured, as it has caused confusion among legal commentators and remains underexploited in practice, despite its promising potential. The system is thus inaccessible for certain business operators and it is potentially misleading for the consumers, who cannot be safely guided if a mark conveys multiple messages, sometimes mutually exclusive.

Community collective marks reveal primarily collective commercial origin and guarantee observance of an association's consistent quality standards. These standards are set by the association itself and the use of the mark is conditioned upon membership in the association. In that sense and from a doctrinal point of view, collective marks should be distinguished from certification ones.

To this day, there are no Community certification marks, but certification marks are recognised in many national jurisdictions. Because of the discrepancies in terminologies, making a comparison between Community collective and certification marks is challenging, and the conclusion has been drawn through a compilation of their common elements. It appears as widely accepted that certification marks are owned by individuals or bodies not

engaging in commercial activity connected to the products for which they certify quality. They set, in an objective manner, certification mechanisms for compliance with absolute standards. Use of the certification mark is permitted to anyone observing these standards without becoming a member of any group. For all those reasons, the proposal for a new European Trade Mark Regulation goes towards this direction. It divides the marks into two separate categories allowing for legal certainty, for more interested parties to benefit from its centralised system and for reconciling different national provisions, thus achieving definitional clarity.

GIs are the principle counterpart of collective and certification marks, because the way they have developed, their structure and partly their function are similar to the ones of trade marks. GIs, however, do not signal business origin or simply quality of a product. They flag the interconnection of product, geographical source and quality, which results in a unique outcome, formed out of the particular geographical and human factors developed in a place. GIs are part of a region's cultural legacy and they serve as an instrument of not just bridging information asymmetries in the marketplace or protecting the traders' goodwill, but also of promoting socio-economic objectives. These include sustainable development, preservation of local traditions, support of non-standardised goods and reward of populations producing them as well as mobilisation of progress in rural regions. Hence, GIs are debated in diverse fora, not only within the trade regime, but also in an agriculture framework and are included in a State's policy agenda.

The rationale of market efficiency underscoring trade mark law only partly covers the GI considerations, so accommodation of GIs in the trade mark system would be out of compromise. Collective and certification marks do not necessarily provide for quality standards as strict as the ones prescribed in a *sui generis* regime, nor do they afford a high level of protection, such as to align with the GI mentality.

Although GIs should be maintained as a separate legal regime, Community collective marks and certification marks are not rendered automatically useless. These types of trade marks can be a valuable alternative in cases where registration for non-agricultural goods or services is sought, where the sign is not a word mark or where reputation of or link to a place cannot be established. They can also help where time is an issue, where international protection or protection as a domain name are a priority or where the circumstances require flexibility regarding possibilities for transfer, licensing, relocating, changing production modes or trial of innovative techniques.

B. Epilogue

As a penultimate note to this paper, it is not argued that the GI system is better than the trade mark one or vice versa. With that in mind, the title of this paper appears misleading, because it somehow predisposes for a conflict, when a symbiotic relation is actually endorsed.

The result of this study is that each system serves a different purpose, so they should not be assimilated. It is an advantage for producers to have many arrows in their quiver, from which they can choose in accordance with their needs. However, and besides the sonorous call for awareness raising in a marketplace battered by labels, one aspect that might deserve attention and improvement, is precision both in definitions as well as in intentions. What is understood under each type of sign should be made clear, whereas, to the extent possible, more solid criteria should be drafted for the way the link between a good and a geographical place is established. This would help avoiding excessive and undeserved protection that discredits the system, distorts its rationale and objectives, while creating scepticism among consumers as well as suspicion and disbelief between competitors.