Article 10

Should there be differences of opinion regarding the fixing of indemnities and the payment thereof, or regarding the payment of amounts due by virtue of contracts as provided for in the last paragraph of Article 3, a conciliation preliminary shall be held before a board composed of representatives of the Minister for National Economy and Energy, the Minister responsible for industrial property, the Minister for the Armed Forces, the Minister for the Treasury, and, depending on the nature of the invention, the Chamber of Commerce or the Chamber of Trades. The person concerned shall be heard and may be assisted by counsel.

Article 11

If the conciliation is unsuccessful, the differences of opinion shall fall within the jurisdiction of the civil courts of the district, regardless of the amount of the request.

CHAPTER 5

Secrecy of Inventions Which Are the Subject of Patent Applications in a Foreign State

Article 12

Where, in the interests of defense, a foreign State or an international organization prohibits the disclosure of an invention which is the subject of a patent application, the Minister responsible for industrial property shall ensure, either at the request of such State or organization, or at the request of the applicant duly authorized to file an application in Luxembourg concerning the secret invention, that the invention will be kept secret as long as the prohibition remains in force.

Such request shall be taken into consideration only in cases where Luxembourg is bound to the foreign State or to the international organization issuing the prohibition by a bilateral or multilateral convention providing for the keeping of inventions secret. The applicant shall have no right to indemnity on the part of the Government of Luxembourg by reason of the fact that the invention concerned in the patent application is kept secret in Luxembourg. He shall, however, be entitled to file an action for indemnity under the laws of Luxembourg in the event of the use, by the Government of Luxembourg, or the non-authorized disclosure of the invention concerned in the patent application.

The competent Ministers of Luxembourg shall officially put an end to the secrecy upon receipt of a copy of the document attesting that the secrecy instituted by the Government of the country of origin or by the soliciting international organization has come to an end.

CHAPTER 6

Penal Provisions

Article 13

Without prejudice to the provisions of the Penal Code, the author of the disclosure referred to in Articles 1, 2 and 5 shall be liable to imprisonment of from six months to five years and to a fine of from five hundred one (501) to one hundred thousand (100,000) francs, or to one of these penalties, only.

Any person who, by negligence, has caused such disclosure shall be liable to imprisonment of from one month to one year and to a fine of from five hundred one (501) to fifty thousand (50,000) francs, or to one of these penalties, only.

Infractions of the measures prescribed in Article 3 shall be punishable by imprisonment of from one month to one year and by a fine of from five hundred one (501) to fifty thousand (50,000) francs, or by one of these penalties, only.

The provisions of Book 1 of the Penal Code as well as those of the Law of June 18, 1879, stating the competence of the courts to assess extenuating circumstances, amended by the Law of May 16, 1904, shall be applicable to infractions of this Law.

GENERAL STUDIES

The Protection of Appellations of Origin and Indications of Source

By A. DEVLETIAN, Paris

In an earlier study published in *La Propriété industrielle* [1]), we discussed the principal aspects of this important subject.

After defining the notions "appellation of origin" and "indication of source," we explained why appellations of origin are usurped and why they should be protected. It was pointed out that for quite some time efforts had been made to combat usurpations of appellations of origin and indications of source, and a number of examples were cited to illustrate the widespread attention being given to the prevention of fraud and abuse.

We then demonstrated that, as far as matters of principle were concerned, the organizations and associations of an international character which had taken an interest in the subject of the protection of appellations of origin and indications of source had all passed resolutions or recommendations strongly supporting the protection of such names of origin.

We further stressed that the interest a great many countries had shown in protecting appellations of origin and indications of source had not been confined to theory alone but had been evidenced in practice by the drawing up of international conventions and agreements, both multilateral and bilateral, and by the drafting of national legislation affording protection to these names of origin. In this connection, we quoted the provisions contained in the Convention of the Paris Union for the Protection of Industrial Property, of March 20, 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, of April 14, 1891, the General Agreement on Tariffs and Trade, the

1) See *La Propriété industrielle* of November and December 1956, and January and February 1957.

International Convention of Stresa on the Use of Appellations of Origin and Denominations of Cheeses, of June 1, 1951, as well as various bilateral agreements.

As it was not possible to discuss or even to list all of the legislative texts in existence, we mentioned a certain number of texts taken from a variety of countries so as to illustrate their diversity and give some idea of the provisions adopted. In addition, we cited, as examples, numerous court decisions handed down in different countries.

In conclusion, we pointed out that the protection of appellations of origin and indications of source was in the interests of all countries since it was intended — and rightly so — to safeguard consumers from being misled regarding the quality and origin of the goods they purchase and to protect producers from the unfair competition resulting from the usurpation of the appellations of origin or indications of source of concern to them, and we demonstrated that this protection can be ensured in a variety of ways.

Since the time our study was published, a great deal of progress has been made in the field of the protection of appellations of origin and indications of source. In our present article, we shall endeavor to sum up that progress.

A. Multilateral Conventions

The provisions on the protection of appellations of origin and indications of source which existed before the Diplomatic Conference of Lisbon (October 1958) in the Paris Convention for the Protection of Industrial Property and in the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods laid down important principles and afforded valuable protection. In the opinion of the parties concerned, however, these provisions did not suffice.

It was for that reason that BIRPI worked out proposals to improve the above-mentioned Paris Convention and Madrid Agreement as far as the protection they gave to appellations of origin and indications of source was concerned.

Moreover, in view of the fact that, regardless of any improvements made in the two Conventions, the Paris Convention's rule of unanimity might have been an obstacle to the adoption of solutions fully satisfactory to all those who rightfully desired to ensure the best possible protection for appellations of origin and to repress effectively any frauds and usurpations relative to such appellations, BIRPI — after having convened and consulted with an international committee of experts in December 1956 [2] — drew up a draft agreement, within the framework of the Paris Convention, for the protection of appellations of origin. Under the terms of this draft, the countries most interested in the protection of appellations of origin would be grouped into a Special Union.

The questions concerning the international protection of indications of source and appellations of origin were carefully considered at the Diplomatic Conference of Lisbon, and, after the delegates had thoroughly discussed the matter, BIRPI's proposals were adopted subject to various amendments [3].

[2] See *La Propriété industrielle*, December 1956, p. 237.
[3] See *La Propriété industrielle*, November 1958, pp. 202 *et seq.*

An important improvement was made in Article 10 of the Paris Convention by the adoption of a new text in paragraph (1) reading: "The provisions of the preceding Article [4] shall apply in cases of direct or indirect use of a false indication of the source of the product or the identity of the producer, manufacturer or trader."

This new text thus applies also to the "indirect" use of a usurped indication, whereas the previous one only provided for the repression of the application of such an indication onto a product; moreover, it mentions the identity of the producer, manufacturer or trader and does not contain the restrictive clause appearing in the previous text "when such indication is joined to a trade name of a fictitious character or used with fraudulent intention," which considerably limited the scope and effectiveness of the protection.

An interesting amendment was made in the French text of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods. Both the title and text of the Agreement, as amended, provide for the repression not only of false indications *(indications fausses)* but also of deceptive or misleading indications *(indications fallacieuses)*.

At January 1, 1968, there were:

— 79 States members of the Paris Union, 51 of which were bound by the Lisbon Act of the Union Convention;
— 29 States members of the Madrid Union, 8 of which were bound by the Lisbon Act of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

To complete these improvements, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was adopted, the principal provisions of which are given below.

In pursuance of Article 1 of the Lisbon Agreement, each member country undertakes to protect on its territory, in accordance with the terms of the Agreement, the appellations of origin of products of the other member countries, recognized and protected as such in the country of origin and registered at the Bureau of the Union for the Protection of Industrial Property.

Article 2 gives a definition of an appellation of origin:

> "In this Agreement, 'appellation of origin' means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."

It then explains the meaning of the term "country of origin":

> "The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation."

Article 3 provides protection that is as broad as possible by stipulating that this protection will be ensured from any

[4] Article 9 prescribes the sanctions provided in the event of unlawful application of a trademark or trade name: seizure or prohibition of importation, etc.

usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translation form or accompanied by terms such as "kind," "type," "make," "imitation," or the like.

Article 4 states that the provisions of the Agreement in no way exclude the protection already granted to appellations of origin in each of the signatory countries by any other international instruments, such as the Paris Convention for the Protection of Industrial Property and the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, or by virtue of national legislation or judicial decisions.

Article 5 sets forth the procedure to be followed for the registration of appellations of origin and the notification of such registrations to the Offices of the member countries by the International Bureau.

This Article gives the Offices of the various countries the possibility of declaring that they cannot ensure the protection of an appellation of origin whose registration has been notified to them, but only in so far as their declarations are notified to the International Bureau, with an indication of the grounds, within a period of one year from the receipt of the notification and provided that such declaration is not detrimental, in the country concerned, to the other forms of protection of the appellation which the owner thereof may be entitled to claim under Article 4 of the Agreement.

The Office of the country of origin is to be informed of any declarations concerning it and is to advise any interested parties which may resort, in the country that made the declaration, to all judicial and administrative remedies open to the nationals of that country.

Article 5 further states that, if an appellation which has been granted protection in a given country, pursuant to notification of its international registration, has already been used by third parties in that country from a date prior to such notification, the competent Office of that country has the right to grant to such parties a period not exceeding two years to terminate such use, on condition that the International Bureau be advised accordingly during the three months following the expiration of the period of one year provided for the declaration indicating that the Office cannot ensure the protection of the appellation.

Article 6 provides that the term of protection is, in principle, unlimited, since the appellation which has been granted protection pursuant to the Agreement cannot be deemed to have become generic as long as it is protected as an appellation of origin in the country of origin; Article 7 specifies that registration is effected without renewal and that a single fee is to be paid for the registration of each appellation of origin.

Under Article 8, legal action required for ensuring the protection of appellations of origin may be taken in each of the signatory countries under the provisions of the national legislation:

1. at the instance of the competent Office or at the request of the public prosecutor;
2. by any interested party, whether a natural person or a legal entity, whether public or private.

Articles 9 and 10 set forth the procedure for the implementation of the Agreement. They provide in particular that a Council is to be set up at the International Bureau to implement the Agreement, that Regulations defining the details for carrying out the Agreement are to be attached to it and signed at the same time, and, furthermore, that both the Agreement and the Regulations may be revised in accordance with Article 14 of the General Convention.

Articles 11 *et seq.* concern the conditions of accession and indicate that the Agreement will enter into force upon ratification by five countries and that it will remain in force as long as at least five countries are party to it.

This Agreement was signed at Lisbon on October 31, 1958, by ten countries members of the General Union: Cuba, Czechoslovakia, France, Hungary, Israel, Italy, Morocco, Portugal, Rumania and Spain. Other delegations which were unable to sign immediately expressed their intention to draw the attention of their Governments to the merits of the Agreement. In point of fact, two more countries did sign at a later date: Greece and Turkey.

The Agreement was ratified some time ago by Cuba, Czechoslovakia, France and Israel and in August 1966 by Portugal. By reason of this fifth ratification, it entered into force on September 25, 1966. Two other countries have also been bound by the Lisbon Agreement since September 25, 1966, in pursuance of Article 16 of the Paris Convention to which Article 11 (1) of the Lisbon Agreement refers: the Republic of Haiti and the United States of Mexico, whose declarations of accession were received in January 1961 and February 1964, respectively. In addition, the Hungarian People's Republic deposited its instrument of ratification in December 1966; in conformity with Article 13 (2) of the Agreement, this ratification became effective on March 23, 1967.

Italy ratified the Lisbon Agreement by Law No. 676 of July 4, 1967. In the remaining signatory countries of the Lisbon Agreement, the ratification procedure is still in process.

The first session of the Council set up by Article 9 for the implementation of the Agreement was held at Geneva at the end of September 1966 [5]).

The session accomplished the following tasks:

— adoption of the statutes and rules of procedure of the Council, by a unanimous vote;
— election of the officers of the Council, as well as examination and approval of the forms to be used by the service for the international registration of appellations of origin.

The second session of the Council was held at Geneva at the end of December 1967 and was devoted primarily to the election of new officers, a consideration of the activities of the Special Union, and a discussion of financial questions [6]).

The Council noted the requests for registration that had reached BIRPI and, having considered the draft budget of BIRPI for 1968 and the problems concerned with the pub-

5) See *Industrial Property*, October 1966, pp. 231 and 232.
6) See *Industrial Property*, February 1968, pp. 51 and 52.

lication of controlled appellations of origin, it approved an increase in the registration fee of from 50 to 200 Swiss francs, to become effective on January 1, 1968. A number of questions concerning new ratifications and adhesions were also discussed.

The concluding of this Lisbon Agreement, which answered the need to find a simple, effective way of providing protection for appellations of origin on a multilateral, international level, is an important contribution to the already existing system of protection and represents au important step forward.

It is now up to the member countries which have not yet done so to notify their appellations of origin.

Mention should be made of the fact that the adoption of the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967, and the purpose of which is to coordinate better the activities of the Unions and to promote the development of protection in the field of intellectual property, has resulted in a revision of the administrative provisions and final clauses of the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration [7]).

Also in connection with multilateral conventions, we should call attention to the work being carried out at Strasbourg, under the auspices of the Council of Europe, by a committee of experts and high officials with a view to the drafting of an international convention on the production and commercialization of wines and spirits and the protection of appellations of origin.

As regards the European Economic Community, each member State is bound by a number of obligations under bilateral and multilateral international agreements and conventions, and the national legislation of each provides, as a general rule, adequate protection for appellations of origin and indications of source, particularly as regards wines and spirits. The implementation of the European Economic Community and the establishment of closer relations among its member States will surely facilitate the harmonization of legislation, thus making such protection even more effective, especially as concerns controls and prosecution.

We believe that we should also call attention to the International Agreement on Olive Oil of 1956, amended by the Protocol of April 3, 1958, which entered into force on June 26, 1959 [8]). Eleven countries [9]) have acceded to this Agreement which provides inter alia that "indications of origin, when given, may only be applied to virgin olive oils coming exclusively from the country, region or locality mentioned by such labelling" (Article 11, paragraph 1) and that "blended olive oil, whatever its origin, may only bear the indication of origin of the exporting country" (Article 11, paragraph 2).

[7]) The Stockholm Acts of these Conventions were published in *Industrial Property*, September, November and December 1967. They have not yet entered into force.

[8]) See *La Propriété industrielle*, October 1961, pp. 23 *et seq.*

[9]) See *La Propriété industrielle*, January 1962, p. 14 (Belgium, France, Greece, Israel, Italy, Lybia, Morocco, Portugal, Spain, Tunisia, United Kingdom).

B. Bilateral Agreements

An agreement dealing exclusively with the protection of indications of source and appellations of origin and other geographical denominations was signed between the French Republic and the German Federal Republic and entered into force on May 7, 1961.

The text of this agreement has already been published in *La Propriété industrielle* [10]), but, in view of its importance and because it has been used as a model for similar agreements concluded by other States, we believe that it would be useful to give a brief analysis of the essential provisions.

Under the terms of Article 1, both States undertake to do whatever is necessary to ensure that natural and manufactured products originating from the territory of the other State will be effectively protected from unfair competition in the exercise of trade and that the denominations listed in the annexes will be given effective protection in conformity with the subsequent provisions.

Articles 2 and 3 lay down the rules of protection: the denominations of each of the contracting States listed in the annexes to the agreement are exclusively reserved for the products or goods of that State and may only be used by the other State in the conditions prescribed in the legislation of the State of origin. Certain provisions of such legislation may, however, be declared inapplicable by a protocol.

Hence, in Germany the protection of the geographical names of French products must be defined in accordance with French law and, likewise, in France the protection of the denominations of German products must be defined in accordance with German law.

The first paragraph of Article 4 specifies that the use, in the exercise of trade, of one of the denominations appearing in the annexes on any products or goods or on their packaging or on their outside wrappers, in commercial papers or in advertising, in violation of the provisions of Articles 2 and 3, is to be repressed by all means provided in the respective legislation of each of the contracting States, including seizure in so far as such legislation permits. The second paragraph indicates that these provisions are to be applicable even if the denominations listed in the annexes are used in translation or if the true origin is indicated or if they are accompanied by terms such as "kind," "type," "make," "imitation," or the like. Finally, the third paragraph states that these provisions do not apply to products or goods in transit.

Article 5 extends the protection granted by declaring that the provisions of Article 4 also apply where the designations, marks, names, inscriptions or illustrations directly or indirectly containing false or deceptive indications regarding the source, origin, nature, variety or material qualities of products or goods are used on such products or goods, on their packaging or outside wrapper, or in commercial papers or advertising.

Under the terms of Article 6, each of the contracting States may request the other State to allow the importation of products or goods bearing a denomination appearing in the annexes only when such products or goods are accom-

[10]) See *La Propriété industrielle*, November 1960, p. 203.

panied by a document proving that they are entitled to the use of that geographical name.

Article 7 sets out the conditions in and methods by which natural persons or legal entities, as well as trade unions, groups and organizations representing interested producers, manufacturers or tradesmen, may bring court action against the use of false or deceptive indications, in so far as the law permits nationals of the State to have recourse to such action.

Article 8 provides a period of two years for the use of wrappers and papers already existing at the time the agreement entered into force. Article 9 relates to changes that may be made in the lists annexed to the agreement.

In Article 10, it is specified that the provisions of the agreement do not bar any protection granted, or which might later be granted, to denominations appearing in the annexes under the domestic legislation of each of the contracting States or under other international agreements.

So as facilite the execution of the agreement, Article 11 sets up a joint committee composed of representatives of the Governments of both contracting States.

A protocol specifies that Articles 2 and 3 do not oblige the States to apply the legislative, statutory and administrative provisions of the other State relating to administrative control and, in addition, that the listing, in the annexes, of denominations covering products or goods does not affect the provisions governing the importation of these products or goods into each of the contracting States.

Moreover, the protocol cites the indications concerning the material qualities within the meaning of Article 5.

The annexes list the geographical denominations protected under the agreement (Annex A for the German denominations and Annex B for the French denominations). These denominations cover numerous categories of products such as wines, spirits, dairy products, fruit, vegetables, honey, poultry, pastries, pork products, mineral water, pottery, textile goods, etc. The lists may, as provided in Article 8, be amended or extended by virtue of a written communication made by one of the contracting States, subject to the consent of the other party. Either contracting State may, however, restrict the list of denominations covering products or goods originating from its territory, without the consent of the other party.

This agreement is indicative of a desire to establish as effective a protection as possible in regard to indications of source and appellations of origin, and represents great progress by reason of the principles it lays down and the amount of protection it affords to appellations of origin and indications of source [11]).

Similar agreements have been concluded with other countries:

— between the German Federal Republic and the Italian Republic on July 23, 1963;
— between the French Republic and the Italian Republic on April 28, 1964 (this convention of 1964 for the protection of appellations of origin and the denominations of certain products replaces the agreement concerning the protection of appellations of origin and the safeguard of the denominations of certain products which had been concluded between France and Italy on May 29, 1948);
— between the German Federal Republic and the Kingdom of Greece on April 16, 1964;
— between the German Federal Republic and Switzerland on March 1, 1967.

Still in connection with bilateral agreements, mention should be made of the following recent agreements which contain provisions on the protection of appellations of origin and indications of source:

— the agreement concluded between the Italian Republic and Austria on February 1, 1952;
— the convention on the reinstatement of industrial property rights and the protection of indications of source concluded on March 26, 1954, between the Federal Republic of Germany and the Republic of Cuba, which provides in particular (Article 13) for the protection of the appellations "Habana" or "Havana," "Cuba," etc.;
— the commercial agreement concluded on July 1, 1959, between Israel and Portugal, providing inter alia for the protection of Portuguese appellations of origin in Israel and for the protection of the denomination "Jaffa" in Portugal;
— the agreement concluded between the Italian Republic and Switzerland on April 25, 1961;
— the agreements concluded between Argentina and Yugoslavia on June 9, 1965, and between Argentina and the United Arab Republic on June 21, 1965, providing for protection against unfair competition and false indications of source.

C. Legislation

By way of example, we shall mention a certain number of legislative texts enacted in recent years, as well as various earlier texts not cited in our previous study [12]):

Belgium

The Law of February 9, 1960, provides for the regulation of the use of names under which goods are put on the market, with a view to ensuring that producers, distributers and consumers will be protected and correctly informed and that business deals will be fair.

The Royal Decree of May 17, 1966, provides for the protection of the mark "Bière de Diest."

Canada

The Trade Marks Act (1-2 Elizabeth II, chap. 49) includes the following provision in respect of unfair competition and forbidden marks:

"*Article 7.* — No person shall
(a) .....
(b) .....
(c) pass off other wares or services as and for those ordered or requested;

11) An important and interesting study of this agreement of March 8, 1960, was published by Mr. Albrecht Krieger, Ministerialrat, Federal Ministry of Justice, in *GRUR* No. 10, October 1964.

12) This list is not complete. It it intended to show the general interest in providing protection for appellations of origin and indications of source, as well as the diversity of the measures in force.

(d) make use, in association with wares or services, of any description that is false in a material respect and likely to mislead the public as to

(i) the character, quality, quantity or composition,

(ii) the geographical origin, or

(iii) the mode of the manufacture, production or performance

of such wares or services . . . "

Chile

The Law of 1943 on Alcohol reserves the name "Pisco" exclusively for the brandy of a certain region of Chile.

Other legal provisions protect the expression "Llano de Maipo" for wines coming from the area of the same name.

Spain

A number of legislative texts specify the conditions to he met in order for Spanish wines having an appellation of origin to enjoy the protection of Article 74 of the Decree dated Septemher 8, 1932, concerning the Statute on Wine.

United States of America

In conformity with a decision of the Treasury Department made in February 1965, Rule 27 CFR, Part 5, on the lahelling and advertising of spirits, was amended hy the addition of a provision prohibiting the use of the word "Bourbon" to designate any whisky, or any spirits of a whisky hase, not produced in the United States of America.

France

Quite a numher of legislative texts on the protection of appellations of origin and indications of source have entered into force since 1935; they primarily concern appellations of origin of wines and hrandies and, to a lesser degree, those of other goods, especially cheeses.

Among the recent texts, mention should be made of the Law of July 6, 1966, a law of a general nature which adds to and amends the Law of May 6, 1919, on the Protection of Appellations of Origin (cited in our earlier study). This Law of July 6, 1966, strengthens, as indicated below, the protection afforded to all appellations of origin used in respect of agricultural produce, foodstuffs or industrial products.

A definition of the term "appellation of origin" similar to the one appearing in the Lishon Agreement is included in the Law.

In regard to the judicial settlement provided for in the Law of May 6, 1919, the powers of the judge have heen enlarged and more clearly defined. To the criterion, estahlished for judicial settlements, of delimited area of production has been added that of the specific qualities or characteristics of the goods which are due to the geographical area.

Apart from judicial settlements for delimiting the area and determining the qualities or characteristics of goods, provision has been made for administrative settlements based on the same criteria. In the absence of a court decision on the main issue, the Government may issue a decree, on the basis of fair and consistent local custom, delimiting the geographical area of production and determining the qualities or characteristics of a product bearing an appellation of origin.

These two types of settlement, judicial and administrative, have heen harmonized to avoid any interference.

The protection afforded to an appellation of origin has been extended hy the possibility of having the judgment or decree relative thereto forbid the use, on goods other than those henefiting from the appellation of origin or on the wrappers containing such goods or the labels or commercial papers referring to them, of any indication that might cause confusion regarding the origin of the goods.

Great Britain

The following are mentioned as offenses under the terms of the Merchandise Marks Act, 1887 to 1953:

(a) "the applying to goods of a description, designation or other indication, direct or indirect, giving a false or misleading idea as to the place or country of manufacture or production of such goods";

(b) "the sale, exposure for, or having in one's possession for, sale, or any purpose of trade or manufacture, of any goods bearing such an indication."

Greece

The codification of the laws and decrees on trade and the protection of wine production, dated November 27, 1952, and amended by Decree-Law 3419 of Octoher 8, 1955, lays down the conditions in which a denomination of source may he granted to a wine. It states in Article 12 (2), in particular, that the appellation of typical wine (district, town, village or any place name) belongs exclusively to the typical wine originating from that place.

Hungary

Articles 18 and 19 of Decree No. 70,000 of September 14, 1936, and Decree No. 2-1959 govern the protection of appellations of origin used for wines.

Israel

The Appellations of Origin (Protection) Law, 5725-1965 [13]), published in the *Official Gazette* on July 17, 1965, defines the procedure for registering appellations of origin and gives concrete protection to rights in such appellations. This Law provides for civil proceedings which forhid the use, by third parties, of registered appellations of origin or the use of false or misleading appellations of origin.

A restraining order may be requested by an owner or any other interested party including government authorities, a puhlic institution or a chamber of commerce.

Italy

Law No. 125 of April 10, 1954, amended hy Law No. 5 of January 5, 1955, governs the use of typical appellations of origin for cheeses, which must he produced in specific geographical areas in accordance with consistant and fair practice. It also provides that decrees are to recognize the denominations and the areas of production and are to fix the characteristics of the cheeses and the methods of production.

Thus, Decree No. 1269 of Octoher 30, 1955, recognizes a certain number of appellations of origin for cheeses. These

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13) See *Industrial Property*, June 1966, pp. 141 *et seq.*

appellations are reserved for cheeses having the required qualities as regards area of production, methods of manufacture and characteristics.

Decree No. 930 by the President of the Republic, dated July 12, 1963, prescribes the rules for the protection of appellations of origin in respect of must and wine [14]).

This Decree defines appellations of origin by distinguishing "simple appellations of origin," "controlled appellations of origin," and "controlled and guaranteed appellations of origin."

It provides that "controlled appellations of origin," "controlled and guaranteed appellations of origin," and the delimitation of their production areas will be recognized by the approval of the production regulations, in a decree of the President of the Republic, acting on a proposal of the Ministry of Agriculture and Forestry, in agreement with the Ministry of Industry and Commerce, after consultation with the National Committee for the Protection and Control of Appellations of Origin.

It lists what is to be determined in the production regulations: the appellation of origin of the wine, the delimitation of the production area, the variety of wine, the vineyard planting and cultivation methods, the maximum yield, etc.

It includes provisious against fraud and unfair competition.

Decrees by the President of the Republic concerning the various appellations of origin of wines were promulgated in July 1967.

Luxembourg

A Ministerial Decree of March 30, 1937, created protection of appellations of origin in favor of Luxembourg wines.

Poland

An Order of 1926 on unfair competition, still in force today, prohibits the mention of the name of a locality on goods or wrappers if the goods did not originate from that locality.

The 1963 trademark legislation bars the registration of trademarks which might be misleading as regards the origin of the goods.

Sweden

Rules safeguarding certain names of origin of other countries were enacted on May 22, 1953. These rules are in conformity with the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods and refer to the Law of June 4, 1913, prohibiting the importation of goods bearing false appellations of origin.

Tunisia

The Decrees of January 10, 1957, and September 18, 1958, set forth the general conditions to be met by wines, liqueurs or brandies that benefit or will benefit from a controlled appellation of origin. Pursuant to these Decrees, the Orders of September 18, 1958, clarify the provisions concerning a certain number of appellations of origin.

14) See *Industrial Property*, August 1964, p. 170.

Yugoslavia

The Fundamental Law on Trade, published on December 26, 1966, by the Yugoslav Federal Assembly includes the following provisions:

"*Article 5.* — Trade and the performance of services must be practised in accordance with trade ethics and the principles of business morality and fair competition."

"*Article 54.* — (1) It is not permitted, in the practice of trade and the performance of services, to act in a manner contrary to the principles of fair competition.

(2) Any action counter to trade ethics which causes or could cause wrong to other economic organizations, to consumers or to the economy of the State shall be deemed unfair competition, especially:

1. the use of the names of other firms or the appellations or other external signs of others;
2. the putting into circulation of goods bearing false indications of source, manufacturer, quality or any other of their characteristics, or bearing names or indications not corresponding to the actual composition, quality or quantity, and the use of such indications in publicity and advertisements concerning the goods."

D. Administrative and Judicial Decisions

There have been a great many administrative and judicial decisions handed down in fraud, falsification or usurpation cases concerning indications of source or appellations of origin. It is not possible here to give long lists or detailed analyses of them. It might be interesting, however, to give a brief survey of some of them to show that the provisions of conventions and legislation concerning the protection of indications of source and appellations of origin are being effectively applied.

Among such decisions we would point out the following:

Germany

A judgment delivered by the Court of Dusseldorf (Fourth Civil Chamber) on September 15, 1964, held that the Franco-German Agreement of 1960 ensured the protection of French appellations of origin not only from identical usurpations of controlled appellations of origin but also from infringements where the designation used is similar to a controlled appellation of origin and can be confused with it. The judgment ordered the cancellation of the marks "Remané" and "Remany" because they could be confused with the controlled appellation of origin "La Romanée."

A judgment of September 27, 1966, handed down by the Court of the *Land* of Dusseldorf forbade a company dealing in sparkling wine from using a get-up and advertising that might make consumers believe that it was a "Champagne."

Argentina

In 1952, the Federal Court of Buenos Aires refused to register the mark "Italia" for Argentine goods, inasmuch as the mark could easily lead people to believe that the goods were imported from Italy.

In a decision of September 14, 1967, the Federal Court of Buenos Aires upheld the opposition that had been filed against the application by an Argentine firm for the registration of the marks " Charente," " Angoulême," " Barbezieux," " St-Jean d'Angely," " St-Amand " and " St-Porchaire " for wines and other drinks, on the ground that the attempt to obtain a group of geographical names from the Cognac region was unacceptable because it was not in line with the spirit of the law and with good business practice.

Belgium

A judgment handed down by the Namur *Tribunal correctionnel* in October 1965 condemned the sale of cognac under the controlled appellation of origin " Fine Champagne " and of brandy under the controlled appellation of origin " Cognac."

A judgment of November 27, 1962, delivered by the Charleroi *Tribunal correctionnel* fined a dealer in wines and spirits for the abusive use of French controlled appellations of origin; he was also condemned to pay damages and to pay for the publication of the judgment in the press.

A decision of the Brussels Court of Appeal, dated March 13, 1964, held that the expressions " Casa Antica " and " Prodotto della casa d'amigo " were deceptive when used for a Belgian wine, as they tended to give purchasers the false impression that they were buying wine of Italian origin.

In a judgment of February 4, 1965, handed down by the Ghent *Tribunal correctionnel*, a dealer who had offered for sale, under the appellations of origin " Cognac," " Fine Champagne " and " Scotch Whisky," alcoholic drinks which had no right to those appellations was fined and required to pay damages and to publish an excerpt of the judgment in the press.

Another judgment of February 1965 delivered by the Ghent *Tribunal correctionnel* condemned sales of brandy made under the controlled appellation of origin " Fine Champagne." An aggravating circumstance was the fact that prohibited coloring had been added to the goods.

In March 1965, a judgment of the Namur *Tribunal correctionnel* condemned the sale of a mixture of brandies imported from France and Belgian spirits under the appellation of origin " Cognac."

Brazil

A decision of the Industrial Property Department, published in the *Official Gazette* of September 25, 1959, refused to register the mark " Château do Pape " as it constituted an infringement of the appellation of origin " Châteauneuf-du-Pape."

The Federal Court of Appeal, in a decision published on November 23, 1964, upheld a decision by the Federal Judge of Sao Paulo who had prohibited the use of a mark " Sherry . . ." by a firm of Brazilian wine growers because of the appellation of origin " Sherry." The Court recognized that the Institute of Fermentations of the Ministry of Agriculture was competent in matters of refusal to authorize the sale of alcoholic drinks bearing labels that were counter to the laws on false indications of source.

A decision of the Industrial Property Department published on December 14, 1964, rejected the registration of the mark " Champanhoff " to designate a cocktail on the ground that the mark was a distortion of the appellation of origin " Champagne."

The Federal Supreme Court, in a decision dated October 1, 1964, and published on December 8, 1964, upheld an interdiction of the use of the mark " Borbonha " to identify red wine because it was a distortion of " Borgonha," the Portuguese translation of the appellation of origin " Burgundy." It was considered that indications of source must be protected not only from reproduction but also from imitations liable to mislead the consumer.

A decision of the Minister for Industry and Commerce, published on February 8, 1966, ordered that the name " Champagne " should be removed from a mark filed by a Brazilian firm and including that name.

The Federal Court of Appeal, in a dccision published on December 2, 1966, rejected the petition made by the State of Sao Paulo, owners of a mark in which appeared the indication of source of a mineral water " Lindoya." The petitioner wanted to prevent another producer of mineral water from the same region from being allowed to mark Lindoya on the label in an obvious manner. The Court was of the opinion, however, that the petitioner had acquired no exclusivity over the indication Lindoya and that the defendant had the right to use the name in large letters, since the indication of source of natural products was more important than any other element appearing on the label.

A decision of the Industrial Property Department, published on December 6, 1966, rejected the mark " Principe de Paris " (Prince of Paris) filed by a Brazilian firm to identify perfumery articles, because of the indication of source Paris.

France

A judgment of December 19, 1957, by the Strasbourg Court of High Instance condemned a company which offered for sale a wine in a get-up giving the impression that it possessed an appellation of origin, when the wine had no right to such an appellation.

A decision of the Bordeaux Court of Appeal dated November 4, 1958, upheld a judgment condemning the use, on sales invoices for the export of ordinary wines to Germany, of expressions including the controlled appellation of origin " Bordeaux," such as " Bordeaux ex propriété " and " Bordeaux ab Kellerei," which were liable to mislead the German buyer or consumer.

A judgment of November 24, 1961, by the Châlons-sur-Marne Court of High Instance condemned the use of the denomination " Crémant," the name of a commune in the region of Champagne, for wines which did, in fact, have the right to the controlled appellation of origin " Champagne " but which were made from grapes not coming from that commune.

A judgment of the Tours Court of High Instance on March 10, 1962, condemned the use of the expression " Val de Loire " for the export sale of a wine having no appellation

of origin, as the expression might make the purchaser think the wine did bave an appellation of origin.

A judgment delivered on June 16, 1962, by the Nîmes Court of High Instance condemned the sale of grapes under the controlled appellation of origin "Tavel" because the grapes did not fulfill all of the conditions of production required in order to have the right to that controlled appellation of origin.

A decision of the Lyons Court of Appeal, dated December 7, 1962, upheld the conviction of a restaurant manager who bad listed an ordinary wine under the heading "Vins de Savoie" (Wines of Savoy) in bis wine list, thus leading the customer to believe that tbe wine had an appellation of origin.

A judgment of December 10, 1962, by the Paris Court of Higb Instance condemned tbe offering for sale of a mixture of a French wine and an Italian wine labelled in such a way as to be confused witb a wine from Italy.

The Saint-Gaudens Court of High Instance on February 15, 1963, convicted a restaurant manager for having used the appellations of origin "Porto" and "Madère" (Madeira) in presenting his disbes "Melon au Porto" and "Cœur de Charolais au Madère" wben the wines used had no right to tbose appellations of origin.

A judgment of February 10, 1964, by the Tours Court of High Instance, convicted a wine merchant wbo had offered sparkling wines for sale under the controlled appellation of origin "Vouvray mousseux" when the nine-month aging period prescribed by law had not been observed.

A decision of the *Cour de cassation* (Supreme Court) (Criminal Chamber), dated March 16, 1964, upheld a decision of October 8, 1962, by the Rennes Court of Appeal which had defined the appellation of origin "Belon" and convicted an oyster breeder for selling, under the appellation "fines Belon," oysters tbat did not come from the oyster beds at Riec-sur-Belon but from oyster beds he owned at Carentec.

Great Britain

A decision of the High Court of Justice of England and Wales, given on December 16, 1960, following a passing-off action, condemned the use of the expression "Spanish Champagne" for a sparkling wine from Spain.

In a note published in tbis Review[15]) we gave some explanation of the case and of the severe but well-founded judgment wbich is an important case-law decision for the protection of appellations of origin in Great Britain.

A decision of July 17, 1964, by the Scottish Court of Session specified that, in order to be called "Harris Tweed," a clotb must have been woven by hand in the Outer Hebrides and all otber manufacturing proccsses must have been performed in tbe same geographical area.

Greece

In decisions Nos. 248 and 249 of 1955, the Trademark Court pronounced tbe suppression of the appellation "Cognac" from two labels filed by a Greek firm.

Italy

By virtue of an Italo-Portuguese agreement providing for tbe protection in Italy of tbe appellation of origin "Porto," the use of the names "Porto de Casteldaccia" and "Porto Conte" for wines from Sardinia was declared illegal following a long suit: Milan, Court of Appeal, February 9, 1943, and December 28, 1945; Supreme Court, April 22, 1948; and Milan, Court of Appeal, February 3, 1953.

The Genoa Court, in a judgment of March 12, 1952, held that the marks included a false indication of source and should be cancelled, even if they had been used for over 30 years.

A decision of the Milan Court, of July 24, 1953, held invalid a mark composed of the name "Montecassino" for a liqueur not manufactured there.

A decision dated May 21, 1957, of the Naples Court of Appeal held that the use of the name of a locality as an indication of source constituted an act of unfair competition when production did not take place in that locality and the latter was traditionally known for the skill of its local manufacturers.

A February 1954 decision of the Milan Court of Appeal condemned the usurpation of the appellation of origin "Cognac."

A Milan Court judgment of January 11, 1964, condemned the usurpation of the appellation of origin "Scotch Whisky" for wbiskies produced in Italy.

Netherlands

Following a Supreme Court decision of 1955 in a case involving the usurpation of a controlled appellation of origin, the legislative provisions necessary to ensure the protection of controlled appellations of origin of French brandies were adopted and published by the Netherlands authorities to give effect to the Franco-Netherlands Treaty of May 28, 1935, providing for the protection of appellations of origin. (Such provisions already existed in respect of the appellations of origin of wines.)

A decision given by the Court of Appeal of Tbe Hague in November 1956 and a decision given by the Amsterdam Court in December 1961 condemned the use of trade names of Anglo-Saxon consonance by purely Dutch companies.

Two judgments of the Court of The Hague (November 20, 1961, and March 28, 1963) refused to accept the marks "La Marianne" for wines not originating from France and "Matterhorn" for chocolate manufactured in Holland.

Switzerland

A decision of May 16, 1949, by the Supreme Court of the Canton of Zuricb held it unlawful for the name "Paris" to be used for perfumery articles not originating from that city.

A decision dated February 11, 1963, of the First Civil Chamber of the Federal Court, ruling on an appeal in administrative law against a refusal to register the mark "Berna" (Italian translation of Berne) for pharmaceutical products, confirmed the consistent case-law principle that a mark comprising a source name not corresponding to reality may not be affixed to a product.

15) See *La Propriété industrielle*, April 1961, p. 82.

A decision of the Federal Court dated April 9, 1965, upheld a refusal to register in Switzerland the international word mark " Monte Bianco " (Mont Blanc in Italian) for perfumery articles, cosmetics and sun creams coming from Austria.

A Geneva Court judgment of 1966 severely condemned a swindler who had sold ordinary wines under the controlled appellations of origin " Châteauneuf-du-Pape," " Beaujolais," " Fleurie," and " Pommard."

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