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Contents

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Notifications Concerning Treaties

Patent Cooperation Treaty (PCT)

New Member of the PCT Union

SPAIN

The Government of Spain deposited, on August 16, 1989, its instrument of accession to the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970, as amended on October 2, 1979, and modified on February 3, 1984.

The said instrument contains the following declaration:

"Availing itself of the reservation provided for in Article 64(1)*(a)* and *(b)*, Spain does not consider itself bound by the provisions of Chapter II or the corresponding provisions of the Regulations." *(Translation)*

The said Treaty will enter into force, with respect to Spain, on November 16, 1989.

PCT Notification No. 55, of August 21, 1989.

Budapest Treaty

Communication of the European Patent Organisation (EPO)

DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH (DMS)

(Federal Republic of Germany)

The Director General of WIPO received on July 31, 1989, from the European Patent Organisation (EPO) the following written communication informing him that item 1 of the requirements of the Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (DSM) under Rule 6.3 of the Regulations under the Budapest Treaty concerning the quantity of microorganisms to be deposited, as published in the April 1988 issue of *Industrial Property*,[1] has been amended as follows:

"1. DSM must be supplied with two preparations of any microorganism to be deposited.

(a) Bacteria and fungi should, where possible, be deposited in the form of active cultures.

(b) Plasmids as isolated DNA preparations should be in a minimum quantity of 2 x 20 μg.

(c) Bacteriophages should be deposited in minimum quantities of 2 x 5 ml having a minimal titre of 1 x 10^9 pro ml."

Budapest Communication No. 56 (this Communication is the subject of Budapest Notification No. 83, of August 28, 1989).

[1] See *Industrial Property*, 1988, p. 141.

WIPO Meetings

Madrid Union

Assembly

Twentieth Session (13th Extraordinary)
(Madrid, June 27, 1989)

NOTE*

The Assembly of the Madrid Union for the International Registration of Marks (hereinafter referred to as "the Assembly") met in extraordinary session at Madrid, on June 27, 1989,[1] upon convocation by its Chairman.

The following member States of the Madrid Union were represented: Algeria, Austria, Belgium, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, France, Germany (Federal Republic of), Hungary, Italy, Liechtenstein, Luxembourg, Mongolia, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Switzerland, Viet Nam, Yugoslavia (22). The list of participants follows this Note.

The Assembly unanimously adopted the following decision:

"1. The Assembly of the Special Union for the International Registration of Marks (Madrid Union), meeting in extraordinary session at Madrid on June 27, 1989,

2. *Noting* Articles 1 and 10 of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on June 27, 1989, and opened for signature on June 28, 1989 (hereinafter referred to as "the Protocol"),

3. *Decides* to accept as members of the Madrid Union and of the Assembly of that Union States not party to the Madrid Agreement and any intergovernmental organizations as of the date on which such States and organizations become bound by the said Protocol, it being understood

(i) that, on matters concerning only countries that are party to the Madrid (Stockholm) Agreement, States which are party to the Protocol without being party to the Madrid (Stockholm) Agreement and intergovernmental organizations party to the Protocol shall not have the right to vote in the Assembly of the Madrid Union and

(ii) that, on matters concerning only States and intergovernmental organizations party to the Protocol, only those States and organizations shall have the right to vote in the Assembly of the Madrid Union."

LIST OF PARTICIPANTS**

I. Member States

Algeria: F. Mekidèche; F. Bouzid; M.S. Ladjouzi. **Austria:** J. Fichte; G. Mayer-Dolliner. **Belgium:** W.J.S. Peeters. **Bulgaria:** K. Iliev; P. Karayanev. **Czechoslovakia:** E. Mück; L. Dokoupil; J. Prošek. **Democratic People's Republic of Korea:** Li Jin Gyu; Hong Yong; Kim Yu Chol. **France:** J.-C. Combaldieu; B. Vidaud. **Germany (Federal Republic of):** A. Krieger; A. von Mühlendahl. **Hungary:** Gy. Pusztai; J. Bobrovszky; G. Bánrévy; E. Boytha-Füzesséry. **Italy:** M.G. Fortini. **Liechtenstein:** D. von Muralt. **Luxembourg:** G. Bombled. **Mongolia:** D. Tsedendamba; D. Zolboot. **Morocco:** A. Bendaoud; H. Abbar. **Netherlands:** H.R. Furstner; D. Verschure. **Portugal:** J. Mota Maia; R.A. Costa de Morais Serrão; J. Pereira da Cruz. **Romania:** P. Moldoveanu. **Soviet Union:** L.E. Komarov; S.A. Gorlenko; Y.P. Pimoshenko; L.P. Salénko; V.M. Oushakov. **Spain:** J. Delicado Montero-Ríos; A. Casado Cerviño; C. Muñoz Caparros; T. de las Heras Lorenzo; M.-T. Yeste López; J.L. Barbero Checa; A. Fernández Picaza. **Switzerland:** J.-L. Comte; J.-D. Pasche; D. von Muralt. **Viet Nam:** Nguyen Duc Than; Vu Huy Tan. **Yugoslavia:** B. Žarković; T. Lisavac.

* Prepared by the International Bureau of WIPO.

[1] For the Note on the previous session, see *Industrial Property*, 1988, p. 294.

** A list containing the titles and functions of the participants may be obtained from the International Bureau.

II. Officers

President: J.-C. Combaldieu (France). *Secretary:* P. Maugué (WIPO).

III. International Bureau of WIPO

A. Bogsch *(Director General)*; A. Schäfers *(Deputy Director General)*; F. Curchod *(Director of the Office of the Director General)*; G. Ledakis *(Legal Counsel)*; P. Maugué (*Senior Counsellor, Industrial Property (Special Projects) Division).*

Studies

The Protection of Appellations of Origin and Indications of Source

A. DE VLÉTIAN*

In the two studies previously published under the same title in *Industrial Property*,[1] I set out the major aspects of this important matter.

I defined the concepts of indication of source and of appellation of origin and showed the reasons for which appellations of origin and indications of source are usurped and also the reasons for which they should be protected.

I emphasized that measures had been taken, a long time ago already, to counter the usurpation of appellations of origin and indications of source and cited a number of cases to show that the concern to combat fraud and abuse was constant.

I pointed out that, as far as principles were concerned, the bodies and associations involved at international level with the protection of industrial property, international trade and the repression of unfair competition had concerned themselves with this matter of protection for appellations of origin and indications of source and had adopted various resolutions that quite clearly recommended the protection of such denominations of origin.

Finally, I explained that the interest shown in the protection of appellations of origin and indications of source had not remained a matter of principle, but had been translated into practice by the drafting and conclusion of international, multilateral or bilateral, conventions, agreements and treaties and by the adoption of domestic legislation and regulations to provide protection for indications of source and appellations of origin against usurpation and fraud.

I cited in that respect the provisions contained in the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised, in the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, as revised,[2] in the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration of October 31, 1958, in other multilateral agreements as well as in a certain number of bilateral agreements.

I mentioned as an example a number of legislative texts in force in various countries in order to give an idea of the provisions adopted and of their variety, and I further gave a number of examples of court decisions taken in various countries, showing that protection actually existed.

Since the publication of my study in 1968, considerable progress has been achieved in the protection of indications of source and appellations of origin, both as regards international, multilateral and bilateral, agreements and national legislation on the repression of fraud and usurpation. The aim of this paper is to present a survey of those developments.

A. Multilateral Conventions

Paris Convention for the Protection of Industrial Property. On January 1, 1988, there were 97 member States of the Paris Union, of which nine were bound by the Lisbon Act, nine by the London Act, and two by the Hague Act; the remaining States were bound by the Stockholm Act.

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods. On January 1, 1988, there were 32 States party to the Madrid Agreement, of which 20 were bound by the Lisbon Act, eight by the London Act, three by the Hague Act and one whose situation was under examination. Of those 32 States, 19 have become party to the Additional Act of Stockholm.

Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration. On January 1, 1988, the States members of the Lisbon Union numbered 16: Algeria, Bulgaria, Burkina Faso, Congo, Cuba, Czechoslovakia, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, Togo, Tunisia.

* Agricultural engineer, Paris.

[1] See *La Propriété industrielle*, 1956, pp. 225 *et seq.* and 250 *et seq.*; 1957, pp. 17 *et seq.*, 35 *et seq.* and 58 *et seq.*; and *Industrial Property*, 1968, pp. 107 *et seq.*

[2] See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES – Text 3-004.

Of those 16 States, 13 are bound by the Stockholm Act and three by the Lisbon Act.

New Regulations under the Lisbon Agreement were adopted on October 5, 1976,[3] to replace those of October 31, 1958.

These Regulations give a certain amount of detail as regards, in particular, the following points: applications for registration, date of registration, the international register, amendments to registrations, registration certificates, notifications, publications, extracts from the international register.

Since the entry into force of the Lisbon Agreement and up to February 1987, 725 appellations of origin have been internationally registered.

The appellations of origin that have been registered cover a large range of products:

beverages: wines, beer, spirits, liqueurs, mineral waters;
fruit and vegetables: grapes, nuts, oranges, lemons, grapefruit, lentils, carrots, peppers;
animal products: cream, butter, cheese, poultry, honey, fish;
other agricultural produce: hay, tobacco, hops, malt, olives, olive oil, gherkins, condiments, biscuits, gingerbread, essence of lavender;
products of handicrafts or industry: lace, hand-woven and embroidered products, carpets, chinaware, pottery, tableware, articles of glass, cut glass, enamels, jewelry, musical instruments, musical toys, objects of metal;
extractive products: kaolin, salt, silica.

The applications for registration of appellations of origin have been filed by various authorities, depending on the applicant country: Ministries of Agriculture, Industry, Trade and Handicraft, Industrial and Scientific Development, or Justice, National Institute of Industrial Property, and the like.

In most cases the registrations show as owner of the right to registration either the producers or associations of producers or groups of producers whose products are entitled to the appellation of origin. The names of the associations have been given in certain cases. The Council of the Lisbon Union indeed stated at one of its sessions that it was not necessary for the owners of the right to the appellation of origin to be stated, but that it was sufficient for the circle of owners to be clearly shown.[4] That is quite logical since the right to an appellation of origin does not constitute personal property, but is linked to the area of production and all producers in that area may use the appellation of origin corresponding to the name of the area on condition, of course, that they comply with the production conditions corresponding to local usage relating to the appellation of origin.

[3] *Ibid.*, Text 5-001.

[4] See *Industrial Property*, 1970, p. 367. See also the study entitled "The Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration," by A. Devlétian, *ibid.*, 1973, pp. 308 *et seq.*

Valuable work has been undertaken, under the aegis of the World Intellectual Property Organization (WIPO), to study the improvements that could be made to extend and strengthen protection of indications of source and appellations of origin at international level.

Detailed reports and summaries of that work have been published in *Industrial Property*, to which reference should be made, since they are very interesting and it is not possible within the scope of this paper to analyze them as they deserve.

Among this work, I may give a number of examples:

- based on the work of a committee of experts that met in 1973, the International Bureau of WIPO drew up, in January 1975, the final text of the Model Law for Developing Countries on Appellations of Origin and Indications of Source, which a number of countries took into account when updating their legislation;
- work towards possible revision of the Lisbon Agreement for the Protection of Appellations of Origin in order to facilitate its application and encourage new accessions has made it possible to compare points of view in the search for a solution;
- a Committee of Experts on the International Protection of Appellations of Origin and Other Indications of Source met in 1974 to study a certain number of problems;
- work towards revision of the Paris Convention has been undertaken and is continuing in a search for solutions that will enjoy a consensus;
- from November 3 to 5, 1988, a Symposium on Appellations of Origin and Indications of Source was organized in Bordeaux by WIPO in collaboration with the National Institute of Industrial Property (INPI) of France. The papers given at the Symposium have been published by WIPO.[5]

During these international meetings, at which a large number of countries, together with intergovernmental organizations and international non-governmental organizations, were represented, emphasis was laid on the value of protecting indications of source and appellations of origin in order to safeguard the legitimate rights of producers in the face of unfair competition and to protect consumers from fraud, together with the aim of strengthening international protection.

It was stated that the system of protection set up by the current international agreements should be extended both within the multilateral framework and at bilateral level and it was pointed out that the amendments that could be made to the international system of protection should in no way restrict the scope and effectiveness of the protection provided under existing agreements.

[5] WIPO publications 669(F) and 669(E).

Among the other multilateral agreements, I may mention:

International Olive Oil Agreement of April 20, 1963, supplemented in 1973 and 1986, which stipulates that appellations of origin or indications of source, where used, may only apply to virgin olive oil produced exclusively in the country, area or locality mentioned or exclusively from those places and that they may only be used in conformity with the conditions applying in the country of origin.

This Agreement also deals with the repression of unfair competition.

Central American Convention for the Protection of Industrial Property (Marks, Trade Names and Advertising Slogans or Signs),[6] signed on June 1, 1968, by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, contains various provisions on the repression of unfair competition and on the protection of indications of source and appellations of origin.

B. Bilateral Agreements

Numerous agreements concerning the protection of indications of source and appellations of origin have been concluded between a certain number of countries.

Many of these are economic or trade treaties, conventions or agreements which contain more or less detailed provisions on the protection of indications of source and appellations of origin, and many others are treaties, conventions or agreements entirely devoted to such protection.

In most cases, protection extends to all products, but in some cases refers only to certain products.

I have cited in my previous papers[7] various of these agreements and have analyzed as an example the protection clause contained in a number of economic agreements concluded by France together with an agreement entirely devoted to the protection of indications of source and appellations of origin: that of March 8, 1960, concluded between the Federal Republic of Germany and the French Republic.[8]

I mention below a number of agreements concluded in recent years or which were not mentioned in a preceding paper. Some agreements have replaced earlier diplomatic instruments whose provisions on the protection of indications of source and appellations of origin were less extensive, less detailed or less precise.

Almost all these agreements are devoted entirely to the protection of indications of source and appellations of origin and the provisions to be found in most of them resemble those in the above-mentioned agreement between the Federal Republic of Germany and the French Republic, providing effective protection for indications of source and appellations of origin against usurpation or fraud. Some of them are trade agreements that contain provisions stipulating such protection or are agreements covering certain products only.

— Trade Agreement of November 25, 1957, between the Argentine Republic and the French Republic whose Article 6 stipulates that both countries will take the necessary measures to ensure protection for appellations of origin and of quality in respect of the exclusive products of either of the countries and to prevent the circulation and sale of merchandise produced on their territories or in third countries which bear false appellations of origin, of quality or of type.

— Treaty concluded on March 7, 1967, between the Swiss Confederation and the Federal Republic of Germany on the Protection of Indications of Source and Other Geographical Denominations.[9]

— Agreement signed on December 16, 1968, between Poland and Argentina under which the two countries undertake to repress all forms of unfair competition in trade, particularly the use of false or deceptive indications of source or of origin.

— Treaty signed on September 11, 1970, between the Federal Republic of Germany and the Spanish State on the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations.[10]

— Agreement of December 16, 1970, between Spain and Portugal on the Protection of Indications of Source, Appellations of Origin and the Denominations of Certain Products.[11]

— An exchange of letters, dated December 2, 1970, and January 18, 1971, between the French Government and the Government of the United States of America laying down protection in France for the appellations "Bourbon" and "Bourbon Whiskey" and protection in the United States of the appellations of origin "Cognac," "Armagnac" and "Calvados."

— Agreement signed on July 21, 1972, between the Republic of Austria and the Hungarian People's Republic on the Protection of Indications of Source, Appellations of Origin and Other Denominations Denoting the Origin of Agricultural and Industrial Products.[12]

— Agreement signed between the United States of America and Mexico stipulating that the term "Tequila" will be considered a Mexican appellation of origin in the United States of America and will therefore be protected and that only "Bourbon Whiskey" produced in the United States of America in compliance

[6] See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES — Text 1-001.

[7] See footnote 1, *supra*.

[8] See *Industrial Property*, 1974, pp. 373 *et seq.*

[9] *Ibid.*, 1969, pp. 63 *et seq.*

[10] *Ibid.*, 1974, pp. 379 *et seq.*

[11] See *Industrial Property Laws and Treaties*, BILATERAL TREATIES — Text 5-004.

[12] See *Industrial Property*, 1974, pp. 384 *et seq.*

with the laws and regulations of that country may be sold in Mexico as "Bourbon" or "Bourbon Whiskey."

— Convention of June 27, 1973, between the French Republic and the Spanish State on the Protection of Appellations of Origin, Indications of Source and the Denominations of Certain Products.[13]

— Treaty of November 16, 1973, between the Swiss Confederation and the Czechoslovak Socialist Republic on the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations.[14]

— Treaty of April 9, 1974, between the Swiss Confederation and the Spanish State on the Protection of Indications of Source, Appellations of Origin and Similar Denominations.[15]

— Agreement of May 10, 1974, between the French Republic and the Republic of Austria on the Protection of Indications of Source, Appellations of Origin and Denominations of Products of Agriculture and Industry.[16]

— Treaty of May 14, 1974, between the French Republic and the Swiss Confederation on the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations.[17]

— Trade Agreement of December 14, 1974, between Cuba and Spain stipulating protection for appellations of origin.

— Convention of April 9, 1975, between Spain and Italy laying down protection for indications of source and appellations of origin.

— Exchange of letters, dated July 31 and September 11, 1975, between France and the United Kingdom for the protection in the United Kingdom of the appellations of origin "Cognac," "Armagnac" and "Calvados," and the protection in France of the appellation "Scotch Whisky."

— Agreement of May 3, 1976, between the Republic of Austria and the Spanish State on the Protection of Indications of Source, Appellations of Origin and Denominations of Agricultural and Industrial Products.[18]

— Treaty of June 11, 1976, between the Republic of Austria and the Czechoslovak Socialist Republic on the Protection of Indications of Source, Appellations of Origin and Other Denominations Referring to the Origin of Agricultural and Industrial Products.[19]

— Treaty of September 17, 1977, between the Swiss Confederation and the Portuguese Republic on the Protection of Indications of Source, Appellations of Origin and Similar Denominations.[20]

— Trade Agreement of June 27, 1979, between Spain and Colombia which stipulates, in Article 3, that the Governments will adopt the necessary measures to protect, on their respective territories, against all forms of unfair competition, the products that originate in the other contracting party by preventing importation and restricting where appropriate the manufacture, circulation and sale of products bearing trademarks, names, inscriptions or any other similar sign constituting a false indication of origin, source, type, nature or quality of the product.

— Treaty of December 14, 1979, between the Swiss Confederation and the Hungarian People's Republic on the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations.[21]

— Agreement of May 22, 1981, between the Government of the Portuguese Republic and the Government of the Hungarian People's Republic on the Reciprocal Protection of Indications of Source, Appellations of Origin and Similar Denominations.[22]

— Treaty of October 6, 1981, between the Federal Republic of Germany and the Republic of Austria on the protection of indications of source and other geographical denominations.

C. Agreements Concluded by the European Economic Community

Agreement of October 21, 1981, between the European Economic Community and the Republic of Austria on the control and reciprocal protection of quality wines and of certain wines designated by means of a geographical indication. This Agreement comprises a protocol and an exchange of letters constituting an integral part, together with an annex listing the wines to which the Agreement applies and the specific or complementary traditional markings, appellations of origin and geographical denominations designating them. It was approved by Council Regulation (EEC) No. 3826/81 of December 15, 1981. Under that Agreement, each of the contracting parties undertakes to take all necessary measures to control and effectively protect, in compliance with the provisions cited, the wines designated by means of a geographical denomination referred to in Article 2 that originate on the territory of the other contracting party, in particular against unfair competition in the course of trade.

It applies, as stated by its Article 2,

— as regards wine originating in the European Economic Community: to quality wines produced in specified regions (comprising the wines of designated origin), table wines designated as "local wines" (or their equivalents in the various Community Member States) followed by

[13] See *Industrial Property Laws and Treaties*, BILATERAL TREATIES — Text 5-001.

[14] *Ibid.*, Text 5-006.

[15] *Ibid.*, Text 5-007.

[16] *Ibid.*, Text 5-002.

[17] *Ibid.*, Text 5-003.

[18] *Ibid.*, Text 5-005.

[19] *Ibid.*, Text 5-010.

[20] *Ibid.*, Text 5-008.

[21] *Ibid.*, Text 5-009.

[22] *Ibid.*, Text 5-011.

the name of the area of production, to table wines designated by means of a geographical indication and subject to special production rules;
— as regards wines originating in Austria: to "Qualitätsweine" designated by a specified quality epithet and by the name of one of the federal provinces or of the wine-growing regions or subregions listed and, possibly, the name of a smaller geographical entity.

The denominations protected in compliance with the Agreement are, in particular, those terms that refer to the Member State of origin, the terms "quality wines produced in specified regions" (in one of the Community languages) or "quality wines psr," the traditional designations such as "appellation d'origine contrôlée" "vins délimités de qualité supérieure," the names of specified regions and of geographical entities that are smaller than the specified regions, the names of the Austrian federal provinces, the wine-growing regions and subregions, parishes, localities and *Grosslagen.*

The Agreement provides effective protection for geographical indications and appellations of origin for wines. Its provisions on the basic principles for protection and on the extent and conditions for protection are similar to those in the agreement concluded between the Federal Republic of Germany and the French Republic referred to in a previous study[23] and to those of similar agreements cited in the chapter on bilateral agreements, particularly those of the agreement between the French Republic and the Republic of Austria.

Agreement of July 20, 1972, between the European Economic Community and the Swiss Confederation, supplementing an agreement of June 30, 1967, on products of the clock and watch industry. That agreement defined the conditions under which a watch may be considered to be Swiss and established a certification procedure between Switzerland and the Community, in compliance with the rules set out therein.

The European Economic Community has concluded preferential agreements with a number of countries, accompanied by protocols defining the notion of originating product in compliance with the definition given in Regulation (EEC) No. 802/68.[24]

D. Legislation

The laws and regulations on the protection of indications of source and appellations of origin can be of a general nature, for example, within the framework of protection of consumers against fraud—particularly as regards the source or origin—or the repression of unfair competition or again the protection of industrial property, and apply to all products; they may also specifically apply to just the protection of indications of source and appellations of origin for all products or again concern only certain products or even a specific product.

There are many such provisions to be found in many countries; it is not feasible therefore, within this paper, to look at the situation in all countries and to analyze, or even simply mention, all the existing texts.

I have cited a number of such texts in the preceding papers. In this study I shall mention further texts adopted by a number of countries, as examples, to show the importance afforded to the protection of indications of source and appellations of origin and also the great diversity of the provisions adopted, depending on the country and on the product.

South Africa

In Regulations published in the *Government Gazette* of June 16, 1972, the Minister for Agriculture has defined production areas for designated wines and has authorized the sale in South Africa and export of wines under the name of one of these areas to denote that the wine has been produced and processed in that area, subject to the name being used together with the term "designated wine" or "superior designated wine" and that a certificate has been issued by the Wine and Spirit Board certifying that the wine complies with the quality conditions laid down by the Board for wines of the region concerned.

Algeria

Ordinance No. 76-65 of July 16, 1976 (on Appellations of Origin).[25]

Decree No. 76-121 of July 16, 1976 (on the Rules for Registering and Publishing Appellations of Origin and Laying Down the Relevant Fees).[26]

Germany (Federal Republic of)

The Law on Unfair Competition of June 7, 1909,[27] prohibits misleading statements as to the geographical origin of products.

The Law of December 29, 1929, excludes German appellations for hops from transformation into generic names.

The Ordinance of November 12, 1934, prohibits the use of deceptive indications or appellations for table waters.

The Ordinance on coffee of March 26, 1963, stipulates that it shall constitute a deceptive denomination if coffee sold with a denomination of source does not come from the production area that corresponds to that denomination.

[23] See *Industrial Property*, 1968, pp. 114 *et seq.*

[24] See European Economic Community Regulations.

[25] See *Industrial Property Laws and Treaties*, ALGERIA — Text 5-001.

[26] *Ibid.*, ALGERIA — Text 5-002.

[27] See *Industrial Property*, 1972, pp. 38 *et seq.*

Argentina

The Law on Trademarks and Designations (No. 22,362 of December 26, 1980)[28] provides that domestic and foreign appellations of origin may not be registered as marks.

The Law includes a definition of appellation of origin taken from the WIPO Model Law for Developing Countries on the Protection of Appellations of Origin and Indications of Source.

Law No. 19,982 of 1972 on the Identification of Goods prohibits the use of trademarks, whether registered or not, liable to mislead or confuse as to the origin of products.

The National Wine Institute issued a Decision No. 935/79 not to approve labels bearing the names of foreign geographical regions even where preceded by words such as "type" or similar terms.

Austria

An Ordinance of the Federal Minister for Agriculture, which entered into force in September 1974, requires all wine producers and dealers to keep a cellar book, in particular to prevent fraudulous blending and other fraud in respect of appellation of origin wines.

Belgium

The Law of July 14, 1971, on Trade Practices[29] gives a definition of appellation of origin that is identical with that contained in the Lisbon Agreement and makes provision for the recognition and confirmation of appellations of origin for Belgian products by means of royal decree setting out the production conditions for the products sold under those appellations.

For some appellations, the Law provides the possibility of instituting attestations of origin which may be imposed on producers and those who put up for sale or sell products bearing an appellation of origin.

The use of a denomination presented as an appellation of origin although it is not confirmed as such by royal decree is prohibited.

Prohibition also applies to the putting up for sale or selling under an appellation of origin of goods that do not satisfy the conditions laid down by the royal decree confirming the appellation of origin or not covered by an attestation of origin where such is required.

The prohibition applies even if amending terms are used such as "kind," "type," "make," "similar" or their translation and also if the protected appellation is used as an indication of source.

A Royal Decree of December 20, 1973, laid down the conditions for approving the bodies responsibile for issuing attestations of origin.

The Royal Decrees of February 4, 18 and 20 and of March 1, 1974, on the appellation of origin "Jambon d'Ardenne" (Ardenne ham), confirmed by virtue of the 1971 Law.

Bulgaria

Law No. 95 of December 5, 1967, on Trademarks and Industrial Designs[30] gives a definition of appellation of origin which coincides with that in the Lisbon Agreement and provides for the protection of appellations of origin.

The Law on Obligations and Contracts, dealing with unlawful prejudice, provides for the protection of indications of source.

Article 227 of the Penal Code permits the repression of unfair competition constituted by unlawful use of an appellation of origin.

Appellations of origin are protected against incorrect use or falsification even in those cases where the true origin of the goods is stated or where the appellation of origin is translated into another language or accompanied by words such as "type," "make," etc.

Pursuant to Decree No. 7 of March 14, 1978, of the Council of Ministers, Ordinance No. 8 of the Ministers for Agriculture and Food Industry, for Internal Trade and for External Trade Services, for Finance and the State Committees for Planning and Standardization, sets out the conditions to be met by controlled appellation of origin wines together with the procedure for their recognition.

Chile

Under the Decree-Law of 1931 on Industrial Property and the Regulations of 1982 concerning application of that Decree-Law as regards trademarks, expressions and signs denoting a place of origin of products together with signs liable to mislead as to the origin may not be registered as trademarks.

Law No. 17,105 of 1969 on Alcoholic Beverages has given the President of the Republic powers to establish wine-growing areas and wine production regions. Only the products of these regions that meet specific conditions are entitled to an appellation of origin. This Law has also established a number of appellations of origin for specific wine products.

Decree-Law No. 280 of January 22, 1974, for the Safeguard of Economic Activities has laid down penalties for persons committing fraudulent acts in the sale of products and for those who mislead or attempt to mislead as to the origin of the goods offered.

A Decree of September 5, 1979, of the Minister for Agriculture established appellations of origin for wines produced in a number of regions and stipulated that only the wines produced in those regions could be designated with the appellation of origin of the respective region. Controls are carried out and infringements prosecuted.

Colombia

The Code of Commerce, which entered into force on January 1, 1972,[31] provides for the repression of unfair

[28] *Ibid.*, ARGENTINA — Text 3-001.

[29] See *Industrial Property*, 1972, pp. 39 *et seq.*

[30] *Ibid.*, 1969, pp. 39 *et seq.*

[31] *Ibid.*, 1972, pp. 128 *et seq.*

competition and deceit of the public and specifies that the direct or indirect use of a false or deceptive appellation of origin constitutes unfair competition even if the true provenance is stated, either in translation or accompanied by terms such as "kind," "type," "imitation," etc., and prohibits registration as a trademark of names and signs that could be used in trade to designate the place of origin.

Decree No. 1461 of 1932, as amended, provides that coffee originating in Colombia must be marketed with the statement "café de Colombia" or "produce of Colombia."

Decision No. 1898 of August 21, 1985, taken by the Office of Commerce and Industry has reserved the term "Champaña" for sparkling wine produced in the region of Champagne in compliance with the French requirements for that appellation of origin.

Cuba

The text of Decree-Law No. 68 of May 14, 1983, on Inventions, Scientific Discoveries, Industrial Designs, Marks and Appellations of Origin[32] prohibits the registration as a trademark of signs and figures constituting false indications as to the nature, origin, etc., of goods or services they are intended to protect, and of geographic or regional names if they may constitute false or deceptive indications of origin or if they are registered in Cuba as appellations of origin or indications of source. Any use by a non-authorized person of an appellation of origin or indication of source is illegal when presented in another language or accompanied by expressions such as "kind," "type," "make," "imitation" or similar expressions. The geographical names of areas whose goods or services are not due exclusively or essentially to natural or human factors cannot be protected as appellations of origin.

Spain

Law No. 25/1970 of December 2, 1970, on Wine has regulated the arrangements for appellations of origin.

A number of appellations of origin for wine have been recognized, and the conditions for production and the characteristics of the wines that may claim an appellation of origin specified.

Decree No. 2484 of August 9, 1974, concerning production, circulation and marketing of "Brandy" stipulates a prohibition on the use of denominations or trademarks which, by reason of their phonetic or graphical resemblance, may mislead the consumer as to the nature and origin of the product.

The Decree of December 20, 1974, has stipulated that the arrangements for appellations of origin and specific denominations set up by the Law of December 2, 1970, may be extended to other products which, in view of their characteristics, may enjoy the protection inherent to appellations of origin, that is to say, olive oil, cheese and mountain ham.

Royal Decree No. 2004/79 of July 13, 1979, laid down the constitution of regulatory councils for wine appellations of origin to be composed, henceforth, exclusively of wine growers, and of the General Council of the National Institute of Appellations of Origin (INDO) of which some members will be representatives of the trade circles chosen from among the members of the regulatory councils.

A Decree of March 2, 1981, recognized an appellation of origin "Baena" for virgin olive oil from the region of that name.

Two Decrees, of November 12, 1980, and May 9, 1981, recognized two appellations of origin for cheese and a Decree of March 2, 1981, approved the regulations for an appellation of origin for cheeses.

A Decree of June 17, 1981, recognized an appellation of origin "Jamón de Teruel" (Teruel ham).

United States of America

The Trademarks Act[33] lays down that any false designation of origin used in inter-State selling shall entitle any person who believes he has suffered or is likely to suffer damage as a result of the use of such false designation to take proceedings before a civil court for an injunction and for damages.

Cancellation of a registered trademark may be requested if the mark is used in order to give false indications as to the origin of the goods or services for which it is used.

Regulations published in 1976, to supplement the earlier regulations of 1974, specified that the appellation "Tequila" is reserved for a typical Mexican product which must have been produced in compliance with the Mexican provisions regulating production of "Tequila" for the Mexican market.

Thus, the protection afforded to the appellation "Tequila" is similar to that already applied for the appellations "Scotch Whisky," "Irish Whiskey" and "Canadian Whisky" to designate the typical products of Scotland, Ireland and Canada and to protection for the controlled appellations of origin for French spirits "Cognac," "Armagnac" and "Calvados."

The Federal Regulations on Appellations of Origin and Designations of Wine, published in 1978 define the appellation of origin for American wines which may be "United States," the name of a state of the Union, of a county or of a wine-growing region as defined in the Regulations and gives a similar definition for the appellation of origin of imported wines; it further sets out the conditions to be met for an American wine to be sold with an appellation of origin and specifies that imported appellation of origin wines must comply with the legislation of the country of origin.

Under those regulations, a number of wine-growing regions have been recognized and established by rules published in the Federal Register: "Napa Valley," "Sonoma Valley," "San Pasqual Valley," "Santa Cruz

[32] See *Industrial Property Laws and Treaties*, CUBA – Text 1-001.

[33] *Ibid.*, UNITED STATES OF AMERICA – Text 3-001.

Mountains" and "Santa Maria Valley" (California), "Augusta" (Missouri) and "Fennville" (Michigan).

Additional information was published in the Federal Register in 1979 concerning future designations of American wine-growing regions, particularly as regards requests for recognition and demarcation and the files that must be drawn up to support the applications.

The current American regulations contain provisions providing for protection for a large number of appellations of origin of wine and spirits of the United States and of other countries.

A 1986 regulation stipulates that it is prohibited to use an appellation of a geographical nature to designate a wine that does not comply with the requirements of the regulations in respect of the production area designated by the geographical appellation.

Finland

Extensive protection for indications of source and appellations of origin is provided by the Law of January 20, 1978, for the protection of consumers, which prohibits the use of false or deceptive information and foresees fines and/or imprisonment for infringements.

Compliance with appellations of origin for wines and spirits is ensured by the State Wines and Spirits Monopoly.

France

Law No. 66-1175 of December 27, 1968, has supplemented the Law of December 19, 1917, and has set out the procedure to be applied for the protection of production areas for appellation of origin wines against the installation within such areas or close to them of hazardous, insanitary or noxious establishments (the Law of December 19, 1917, has been superseded by Law No. 76-663 of July 19, 1976, on installations classified for the protection of the environment).

Decree No. 69-335 of April 11, 1969, laid down the conditions for public inquiries which, pursuant to Article 7.3 of the Law of May 6, 1919, relating to the protection of appellations of origin, as amended by Law No. 66-482 of July 6, 1966, must precede any decrees taken by the Government to ensure protection for the appellations of origin of certain products.

The Law of December 24, 1969, has set out the rules for downgrading appellation of origin wines either at the estate or at the dealers.

The Law of May 22, 1971, has prohibited the manufacture of ordinary sparkling wines within the geographical area of the controlled appellation of origin "Vouvray" in order to avoid confusion between products entitled to that appellation of origin and those not entitled.

A Decree of June 14, 1971, defined the appellation of origin "Chasselas de Moissac."

The Law of July 5, 1972, on the marketing of wines with the controlled appellation of origin "Alsace" requires compulsory bottling within the departments of Bas-Rhin and Haut-Rhin.

Decree No. 73-1007 of November 29, 1973, laid down production conditions for local wines.

Law No. 73-1097 of December 12, 1973, amended Law No. 55-1533 of November 28, 1955, relating to appellations of origin for cheeses.

Law No. 73-1097 of December 12, 1973, laid down that, among the wines produced on the national territory, only controlled appellation of origin wines and superior quality demarcated wines could enjoy the provisions of the Law of May 6, 1919, as amended, relating to the protection of appellations of origin.

Decree No. 75-1098 of December 12, 1973, concerns requests for definition or amendment of appellations of origin for cheeses.

Decrees Nos. 74-872 of October 19, 1974, and 74-958 of November 20, 1974, concern the yield of vineyards producing controlled appellation of origin wines.

Decrees Nos. 74-871 of October 19, 1974, and 79-1107 of December 17, 1979, concern analyses and organoleptic tests for controlled appellation of origin wines.

Law No. 75-577 of July 4, 1975, reserves the use of the word "crémant" for sparkling and semi-sparkling wines with appellations of origin.

Decree No. 76-1192 of December 22, 1976, defined and detailed the production and marketing conditions for the appellation of origin "Dinde fermière de Bresse" (Bresse farm turkey).

An Ordinance of July 15, 1979, set out the conditions for applying Law No. 57-866 of August 1, 1957, laying down the status of the appellation of origin "Volaille de Bresse" (Bresse poultry).

An Ordinance of April 11, 1980, declared as being of public interest the totality of the demarcated territories producing controlled appellation of origin wines.

Law No. 80-957 of December 2, 1980, extended to the overseas departments the provisions of the Decree-Law of July 30, 1935, on the protection of controlled appellations of origins for wines and spirits and the provisions of the Law of December 17, 1941, laying down the conditions for the circulation of spirits with regulated appellations of origin.

The Decrees of August 29, 1979, and June 30, 1986, recognized and defined the appellations of origin "Beurre de Charentes" (Charentes butter), "Beurre Charente Poitou" (Charente Poitou butter), "Beurre des Deux-Sèvres" (Deux-Sèvres butter), "Beurre d'Isigny" (Isigny butter) and "Crème d'Isigny" (Isigny cream).

The Decrees of August 18, 1980, and December 29, 1986, defined 28 appellations of origin for cheese, including "Brie de Melun," "Brie de Meaux," "Camembert de Normandie," "Munster Géromé," "Salers," "Roquefort," "Saint-Nectaire," "Comté," "Cantal," "Bleu d'Auvergne," "Bleu des Causses" (these Decrees superseded earlier texts.)

The Decree of December 14, 1981, recognized and defined the appellation of origin "Huile essentielle de

lavande de Haute Provence" (essential oil of Upper Provence lavender).

The Law of January 9, 1985, relating to the development and protection of mountain areas stipulated the demarcation of the mountain areas.

Decrees Nos. 88-194 and 88-195 of February 26, 1988, detailed the conditions for using the denomination "provenance Montagne" (mountain provenance) and "appellation Montagne" (mountain appellation).

Decree No. 88-416 of April 22, 1988, concerned appellations of origin for rum.

Additionally, numerous decrees concerning, in particular, the recognition and definition of "vins de pays" (local wines) and "vins à appellation d'origine contrôlée" (controlled appellation of origin wines), amended earlier texts or detailed the conditions of application.

Greece

Law No. 5506/1932, amended by Decree-Law No. 2633 of 1953, represses the use of false indications as to the origin of wines and provides that any natural or legal person who has suffered damage may take action to obtain compensation for the damages.

The Presidential Decree of November 17, 1932, stipulates that decisions by the responsible Ministers may, after consulting the special committees, define those wines that are entitled to an appellation of origin.

Decisions by the Ministers for Trade and for Agriculture subsequently defined a number of typical appellation of origin wines in 1963 and 1964.

Decree-Law No. 243 of July 22, 1969, on the improvement of vineyard production provides for the recognition and protection of appellations of origin. It contains a definition of appellation of origin that is identical with the definition in the Lisbon Agreement. It provides for two categories: controlled appellation of origin wines and simple appellation of origin wines, and sets out the conditions to be met for each of the two categories. The appellations of origin established pursuant to Law No. 5506/1932 are to be maintained until reviewed or to be suppressed.

Decree No. 423/1970 on the recognition of appellations of origin for wines details the formalities and conditions for recognizing controlled appellation of origin wines.

A number of controlled appellations of origin and simple appellations of origin were recognized by Decree in 1971 and 1972 and ministerial decisions have defined the conditions for using such controlled appellations of origin and simple appellations of origin.

Israel

Law No. 5725-1965 on the Protection of Appellations of Origin[34] lays down the conditions for registering appellations of origin and provides material protection for rights in such appellations of origin.

Civil proceedings may be instituted by any interested person, including government authorities, public bodies or chambers of commerce, to prohibit the utilization by third parties of registered appellations of origin or the use of false or deceptive appellations of origin.

Criminal proceedings may also be instituted against the unlawful use of appellations of origin.

Italy

Decree No. 506 of the President of the Republic, of May 24, 1967, concerns the Viticultural Land Register and the declaration of grapes intended for the production of "denominazioni di origine controllata" (controlled denomination of origin) and "controllata e garantita" (controlled and guaranteed) wines.

The Decree of December 10, 1969, of the President of the Republic concerns the keeping of incoming and outgoing registers of controlled denomination of origin wines and controlled and guaranteed wines.

Numerous controlled denomination of origin wines have been approved by Decrees of the President of the Republic.

The Ministerial Decree of December 21, 1977, has regulated the designation and presentation of table wines with geographical indications.

Mexico

The Law on Inventions and Marks (of December 30, 1975, as amended by the Decree of December 29, 1986),[35] provides that the unlawful use of an appellation of origin will be punishable, even if the appellation is accompanied by expressions such as "kind," "type," "imitation" or other terms that mislead the consumer and constitute an act of unfair competition.

Poland

The protection of indications of source and appellations of origin is provided under the Law of August 2, 1926, on Unfair Competition[36] and the Law of January 31, 1985, on Trademarks[37] which prohibits the registration of marks containing geographical or other elements defining or designating a member State of the Paris Union for the Protection of Industrial Property or a region or locality of such State in relation to products not originating in such State if the use of such marks may mislead purchasers as to the origin of the goods, on condition that exclusion from registration of such trademarks derives from an international treaty.

[34] See *Industrial Property*, 1966, pp. 141 *et seq.*

[35] See *Industrial Property Laws and Treaties*, MEXICO – Text 1-001.

[36] See *La Propriété industrielle*, 1927, pp. 8 *et seq.*

[37] See *Industrial Property Laws and Treaties*, POLAND – Text 3-001.

Portugal

The Industrial Property Code of August 24, 1940, as last amended on January 27, 1987, contains various provisions on the definition and protection of indications of source and appellations of origin.

Romania

The Law on Trademarks and Service Marks, No. 28 of 1967,[38] published on December 29, 1967, and Decision No. 77 of the Council of Ministers published on January 27, 1968, excludes from registration signs that refer to a place of manufacture and those that contain a false or deceptive indication.

United Kingdom

The Trade Description Act 1968 prohibits the use of false designations of goods, including false indications as to the origin of goods, gives to the Department of Trade and Industry powers to define designations of goods and prohibits the import of goods bearing false indications in respect of origin.

Sweden

Rules were promulgated in 1953 for the protection of certain names of origin of other countries with reference to the Law of June 4, 1913, which prohibits the importation into Sweden of goods bearing false indications of origin.

The use of an appellation of origin for a vine product is prohibited, even if the true region or true country of production is stated.

Switzerland

The Federal Law of September 26, 1890, Concerning the Protection of Trademarks, Indications of Source and Industrial Awards[39] has been supplemented most recently by the Federal Law of March 18, 1971,[40] which provides that, where justified by the general interests of the Swiss economy, the Federal Council may define conditions to be satisfied by a product, depending on its characteristics, for the use of an indication of source to be lawful.

These conditions may concern the Swiss origin of the basic materials or parts, work undertaken in Switzerland, or other essential properties, in particular the quality expected by the public from goods bearing a Swiss indication of source.

Pursuant to this Law, an Ordinance of December 23, 1971, by the Federal Council regulated the use of the word "Swiss" for watches. This Ordinance was amended by Federal Ordinance of October 18, 1978.

Czechoslovakia

Law No. 159/1973 Sb of December 12, 1973, on the Protection of Appellations of Origin[41] is based on the Madrid Agreement to which Czechoslovakia is party. It contains the provisions of the Lisbon Agreement, particularly the definition of appellation of origin.

The Order of the Office for Inventions and Discoveries concerning the procedure in respect of appellations of origin for products, No. 160/1873 Sb, of December, 13, 1973, constitutes the implementing text for this Law.[42]

Soviet Union

There is no specific legislation to protect indications of source and appellations of origin.

Protection derives from general legislation concerning indications relating to the quality and geographical origin of goods, which must correspond to reality and be supported by documents that prove their authenticity.

The Statute on Trademarks of 1974, as last amended in 1983,[43] prohibits the registration as marks of signs constituted entirely or in part of geographical names or designations that are likely to be understood as an indication of the place at which the manufacturer is located; a sign comprising an appellation of origin may not be registered as a mark unless the applicant furnishes a document issued by the responsible authority certifying his right to use the appellation of origin.

Decree No. 442 of May 15, 1962, of the USSR Council of Ministers contains a provision prohibiting inclusion in a trademark of false indications as to the place of production of the goods.

Where no such indication is shown in the trademark as submitted for registration, its use would be prohibited by Section 5 of the Fundamentals of the Civil Legislation of the USSR and the Union Republics.[44]

Venezuela

The Law of August 5, 1974, on the Protection of Consumers prohibits the offering of goods or services, as advertising promotion or by any other means, by attributing to them characteristics, qualities, certifications and the like that are different from those they really possess and which may be verified in an objective manner.

The Law on Industrial Property of August 29, 1955,[45] prohibits the registration of trademarks that are likely to indicate a false origin and of geographical names constituting indications of source.

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[38] See *Industrial Property*, 1968, pp. 279 *et seq.*

[39] See *La Propriété industrielle*, 1939, pp. 179 *et seq.*; and 1951, pp. 175 *et seq.*

[40] See *Industrial Property*, 1972, pp. 78 *et seq.*

[41] *Ibid.*, 1975, pp. 88 *et seq.*

[42] *Ibid.*, 1975, pp. 89 *et seq.*

[43] See *Industrial Property Laws and Treaties*, SOVIET UNION — Text 3-001.

[44] See *Industrial Property*, 1967, pp. 77 *et seq.*

[45] See *La Propriété industrielle*, 1956, pp. 220 *et seq.* and 243 *et seq.*

A Decree of July 17, 1986, restricts the use of the names "Champagne" and "Champaña" to sparkling wines produced in the Champagne region in conformity with French regulations.

Yugoslavia

The Law of 1930 on the Repression of Unfair Competition and of Monopoly Contracts provides that the geographical names of wines, mineral waters and of their manufactured products may never be held generic and that the appellations of origin of foreign countries whose properties are influenced by climate and soil may be protected on a reciprocal basis.

The Basic Law on Trade of 1966 provides for the repression of false indications of source.

The Federal Law on Wine, promulgated in 1965, established, apart from a general prohibition on false indications for wines, special protection for wines of high repute produced exclusively in specified regions or localities.

Since 1973, following a transfer of responsibility to the Republics and Autonomous Regions, the latter have promulgated their own laws on wines containing special provisions on wines of high repute originating in specified regions, for which certain conditions have been imposed.

The Law on the Protection of Inventions, Technical Improvements and Distinctive Signs of June 9, 1981,[46] has instituted a special legal title for the protection of appellations of origin for products whose specific properties result from the natural environment (climate and soil) and from customary methods. Appellations of origin may not be transformed into generic denominations and protection also extends to the indirect designation of products within the meaning of Article 3 of the Lisbon Agreement.

Regulations of the European Economic Community

The Community Regulations are directly applicable in all Member States and are compulsory in all respects.

A number of those Regulations concern indications of origin or goods bearing indications of origin and appellations of origin.

Of those Regulations, I may mention:

Council Regulation (EEC) No. 802/68 of July 27, 1968, on a common definition of the concept of origin of goods, amended in particular by Regulation (EEC) No. 1318/71 which gave a Community definition of country of origin and laid down the rules for drawing up certificates of origin.

This definition states that goods originate in a country if they are entirely obtained in that country: mineral products extracted from its territory, vegetable produce harvested there, livestock born and raised there, produce from livestock born and raised there ... and goods or their derivatives obtained exclusively from goods, produce and animals referred to above, at any stage whatsoever.

The Regulation lays down that goods in the production of which two or more countries are involved originate in the country where the last substantial and economically justified transformation has taken place resulting in the manufacture of a new product or representing an important stage of manufacture.

Commission Regulation (EEC) No. 315/71 of February 12, 1971, sets out the rules applicable for determining the origin of basic wines intended for the production of vermouth and the origin of vermouth.

Council Directive No. 79/112/EEC concerning labeling and get-up of food products intended for the final consumer and the relevant advertising requires that labeling should not be such as to mislead the purchaser, particularly as regards the characteristics of the foodstuff, particularly its nature, its identity, its qualities, its composition, its origin or source, its method of manufacture or production.

This Directive also requires that the statements made on the labeling of foodstuffs must also give the place of origin or source in those cases where omission would be liable to mislead the consumer as to the true origin or source of the foodstuffs.

A number of Regulations relate especially to wines:

Council Regulation (EEC) No. 822/87 of March 16, 1987, on the common organization of the market in wine, amended by a number of Regulations, specifies the rules applicable for the use of a geographical indication to designate a table wine and stipulates that imported wines intended for direct human consumption and designated by means of a geographical indication may enjoy, for their marketing in the Community, subject to reciprocity, the controls and protection referred to in Article 16 of Regulation (EEC) No. 823/87 for quality wines produced in specified regions.

Council Regulation (EEC) No. 823/86, of March 16, 1987,[47] established the special conditions for quality wines produced in specified regions. Its provisions concern:

- demarcation of the production area whose name is used to designate the wines;
- determination of the list of vine varieties that are cultivated together with wine-growing and wine-making practices that are required, permitted or prohibited;
- the analyses and organoleptic tests to which producers must submit their wines;
- the statements that may be used in designating wines, declaring harvests and stocks, in controls.

[46] See *Industrial Property Laws and Treaties*, YUGOSLAVIA – Text 1-001.

[47] These Regulations have superseded Regulation (EEC) No. 337/79 of February 5, 1979, which had already superseded Regulations (EEC) Nos. 816/70 and 817/70 of April 28, 1970, covering the same matter.

Council Regulation (EEC) No. 355/79 of December 20, 1979, established general rules for the designation and get-up of wines and musts and laid down the rules applicable to products originating in the Community: table wines, including local wines, quality wines produced in specified regions and wines imported from non-member countries, including wines designated with a geographical indication.

The Regulation stipulates that marks containing words, parts of words, signs or illustrations containing false indications or indications liable to lead to confusion, particularly as regards the geographical origin, may not be used on the labels to designate these three categories of wines.

A number of other Regulations concerning quality wines produced in specified regions have been adopted as regards the tests to which wines are submitted, the conditions for controls, the implementing conditions for certain oenological practices, downgrading.

Furthermore, the lists of table wines designated as local wines (i.e., with a geographical indication), quality wines produced in specified regions and wines imported into the European Economic Community designated by means of a geographical indication have been published in the *Official Journal of the European Communities.*

E. Case Law and Administrative Decisions

Fraud, usurpation and falsification of indications of source and appellations of origin are subject to penalties of varying severity depending on their importance and their seriousness, and also depending on the country.

Apart from cessation of the abuse, the sanction may comprise, depending on the case, confiscation of the disputed product or its downgrading, frequently a criminal fine (to which is added a fiscal fine in some countries and in some cases), in certain cases publication of the judgment in the press and/or posting of the judgment at the address of place of business of the convicted person. Where appropriate, payment of damages to a civil plaintiff (or a number of civil plaintiffs in some cases). In certain serious cases, the courts of some countries also give prison sentences. In the case of trademarks, refusal of registration or cancellation of an already registered mark may be decided by the responsible office.

It should also be pointed out that in many cases abusive practices have been brought to a halt, either by an amiable agreement following intervention by the producers concerned or by an administrative decision not involving the courts. There are further court decisions that have recognized and defined appellations of origin for various products.

The decisions, judgments and sentences are very numerous and very varied and they concern numerous countries.

I shall cite a number of these, concerning a few countries, as examples of the abuses punished.

Germany (Federal Republic of)

In its Decision of July 10, 1975, the Provincial High Court [*Oberlandesgericht*] of Munich held that the use of the designation "Dresden" for chinaware suggested that it came from the area of Dresden, known for its quality china, and decided that the use of the designation "Dresden" for china manufactured in Bavaria was misleading.

A Decision by the Federal Court of December 5, 1975, confirmed a Decision of the Federal Patent Court that had refused registration of the trademark "Happy" for milk-based desserts on the grounds that such designation in the English language was an indirect geographical indication of source that could mislead as to the origin of the product for a non-negligible section of the public.

A Decision by the Provincial Court [*Landesgericht*] of Munich of October 27, 1977, held that the name "San Marco" used to designate vermouth manufactured in the Federal Republic of Germany was a misleading indication of source since it suggested an Italian origin.

A Decision by the Appeals Court of Hamburg of June 1, 1978, held the use of a place name for beer to be deceptive use of an indication of source where the beer had not been brewed in the stated place.

A Decision of the Federal Court of June 6, 1980, held that the denomination "Lübecker Marzipan" constituted an indication of source.

According to a Decision of the Federal Court of April 10, 1981, the use of a combination of the colors red, white and green on the labels of salami manufactured in the Federal Republic of Germany constituted use of an indirect, not purely geographical, indication of source since a section of the public would think of Hungarian salami and others of Italian salami.

A Decision by the Appeals Court of Hamburg on May 21, 1981, held the use of the denomination "Les Baguétines de Paris" placed on *baguettes* (French-style loaves) made in France, but not in Paris, to be an infringement of Section 3 of the Law on Unfair Competition.

Austria

A Decision by the Supreme Court of January 29, 1974, was given against an Austrian firm that had used the designation "Eisenthürer" for wines that were not from the region of Eisenthür, being the German name for a wine-growing region in Yugoslavia, since it held the designation to be an indication of origin, despite the fact that the denomination "Eisenthürer" is no longer used in Yugoslavia.

Belgium

In December 1964, the Appeals Court of Brussels found against the use in respect of spirits of a trademark comprising the word "Scott" as an act of unfair competition to suggest that the spirits involved were Scotch whisky.

In March 1964, the Appeals Court of Brussels found against the use of the get-up of wines made from Belgian fruit that suggested that they were Italian wines.

On May 16, 1975, the Appeals Court of Antwerp found against a firm that had sold sparkling wine manufactured in the United States of America under the designation "Champagne made in New York."

On March 4, 1976, the Appeals Court of Brussels found against a wine dealer who had used the denominations "Chianti" and "Valpolicella" for wines not entitled to those appellations.

The First Instance Court of Mons, acting in criminal proceedings, sentenced by judgment of February 22, 1977, a number of defrauders to fines, prison sentences and damages in respect of the sale of sparkling wines bearing the appellation of origin "Champagne."

A Decision of November 11, 1978, by the Commercial Court of Charleroi prohibited the get-up and sale under the denomination "Grès Gallois" of articles that were not stoneware of that area.

On September 13, 1979, the Appeals Court of Brussels sentenced a commercial representative to a fine, a term of imprisonment and damages for deceptive use of the appellation of origin "Champagne."

Bermuda

A Decision of June 1975 by the High Court of Bermuda, obtained "by assent," prohibited the passing off as wines produced in the Champagne area of wines not produced in that area by selling them as "Champagne," "California Champagne" or "American Champagne" or with any other designation or description comprising the word "Champagne."

Brazil

The National Institute of Industrial Property refused an application in 1979 for registration of the trademark "Paris" for articles of clothing.

Colombia

A Decision of March 1961 refused registration of the trademark "Hollywood" for textile goods on the grounds that it was a geographical term and that it was not necessary to know whether textiles were manufactured or not in that town.

A Decision of 1974 refused registration for the names "Evian" and "Vichy" as trademarks for beer, aerated and non-alcoholic beverages, on the grounds that these were names of towns in France that were well known for their mineral waters.

A Decision of 1978 refused registration as a trademark of a label bearing the words "Estilo Haut Sauternes" to distinguish wines, holding that "Sauternes" was an appellation of origin that could only be used for produce of the corresponding area of that name.

Likewise, registration was refused in 1978 for the term "Whisky-type Scotch" as a trademark.

Spain

Trademark registration was refused for the following denominations: "achampañada" to designate aerated beverages, "Champearle," "Armanac," "Chabis," "Frontinya," "Saint-Denis."

United States of America

A Decision taken on Novermber 12, 1973, by the US Court of Appeals for the Seventh Circuit upheld the judgment of the District Court for the Northern District of Illinois that had prohibited an American producer of spirits, who sold part of his production under the name "House of Stuart Blended Scotch Whisky" from using that mark on the grounds that it constituted a false indication of the place of origin.

Registration of the trademark "Nantucket" for men's shirts was also refused as being "primarily geographically deceptively misdescriptive" for the applicant's products that had no connection with the well-known island of Nantucket off the coast of Massachussets.

Registration was refused for the trademark "San José window guard" for an applicant established at San José on the grounds that it was "primarily geographically descriptive."

The geographical nature of the following denominations was acknowledged: "Mode de Paris" for wigs, "London" for records, "Lackawanna" for coal, "Columbia" for flour, "Elgin" for watches.

The use of the trademark "American Beauty" for sewing machines was held to be deceptive.

France

A judgment by the Civil Court of Moissac of July 21, 1953, recognized and defined the appellation of origin "Chasselas de Moissac."

A Decision by the Supreme Court of Appeal (Criminal Chamber) of January 7, 1958, confirmed a sentence for false appellation of origin in respect of the use of the denomination "Foin de Crau" for hay harvested outside the Crau region in the Bouches-du-Rhône.

A Decision by the First Instance Court of Coutances of July 12, 1960, recognized and defined the appellation of origin "Carottes de Créances."

On March 28, 1961, the First Instance Court of Moulins recognized and defined the appellation of origin "Poulets du Bourbonnais" (Bourbonnais chicken).

A Decision of the First Instance Court of Valence of December 2, 1969, recognized and defined the appellation of origin for poultry "Pintadeaux de la Drôme."

A Decision by the First Instance Court of Valence of April 24, 1968, recognized and defined the appellations of origin "Olives de Nyons" (Nyons olives) and "Huile d'olive de Nyons" (Nyons olive oil).

The Supreme Court of Appeal (Criminal Chamber) upheld on June 16, 1970, the sentence against a dealer for falsifying "Port" held for sale and for improper keeping of the special incoming and outgoing account.

A Decision by the First Instance Court of Paris on December 11 found against the use of the trademark "Romain Conté" for wine as constituting infringement of the appellation of origin "Romanée Conti" comprising two words that were almost identical.

The First Instance Court of Montpellier found on July 1, 1974, against a dealer for prohibited blending of imported wines and wines produced in the European Economic Community after he had been unable to present the corresponding quantities from the various origins when his cellars were inspected.

A Decision of the Supreme Court of Appeal (Criminal Chamber) of May 21, 1974, gave a sentence for misleading advertising based on the dispatch or handing to customers, by the seller's representatives, of trade documents comprising statements that misled as to the origin of the goods.

The First Instance Court of Laval found on January 24, 1975, against the sale of cider spirits with the appellation of origin "Calvados" that had been made with apples harvested outside the specified Calvados area.

The First Instance Court of Orleans, on December 14, 1977, found against the management of a supermarket that had presented in the same advertising, without clearly separating them, appellation of origin wines and wines without appellation, thus causing confusion in the minds of the consumers.

On September 26, 1979, the First Instance Court of Nancy found against the managing director of a club in which sparkling wine had been served to a customer who had ordered "Champagne."

In a judgment of March 5, 1980, the First Instance Court of Toulon held that the sale of wines from various countries of the European Economic Community, without stating the fact, thus making it appear that they were of French origin was contrary to the Laws of March 26, 1930, and August 1, 1905.

On March 5, 1984, the First Instance Court of Paris annulled the registered trademarks containing the appellation "Champagne" for cigarettes on the grounds that the firm concerned had committed an offense by usurping the concept of prestige that accompanied the appellation.

Italy

In a Decision of 1969, the Appeals Court of Milan held that the use by an Italian producer of liqueur of the denomination "Barack Pálinka" (apricot brandy in Hungarian) together with a get-up suggesting that it was a product coming from Hungary, constituted the use of a false indication of source and an act of unfair competition.

On January 1, 1970, the Milan Court held the use of the word "Swiss" by an Italian manufacturer on watches that contained no element of Swiss origin to be the use of a false indication of source and an act of unfair competition.

A Decision of the Milan Court, of June 19, 1972, held the use of the appellation of origin "Jerez" by an Italian producer to be an infringement.

On October 23, 1972, the Milan Court held the marketing under the appellation "Scotch Whisky" of a beverage composed of spirits imported from Scotland and other elements, including rectified ethyl alcohol, to constitute a false indication of source.

On October 26, 1973, the Turin Court found against the use of the appellation of origin "Champagne" in advertising inserted in Italian dailies for an Italian sparkling wine.

A Decision by the Supreme Court of Appeal, on December 14, 1973, found against the use for Italian products of the name of a locality in Hungary that constituted an indication of source for apricot spirits since it was likely to mislead the consumer as to the origin and authenticity of the product and therefore constituted an act of unfair competition.

On March 29, 1974, the Appeals Court of Milan annulled the trademark "Scotch Drinx" for spirits produced in Italy mixed with malt spirits imported from Scotland.

In a Decision of June 7, 1974, the Appeals Court of Rome acknowledged the unlawful nature and unfair competition of using the denomination "Scotch" or "Scotch Whisky" for products not entitled to that appellation.

On November 27, 1974, the Sienna Court found against the use of the appellation of origin "Champagne" in advertising for a sparkling wine produced in Italy.

A Decision of the Appeals Court of Turin, of March 14, 1975, upheld a Decision by the Turin Court against the use of the appellation of origin "Champagne" in advertising in the press and on television for an Italian sparkling wine.

On June 26, 1976, the Civil Court of Genoa found against a wine and spirits trading firm for having used the appellation of origin "Champagne" in an advertising article published in a daily for the benefit of sparkling wine imported from Spain. The defendant claimed that responsibility lay with the journalist, but the Court did not accept that argument since it held that it was for the person who entrusted to someone else the drafting of an advertising insert to ensure, by means of appropriate controls, that the advertising did not infringe the rights of others either in substance or in form.

United Kingdom

On July 16, 1971, the High Court ordered a British firm to cease its fraudulent practices that consisted in supplying "Scotch Whisky" and labels marked "Scotch

Whisky" in the knowledge that they would be used for selling as "Scotch Whisky" spirits not entitled to that appellation.

On May 13, 1975, the High Court found against the use of the designations "Champagne Cider" and "Champagne Perry" for British cider and perry and against any other use of the appellation of origin "Champagne" for such products, carried out in order to mislead, and confirmed that the appellation "Champagne" could only be used for wines produced in the Champagne area.

A Decision of the High Court, of October 25, 1976, prohibited use of the words "amontillado," "fino" and "oloroso" for a wine that was not "Jerez" or "Sherry," since it held that the words could only be used for wines entitled to the appellation "Jerez."

Switzerland

In a Decision of July 8, 1969, the Federal Court upheld refusal to register a trademark "Herzegovina" for "slivowitz" spirits originating in Austria.

In a Decision of May 20, 1970, the Federal Court upheld refusal to register a trademark "Pusta Senf" for mustard manufactured in Austria.

In a Decision of February 19, 1980, the Federal Court upheld a refusal to register a trademark of Italian origin "Lima" intended for model trains since the Swiss purchaser was likely to understand it as a reference to Peruvian origin.

Registration of the word mark "Colonia Aneja" used by a Spanish perfume manufacturer was refused as constituting a deceptive indication of source (*Colonia* is the translation of the word "Cologne" in Spanish, as in Italian, and the latter is a national language in Switzerland).

Uruguay

Registration as trademarks was refused for the following indications of origin in view of the international reputation of the place names when applied to certain products: "Solingen" for steel; "Sheffield" for cutlery. Refusal was based on the provisions of Sections 2 and 13 of Law No. 9956 of October 4, 1940, on Trademarks.[48]

Venezuela

The Trademark Office issued decisions refusing registration as trademarks for: "Rioja Vega" for wines, "Madeira" for wines, "Palermo" for food products, "Capri" for furniture, "Anis Mayorca" for liqueurs, "Niza" for textiles, "Cote de France" for articles of clothing, "Flor de París" for perfumes.

[48] See *La Propriété industrielle*, 1941, pp. 130 *et seq.*

Decisions of the Court of Justice of the European Communities

Various decisions taken by the Court of Justice of the European Communities concern indications of source and appellations of origin.

Of those, the following may be cited:

A Decision of February 20, 1975, in which it is said, *inter alia*:

- appellations of origin and indications of source, whatever the elements that may distinguish them, designate at least, in every case, a product from a specified geographical area and the aim of their protection corresponds to the need to safeguard the interests of the producers concerned against unfair competition and also safeguard consumers against indications likely to mislead them;
- these denominations can only satisfy their specific function if the product they designate indeed possesses the qualities and characteristics that are due to the geographical locality of its origin;
- as regards more particularly the indications of source, the geographical locality of origin of a product should imprint upon that product specific quality and characteristics such as to individualize it.

A Decision of May 16, 1979, approved control of the authenticity of a product bearing an appellation of origin by means of examination of the certificate of origin issued in the Member State from which the appellation of origin product originates.

A Decision of February 25, 1981, in which it is said that the terms "markings likely to lead to confusion" as used in Article 8(c) and Article 18(c) of Regulation (EEC) No. 355/79 laying down general rules for the designation and presentation of wines and grape musts would be understood as concerning not only designations liable to be confused with indications relating to a given place, but also to all designations liable to cause the public to believe that it is a name or part of a name of a locality, which in fact does not exist, or the name of a place which does not in fact exist.

The progress achieved over the last 30 years since the 1958 Diplomatic Conference in Lisbon has been considerable, both as regards international agreements, whether multilateral or bilateral, and national legislation on the repression of fraud and abuse. At present, indications of source and appellations of origin enjoy protection in many countries.

The improvement of protection for indications of source and appellations of origin can but continue to develop since protection concerns all countries, whether producers or consumers, since its aim is a legitimate concern to protect consumers against deception as to the quality and origin of products they buy and to defend producers against unfair competition deriving from the usurpation of their appellations of origin or indications of source and, in addition, it encourages the production of original, quality products.

Current Developments in the Law of Industrial Property in Brazil

L. LEONARDOS*

1. Introduction

With a territory of 8,500,000 km² and a population of around 150 million, Brazil has really struggled to accelerate its development process, which it has to do if it is to provide the millions of new jobs made necessary every year by the increasing number of new workers, and also to overcome its chronic underdevelopment, especially in the poorest areas of the country.

This effort has led the country to contract the largest external debt in the world, nearly 120 billion US dollars, an enormous internal deficit and one of the highest inflation rates in the world.

Nevertheless, it has also helped to raise the country's GNP to around 320 billion US dollars and to take its economy to eighth place in the world, with a surplus of 19 billion US dollars in its exports, which today are mostly industrial products. These may perhaps be the reason why 80,019 new trademark applications were filed in 1986 and 81,642 in 1987, although this total fell to a more normal 62,414 in 1988, while during the same period 12,819 patent applications were received in 1986, including 8,432 for invention patents, followed by 14,514 in 1987, including 9,980 for invention patents, and 14,561 in 1988, including 9,980 for invention patents.[1] Of the total numbers of invention patents 6,532 were of foreign origin in 1986, 7,298 in 1987 and 7,496 in 1988.[2]

The numbers relating to technology agreements, both internal and international, are also growing and, of a total of 1,882 recorded agreements in 1988, 369 were concluded between local companies.[3]

This accelerated development process has often been accompanied by a high degree of protectionism, the more recent examples of which have given rise to strong protest, namely, besides the usual import restrictions, the market reserve for the data-processing industry[4] and the exclusions from patentability in various areas.[5]

As a result of this, two retaliation actions are now pending against Brazil under Section 301 of the United States Trade Act, the first concerning the difficulty of access to the local market of the computer products of American companies, which at this moment is dormant, and the second concerning the non-patentability of pharmaceutical products under Section 9*(c)* of the Brazilian Industrial Property Code, for which the United States imposed an import ban on Brazilian cellulose and electronic products.

The second case led the Brazilian Government to submit a formal complaint against the United States of America to the General Agreement on Tariffs and Trade (GATT), which is now under consideration.

In this context, the new proposals for international treaties within the purview of either the World Intellectual Property Organization or GATT, such as the proposed treaties on integrated circuits, on the harmonization of patent laws and on biotechnology, are looked upon as having the potential for obstructing the acquisition of new technology by developing or newly industrialized countries, and as a means of keeping technological information secret, thereby altering the very spirit of the patent system.

All these factors and political issues carry considerable weight when such countries define their policies on the more recent developments in the international arena of industrial and intellectual property, and they are also reflected in domestic legislation.

On the completion of the political reorganization of our country, a new Constitution became effective on October 5, 1988, with a Section 5(xxix) that provides in broad terms for the protection of industrial property.[6] The present Industrial Property Code[7] is not affected by the new Constitution, which on the whole retains the principles of the former one.[8] The final text of the above provision of the new Constitution resulted from several contributions by different interested sectors, but mainly by the Brazilian Industrial Property Association, which profoundly altered the original version.[9]

2. New Legislation

A.

On December 18, 1987, Law No. 7646 on the Protection of the Intellectual Property in Computer

* Attorney at law, Momsen, Leonardos & Cia., Rio de Janeiro.

[1] *INPI, Relatório de Atividades*, 1988, pp. 7 and 12. The patent application totals include utility models and designs.

[2] *Ibid.*, p.14.

[3] *Ibid.*, p. 30.

[4] Law No. 7232 of October 29, 1984.

[5] Industrial Property Code (Law No. 5772 of December 21, 1971), Section 9. See *Industrial Property*, 1972, p. 175.

[6] Constitution of October 5, 1988, Section 5(xxix): "the law shall afford the creators of industrial inventions a temporary privilege in the use of those inventions as also the protection of industrial creations, ownership of marks, trade names and other distinctive signs, taking into account the interests of society and the technological and economic development of the country."

See *Industrial Property Laws and Treaties*, BRAZIL – Text 1-001.

[7] See note 5 *supra*.

[8] Constitution of 1969, Section 153(24).

[9] *Diário da Assembléia Nacional Constituinte* (Supplement), May 20, 1987, p. 270.

Programs was enacted,[10] to be later implemented by Decree No. 96,036, of May 12, 1988.[11]

Although granting protection for the rights (copyright and proprietary rights) in computer programs over a period of 25 years counted from their release on the market, when different from their release in the country of origin, this Law provides that for marketing purposes the registration of the program or set of programs with the Special Computer Technology Office (SEI) is mandatory.[12]

The SEI will classify them in different categories according to whether they are developed locally or abroad, or jointly by foreign and local companies.[13]

Under applicable legislation, domestic companies are those incorporated and with their principal place of business in Brazil, the control of which is permanently, exclusively and unconditionally held, directly or indirectly, by individuals resident or domiciled in Brazil or by government entities.[14]

Control is defined as follows: (i) voting control: the legal and actual exercise of the right to elect officers of the company and to direct the operation of the company's departments; (ii) technological control: the legal and actual exercise of the power to develop, generate, acquire, transfer and modify technology, including both products and production processes; and (iii) capital control: the direct or indirect ownership of 100% of the voting capital and at least 70% of the total corporate capital.

Section 8 of Law No. 7646 provides that the above-mentioned registration and the approval of the acts and agreements involving foreign programs by the SEI will be subject to establishment of the non-existence of similar programs developed in Brazil by a local company.

Registration is moreover a prior and essential condition of the validity and effectiveness of any legal transactions relating to software, of the occurrence of any tax and exchange effects, without prejudice to other requirements and conditions set forth in the Law, and of the legitimacy of payments, credits or remittances relating to the price of such transactions.

Section 9 of the Law provides that registration is valid for a minimum period of three years and may be renewed automatically, provided that no similar program has been developed in Brazil by a local company.

Section 10 provides that a computer program is considered similar to another program when the following conditions are met:

(a) it is functionally equivalent, bearing in mind that it must
  (i) be original and developed independently,
  (ii) have substantially the same performance characteristics, considering the kind of application aimed at,
  (iii) work on similar equipment and in a similar data-processing environment;

(b) it meets established national standard forms, where applicable;

(c) it substantially performs the same functions in relation to the kind of application aimed at and the characteristics of the national market.

Finally, Section 12 of the Law provides that any company failing to fit the definition of a domestic company will have its registration granted exclusively, for marketing purposes, to software applicable to equipment marketed in Brazil by a company that does fit the category concerned.

The patent office (National Institute of Industrial Property (INPI)) has been designated by the National Copyright Council as the authority responsible for effecting the registration of computer programs, and on December 5, 1988, it established its rules for registration.[15]

B.

Decree-Law No. 2433 of May 19, 1988, lays down rules on the financial instruments relating to industrial policy,[16] and is divided into three main chapters referring to integrated sector programs, industrial technology development programs and special exportation programs.

The first group aims at improving the competitive capability of the sector involved, and may include the technological development of the sector and the preparation of human resources, fiscal incentives and special incentives for activities relating to advanced technology.

The second group aims at enhancing entrepreneurial capability in connection with industrial technology, and several types of incentive may be granted to companies engaged in programs of industrial technology development, including fiscal incentives, special reductions

[10] *Diário Oficial* of December 22, 1987.

[11] *Ibid.*, Section I, of May 16, 1988.

[12] Decree No. 96036/88 introduced six categories for the registration of computer programs:

(i) Category 1: those developed in Brazil, by individuals residing and domiciled in Brazil, or by Brazilian companies;

(ii) Category 2: those developed in cooperation by a Brazilian and a non-Brazilian company, under a project approved by the SEI;

(iii) Category 3: those developed by a non-Brazilian company whose technology and marketing rights for Brazil have been transferred to Brazilian companies, by virtue of instruments or contracts duly recorded with INPI;

(iv) Category 4: those developed in Brazil by a non-Brazilian company;

(v) Category 5: those developed by a non-Brazilian company whose marketing rights for Brazil have been granted to Brazilian companies;

(vi) Category 6: those that do not fit into any of the above categories.

[13] As defined by Section 12 of Law No. 7232 of October 29, 1984, and Section 1 of Decree-Law No. 2203 of December 27, 1981.

[14] National Copyright Council, Resolution No. 57 of July 6, 1988, in *Diário Oficial*, Section I, of July 13, 1988, p. 12971.

[15] Normative Act No. 95, of December 5, 1988.

[16] *Diário Oficial*, Section I, of May 20, 1988.

on taxes paid for the remittance of royalties, together with tax credits of 50% of such payments when the program relates to a priority area, and higher tax-deductible royalty rates when the technology transfer agreement is recorded with INPI.[17]

The third group provides for export incentives. Programs of this kind must be approved by the Industrial Development Council.

In order to cope with its responsibilities, INPI enacted Normative Act No. 093 of November 8, 1988, under which the technology transfer agreements of companies that have their programs approved may be recorded by simple notification, without any prior examination being necessary. In such a case, the agreement must be submitted together with a statement of responsibility acknowledged by the company and a certificate from an attorney registered with the Bar Association attesting that all legal requirements have been fulfilled.

C.

Law No. 7678 of November 8, 1988, rules on the trading of wine and grape and wine derivatives. Apart from the usual definitions of such derivatives and rules concerning the production and trading of wine and other products, it provides that the labels of fine or noble wines may feature classic expressions used internationally such as "Blanc de Blancs," "Blanc de Noir," "Rouge," "Rosso," "Bianco," "Brut," "Sec," "Demi-Sec" and others which may be foreseen in the implementing regulations.[18] Section 11 of the Law defines "Champanha" (Champagne) as the sparkling wine whose carbonic acid gas results solely from a second fermentation, thus confirming that the Portuguese word *champanha* or its French equivalent *Champagne* are considered to be in common use.[19]

The same Law provides that the use of the corrective term "type" is permitted for wines or grape and wine derivatives whose characteristics correspond to those of classical products, as defined in the implementing regulations.[20] As yet the implementing regulations have not been published.

3. Case Law

In the years since the last report on Brazilian court decisions relating to industrial property matters,[21] there has been a steady flow of court rulings, generally confirming traditional orientations, sometimes opening new doors for the solution of problems but sometimes also creating new problems that until then had not been foreseen.

[17] Decree-Law No. 2433, Section 6(iv) and (v).

[18] Law No. 7678, Section 9(5).

[19] See "Indications of Source" and notes 58 and 59 in L. Leonardos, "The Industrial Property Laws of Brazil and Recent Developments in Their Interpretation," in *Industrial Property*, 1977, pp. 212.

[20] Law No. 7678, Section 49(2).

[21] See note 19 *supra*.

A. Software

In the only decision published up to now concerning the alleged violation of copyright in software, the First Civil Chamber of the Court of Appeals of the State of São Paulo, in a decision on May 27, 1986, in other words well before the enactment of Law No. 7646,[22] while expressly admitting that software was eligible for protection under copyright law,[23] nevertheless rejected the action, as the alleged infringement related to the ROM which, according to the Court, being a fixed element of the hardware was an integral part of it inasmuch as the user could not "write" on it. Consequently, being part of the hardware, it should be protected by industrial property law if any patent existed.[24] This decision suggests the patentability of the hardware characterized by the respective program.

B. Forfeiture of Trademarks

A rather difficult situation arises from INPI's understanding that the *force-majeure* exception provided for in Section 94 of the Industrial Property Code does not cover the fact that by virtue of government regulations several kinds of product cannot be imported and that consequently the corresponding marks are not used. INPI maintains that the trademark owner has several options for the use of his mark in Brazil, such as the grant of a license to a local company, exportation to the free port of Manaus, although this is subject to a quota regime, or even selling the products in free shops at Brazilian airports. In the main case that considered this question, the Fifth Chamber of the Federal Court of Appeals decided that, as the prohibition on the importation of certain products by government act was outside the control of the trademark owner, the requirement of Section 94 of the Law for acceptance as a valid excuse for non-use of the mark was met. Also, the Court said, the owner of the registration could not be obliged to enter into a license agreement against his will.[25] The same direction was taken by the Fourth Chamber of the same Court in a decision of April 6, 1988, although in that case forfeiture was declared because the importation ban had already been suspended for more than three years when the forfeiture of the registration was sought.[26]

Another reason which may be accepted as a valid excuse to avoid the forfeiture of a trademark registration, according to a decision of June 18, 1986, by the

[22] See note 10 *supra*.

[23] Law No. 5988 of December 14, 1973.

[24] First Civil Chamber of the Court of Appeals of the State of São Paulo, decision of May 27, 1986, in civil appeal No. 68,945-1, *Sinclair Research Limited v. Microdigital Eletrônica Ltda, et al.*

[25] Fifth Chamber of the Federal Court of Appeals, decision of March 6, 1985, in civil appeal No. 90,573, *Paco Rabanne v. Concorde Indústria de Roupas Ltda and INPI.*

[26] Fourth Chamber of the Federal Court of Appeals, decision of April 6, 1988, in appeal in writ of mandamus No. 119,033, *Miller Brewing Company v. INPI et al.*

Fourth Chamber of the Federal Court of Appeals, is the fact that authorization by the proper government body to use the mark is pending or has been refused.[27]

Still on the forfeiture of trademarks, INPI does not yet have a clear line on cases where the registered mark is used only on products for exportation. In spite of some hesitation, in at least two cases the exportation of the products has been accepted as enough.[28]

In another instance, the Sixth Chamber of the Federal Court of Appeals had the opportunity of examining INPI's contention that, in order to be accepted as a legitimate means of defeating the forfeiture of a trademark registration, use by a licensee, even if a subsidiary of the registered owner, must be the subject of a license agreement that has been duly recorded. The Court stated that the absence of a recorded agreement had no bearing on the objective fact of use. Recording of the trademark license would only be required for the agreement to be binding on third parties.[29] The same line was taken by the Third and Seventh Federal Courts of Rio de Janeiro (district courts) in decisions which are still pending on appeal.[30]

C. Well-Known Marks

The protection of well-known marks in Brazil under Article 6*bis* of the Paris Convention for the Protection of Industrial Property is particularly difficult. The position taken by the Supreme Court in the *Daum* case, cancelling a registration granted to a local company on the ground that "Daum" was a well-known mark in the area of activity concerned,[31] which had also been taken by the Sixth Chamber of the Federal Court of Appeals,[32] while as far as we know it is still valid, has been called into question since the Industrial Property Code came into effect as, according to Section 67 of the Code, INPI only considers well-known a mark that has been registered as such, which fact, in view of the wide knowledge of the mark on the part of the general public that is required, makes protection practically inaccessible in all but exceptional cases. Courts have very seldom made the distinction between the text of the Paris Convention, which derogates on the territoriality of the mark, and that of national law, which derogates on the speciality rule. In both cases, notoriety is only acknowledged if the marks concerned have won a very high degree of popularity among the public, and this makes Article 6*bis* of the Convention a dead letter, as the marks that it aims to protect are in fact not well known or notorious in the country. For instance, the Fifth Civil Chamber of the Federal Court of Appeals refused to admit that the "Cartier" trademark would be well known in Brazil, although protection was granted on other grounds.[33] Similarly, the Fourth and Fifth Chambers of that Court refused to invalidate trademarks that reproduced the "Fila" logo and the "Paximat" mark, stating that the original marks were not well known in Brazil and therefore could not benefit from Article 6*bis* of the Paris Convention.[34] The same line is taken by the decision of the Second Chamber of the Supreme Federal Court refusing to consider "Hermès" a well-known mark, and therefore rejecting the claim of protection against a competitor who had registered an identical mark.[35] On the other hand, on examining the requirements of Section 67 of the Brazilian Law, the Sixth Chamber of the Federal Court of Appeals decided that INPI could not reject the notorious registration of the "Vigor" trademark, which is quite well known in all regions of the country for dairy products.[36]

D. Civil Names and Patronymics

The rule according to which a civil name can only be registered as a trademark if it is given a distinctive form was first adopted in Brazil in the law of October 23, 1875, under the influence of the French law of June 23, 1857.[37] However, in the law of 1923 already,[38] this restriction had been abolished and civil names became freely registrable as trademarks. Nevertheless, important legal writers[39] and, more recently, INPI itself, have insisted that civil names should only be registrable if accompanied by a distinctive feature, while patronymics could be registered by anyone, whether entitled to them or not. Both understandings have been clearly

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[27] Fourth Chamber of the Federal Court of Appeals, decision of June 18, 1986, in appeal in writ of mandamus No. 107,318, *Radio Eldorado Ltda v. INPI et al.*

[28] Decision of the Director of Trademarks in the cases of trademarks "Hush Puppies," No. 003551830, and "Foot-Joy," No. 003140709.

[29] Sixth Chamber of the Federal Court of Appeals, decision of March 23, 1988, in civil appeal No. 90,243, *Henkel KGaA v. INPI.*

[30] Third Federal Court of the State of Rio de Janeiro, decision of December 3, 1986, in first-instance action No. 5,976,260, *Standard Brands Incorporated v. INPI et al.*, and Seventh Federal Court of the State of Rio de Janeiro, decision of March 24, 1986, *SmithKline Beckman Corporation et al. v. INPI et al.*

[31] Supreme Federal Court, decision of April 26, 1963, in civil appeal No. 9,615, *Cristallerie de Daum v. Carnevale & Cia. Ltda et al.*

[32] Sixth Chamber of the Federal Court of Appeals, decision of October 18, 1982, in civil appeal No. 78,471, *Security Pacific Corporation v. Saitecin Turismo Ltda et al.*

[33] Fifth Chamber of the Federal Court of Appeals, decision of November 13, 1985, in civil appeal No. 98,531, *Cartier S.A. et al. v. Silvids Vestuário Ltda et al.*

[34] Fourth Chamber of the Federal Court of Appeal, decision of November 5, 1986, in civil appeal No. 96,381, *Maglificio Biellese Fratelli Fila S.p.A. v. Tavares Carvalho Roupas S.A. et al.*, and Fifth Chamber of the Federal Court of Appeals, decision of September 28, 1987, in civil appeal No. 112,546, *Carl Braun Carrera Werk GmbH v. INPI et al.*

[35] Second Chamber of the Supreme Federal Court, decision of February 17, 1987, in appeal No. 114,930, *Hermès S.A. v. Sociedade Comercial e Importadora Hermes S.A. et al.*

[36] Sixth Chamber of the Federal Court of Appeals, decision of September 3, 1986, in civil appeal No. 94,541, *S.A. Fábrica de Produtos Alimentícios Vigor v. INPI.*

[37] Decree No. 2682, of October 23, 1875, Section 1.

[38] Regulation approved by Decree No. 16264, of December 10, 1923, Section 79.

[39] Cf. J. Gama Cerqueira, *Tratado da Propriedade Industrial*, lst ed., *Revista Forense*, Rio de Janeiro, 1946, vol. 5, p. 393.

rejected by the courts, which have consistently held that a civil name can be freely registered by a person or a company entitled to it, and that a patronymic can only be registered by someone with a right to use it. Thus, in its two *Dale Carnegie* decisions, the Fourth Chamber of the Federal Court of Appeals held that anyone had the right to register his own name as a mark, as did any company with the authorization of the name's owner.[40] The same Chamber also acknowledged the right to registration of the "Jean-Louis Scherrer" trademark[41] and the Sixth Chamber of that Court did likewise with the "Sergio Tacchini" trademark.[42] As far as patronymics are concerned, the judge of the Seventh Federal Court (district court) of Rio de Janeiro, in an interesting decision in which the bad faith of the usurper was stressed by the Court, annulled a registration granted for the "Davidoff" trademark to a local company that was not able to show authorization by Zino Davidoff.[43] This decision was consistent with a well-established position of the Federal Court of Appeals, as may be seen from the decisions cancelling registrations obtained, without authorization from the patronymic holder, for the "Lacoste"[44] and "Paco Rabanne" trademarks.[45]

E. Letters of Consent

In several instances the Federal Court of Appeals has reversed INPI decisions refusing to accept letters of consent written by owners of registered trademarks as a sufficient basis for allowing the registration to a mark deemed confusingly similar to an earlier one. Examples of this are the decisions of the Fifth Chamber of the Court allowing the registration, in view of the consent of the owner of the conflicting trademark, of "Campagnolo" for bicycles in spite of the existence of "Campagnola" for automobiles,[46] and of "Corbel" for cereal fungicides in spite of the previous registration of "Corbom,"[47] and that of the Fourth Chamber of the same Court allowing the registration of "Carling Black Label" for beer in spite of "Black Label" for whisky.[48]

F. Drawings—Double Protection

Figurative elements eligible for protection under copyright law may also be protected as trademarks once they have been registered as such. On the other hand, trademarks registered for drawings without the authorization of the copyright owner may be cancelled.[49] This is the essence of two decisions of the Sixth Chamber of the Federal Court of Appeals. In the first, the Court invalidated a registration consisting of a stylized letter B which was found to be a copy of the logotype of the plaintiffs on evidence that the drawing in question had been created and used long before the trademark application was filed;[50] in the second, in spite of the expiration of a trademark registration for non-renewal, the Court stated that the same figurative element, which was also protected under copyright law, could not be appropriated by a third party, regardless of the artistic merit of the work.[51]

G.

In two other decisions, the Fourth Chamber of the Federal Court of Appeals reaffirmed earlier positions: the first was that the risk of confusion between marks must take into account the kind of consumer to whom the products covered by the marks are addressed, and it was therefore concluded that the "Dymel" trademark for an aerosol propellant could coexist with the "Cymel" and "Dime" marks, for products in the same class;[52] the second one was that when an expression does not correspond to an indication of origin, its use as a trademark for wines is not forbidden, and the lower court's rejection of an action to invalidate the registration of the trademark "Château Lacave" was therefore upheld.[53]

H. Trade Names

Several decisions have examined conflicts between two trade names, between trade names and marks and

[40] Fourth Chamber of the Federal Court of Appeals, decisions of March 22, 1982, in appeals in writs of mandamus Nos. 90,923 and 90,955, *Dale Carnegie, Inc. v. INPI.*

[41] Fourth Chamber of the Federal Court of Appeals, decision of June 18, 1986, in appeal in writ of mandamus No. 107,751, *Jean-Louis Scherrer S.A. v. INPI.*

[42] Sixth Chamber of the Federal Court of Appeals, decision of March 2, 1988, in civil appeal No. 115,484, *Sandys Confezioni S.p.A. v. INPI.*

[43] Seventh Federal Court (district court) of Rio de Janeiro, decision of February 24, 1987, in first-instance action No. 4,896,696, *Davidoff Extension AG v. Davidoff Comércio e Indústria Ltda.*

[44] Fifth Chamber of the Federal Court of Appeals, decision of October 27, 1982, in civil appeal No. 68,252, *Textil Lacoste Ltda v. La Chemise Lacoste.*

[45] Fourth Chamber of the Federal Court of Appeals, decision of December 6, 1982, in appeal in writ of mandamus No. 98,865, *Concorde Indústria de Roupas Ltda v. INPI.*

[46] Fifth Chamber of the Federal Court of Appeals, decision of October 31, 1984, in civil appeal No. 90,397, *Campagnolo S.p.A. v. INPI.*

[47] Fifth Chamber of the Federal Court of Appeals, decision of March 11, 1987, in civil appeal No. 105,997, *Dr. R. Maag AG v. INPI.*

[48] Fourth Chamber of the Federal Court of Appeals, decision of March 9, 1988, in civil appeal No. 110,219, *Carling O'Keefe of Canada Limited v. INPI.*

[49] Cf. Industrial Property Code, Section 65(xv).

[50] Sixth Chamber of the Federal Court of Appeals, decision of October 14, 1987, in civil appeal No. 110,220, *Belauto—Belém Automóveis S.A. v. Gerald Ludwig Prolaska, Gerald Bauer & Cia. Ltda e INPI.*

[51] Sixth Chamber of the Federal Court of Appeals, decision of March 16, 1988, in civil appeal No. 79,683, *Lauro Pereira da Silva v. Indústria e Comércio Irmãos Vasco Ltda e INPI.*

[52] Fourth Chamber of the Federal Court of Appeals of June 29, 1987, in civil appeal No. 106,248, *E.I. du Pont de Nemours & Company v. Shell International Petroleum Company Limited e INPI.*

[53] Fourth Chamber of the Federal Court of Appeals, decision of June 25, 1986, in civil appeal No. 77,033, *Institut National des Appellations d'Origine des Vins et Eaux-de-Vie v. Vinhos Finos Santa Rosa S.A. e INPI.*

between marks and trade names. In all cases, there has been clear acceptance of the protection due to trade names under Article 8 of the Paris Convention and also under Section 65(v) of the Industrial Property Code, whereby a mark that reproduces the characteristic part of a trade name may not be either registered or used. The Second Chamber of the Supreme Federal Court affirmed the exclusive rights in a trade name and ruled that it could not be reproduced in a trademark.[54] However, when the trade name is formed by a word in common use, such as "Hora" (hour), its use by other companies cannot be prevented.[55] Also, the imitation of a trade name cannot be allowed,[56] even if the parties are located in different cities,[57] and a trade name cannot include another's trademark or an imitation thereof.[58]

Up to the present time INPI has hesitated or refused to protect a trade name either under Article 8 of the Paris Convention or under Section 65(v) of the Industrial Property Code whenever the distinctive part of it has been reproduced or imitated in a trademark application. Yet the courts have constantly reversed INPI's approach and ordered the cancellation of registrations granted in violation of the exclusive rights in a trade name. For instance, the Federal Court of Appeals refused to examine an INPI appeal from a lower court decision that invalidated the registration of the "Mikasa" trademark, based on the name of the Japanese company Mikasa Songyo Co. Ltd., stating that INPI did not have a direct interest in the case.[59] On the same lines, the court ordered Levis Importadora Ltda to withdraw the name "Levis" from its trade name on account of Levi Strauss & Company,[60] and cancelled the registration of the "Metacril" trademark, which conflicted with the name of Cia. Química Metacril Ltda,[61] and of the "Drogão Center" trademark on account of the name Organização Farmacêutica Drogão Ltda.[62] In a rather interesting decision the judge of the Tenth Federal Court of Rio de Janeiro (district court) made the distinction mentioned before between well-known marks in terms of Article 6*bis* of the Paris Convention and notorious marks under Section 67 of the Industrial Property Code; rejecting the protection of the "Luxottica" trademark of the Italian company Luxottica S.p.A., which could not be considered well known in Brazil, he then accepted the action by the Italian company and cancelled the registration of an identical mark granted to a Brazilian company based on the provisions of Article 8 of the Paris Convention and of Section 65(v) of the Industrial Property Code;[63] in doing so, he invoked the precedent of the *Cartier* decision referred to earlier,[64] in which the Federal Court of Appeals, likewise rejecting the argument based on Article 6*bis* of the Paris Convention, cancelled the pirate manufacturer's registration on the basis of the protection of the trade name.

I. Unfair Competition

In two cases dealing with the "get-up" of pharmaceutical products, the 28th Civil Court of São Paulo[65] and the Sixth Civil Chamber of the Court of Appeals of the State of Rio de Janeiro[66] ordered the infringers to change the appearance of their products, including the color combination of the packaging, and in the second case granted damages on a royalty basis.

J. Slogans

According to Section 74 of the Industrial Property Code, slogans may be registered for advertising products and attracting the attention of consumers provided that they are original and characteristic. INPI has always been rather strict in its examination of these requirements, but they are looked upon more flexibly in court. Just a certain original turn of phrase, or the fact that it is a new way of expressing an idea, may be enough to qualify the slogan for registration. In a decision of the Fourth Chamber of the Federal Court of Appeals, the phrase "*Voce Sabe Onde Pisa*" (you know what you're stepping on) was considered registrable in connection with shoes.[67] The same Chamber accepted for regis-

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[54] Second Chamber of the Supreme Federal Court, decision of May 23, 1986, in appeal No. 110,636, *C. Roth Trojbicz & Cia. Ltda v. Manufatura de Roupas Roth Ltda.*

[55] Second Chamber of the Supreme Federal Court, decision of February 26, 1985, in extraordinary appeal No. 100,766, *Empresa Brasileira de Relógios Hora S.A. v. Hora Eletrônica Ltda.*

[56] Second Civil Chamber of the Court of Appeals of the State of São Paulo, decision of November 10, 1987, in civil appeal No. 88,141-1, *Restaurante do Aeroporto S.A. v. Panificadora e Lanchonete Aeroporto Ltda.*

[57] Third Civil Chamber of the Court of Appeals of the State of Rio de Janeiro, decision of October 8, 1987, *Pneuac S.A. Comercial e Importadora v. Ademir & Agaste Ltda.*

[58] Seventh Civil Chamber of the Court of Appeals of the State of São Paulo, decision of August 3, 1988, in civil appeal No. 101,056-1, *Christian Dior v. Indústria e Comércio de Roupas Diorno Ltda.*

[59] Decision by Judge Pedro Acioli, of February 10, 1982, in civil appeal No. 66,519, *Mikasa Sangyo Co. Ltd. v. Ferpactor Minas Indústria e Comércio Ltda e INPI.*

[60] Fourth Chamber of the Federal Court of Appeals, decision of February 13, 1984, in civil appeal No. 75,833, *Levi Strauss & Company v. Levis Importadora Ltda.*

[61] Sixth Chamber of the Federal Court of Appeals, decision of December 14, 1987, in civil appeal No. 104,433, *Cia Química Metacril v. Revplast Indústria e Comércio Ltda.*

[62] Sixth Chamber of the Federal Court of Appeals, decision of April 6, 1988, in civil appeal No. 107,125, *Organização Farmacêutica Drogão Ltda v. Drogacenter S.A. Distribuidora de Medicamentos e INPI.*

[63] Decision by the Judge of the Tenth Federal Court of Rio de Janeiro (district court) of January 31, 1989, *Luxottica S.p.A. v. Luxol Comércio de Produtos Oticos Ltda.*

[64] See note 33 *supra*.

[65] Twenty-eighth Civil Court of São Paulo, decision of April 27, 1987, in ordinary action No. 2,307/84, *Produtos Roche Químicos e Farmacêuticos S.A. v. Gilton do Brasil Indústria Química e Farmacêutica Ltda.*

[66] Sixth Civil Chamber of the Court of Appeals of the State of Rio de Janeiro, decision of April 28, 1988, in civil appeal No. 638/88, *Laboratório Americano de Farmacoterapia S.A. v. Laboratório Sedabel Ltda.*

[67] Fourth Chamber of the Federal Court of Appeals, decision of December 14, 1987, in civil appeal No. 103,798, *Strassburger S.A. Indústria e Comércio v. INPI.*

tration the phrase "*E Impossível Comer Um Só*" (it is impossible to eat only one) for snacks,[68] and the Sixth Chamber considered original the phrase "*O Banco Que Está A Seu Lado*" for banking services.[69]

K. Patents

(1) In a decision of February 11, 1985, the Fifth Chamber of the Federal Court of Appeals considered that the alleged absence of economic conditions for local production in accordance with a patented process was not a valid excuse for the non-working of an invention, and further that there was no conflict between Brazilian law, which provided for the granting of a compulsory license and for the forfeiture of the patent, and Article 5 of the Paris Convention (Hague Act). If the party applying for forfeiture were not in a position to manufacture locally, forfeiture would be the remedy for the non-working, as the compulsory license would not bring about such manufacture.[70]

(2) The same Chamber decided that, in the event of conflict between Section 17(3) of the Industrial Property Code, under which a certified copy of the original application had to be submitted within 180 days of the local filing date in support of a priority claim, and Article 22(1) of the Patent Cooperation Treaty (PCT), the latter should prevail, as it was promulgated in Brazil in 1977, in other words after the Industrial Property Code.[71]

(3) Brazilian law provides for the absolute novelty of the invention and allows no grace period. Therefore any publication of the invention before its filing date, even if made by the inventor himself, damages its novelty and prevents the granting of a valid patent.[72]

L.

The Fourth Chamber of the Federal Court of Appeals had the opportunity of reviewing three decisions by the Administrative Council of Economic Defense (Anti-Trust Commission) which imposed penalties on three tire manufacturers for concerted practices to eliminate competition and to harmonize the prices of their products. In the three cases, the Court first affirmed its competence to review the merits of the administrative decisions, including the reality and the existence of the motives stated as grounds for the administrative decisions. Then it stated its view that the existence of other competitors in the market did not mean that the three companies belonged to the same association as a sort of syndicate, and that the uniform discounts granted to retailers were a means of avoiding unfair competition. Consequently, the Court reversed the administrative decisions and declared that there was no abuse in the way the parties conducted their business.[73] In another case, a district court also reversed an Administrative Council decision that had cancelled a patent on the argument that it had expired in the country of origin. Apart from the latter fact not being correct, the court affirmed the independence of patents expressly allowed under the former Industrial Property Codes, which in this connection had revoked the corresponding provision of the law against abuse of economic power.[74]

M. Royalties

With its Normative Act No. 15/75, INPI tried to impose a rule whereby all license and technology agreements should be recorded with it for royalty payments to be considered tax-deductible. Also no distinction was made as to whether the agreement referred to payments within the country or abroad. The Fifth Chamber of the Federal Court of Appeals decided first that, in connection with internal agreements, the limitation of royalties was not applicable,[75] then that for such payments to be deducted as expenses there was no need to have an agreement recorded at INPI,[76] and finally that royalties arising from a trademark license agreement between Brazilian companies were subject neither to royalty limitations nor to the obligation of recording at INPI.[77]

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[68] Fourth Chamber of the Federal Court of Appeals, decision of April 11, 1988, *Pepsico Inc. v. INPI.*

[69] This phrase means "the bank (bench) which is at your side" and the originality is regarded as lying in the word "*banco*" which has the two meanings of "bank" and "bench." Sixth Chamber of the Federal Court of Appeals, decision of April 25, 1988, in civil appeal No. 111,600, *Banco Nacional S.A. v. INPI.*

[70] Fifth Chamber of the Federal Court of Appeals, decision of February 11, 1985, *Bayer AG v. INPI.*

[71] Fifth Chamber of the Federal Court of Appeals, decision of November 25, 1985, in appeal in writ of mandamus No. 103,165, *Erno Rülich v. INPI.*

[72] Sixth Chamber of the Federal Court of Appeals, decision of October 16, 1985, in civil appeal No. 86,496, *Artefatos de Cimento Armado Santa Rita Ltda v. Claudio Werneck de Carvalho Vianna.*

[73] Fourth Chamber of the Federal Court of Appeals, decisions of October 29, 1986, in civil appeals Nos. 56,276, 56,282 and 56,338, *Pirelli S.A., Cia. Goodyear and Indústria de Pneumáticos Firestone S.A. v. Federal Government.*

[74] Decision by the Judge of the Tenth Federal Court of Rio de Janeiro (district court), of June 16, 1987, in first-instance action No. 713,936-5, *Colgate Palmolive Company et al. v. INPI and Federal Government.*

[75] Fifth Chamber of the Federal Court of Appeals, decision of August 29, 1983, in civil appeal No. 59,884, *Syntex do Brasil S.A. v. Federal Government.*

[76] Fifth Chamber of the Federal Court of Appeals, decision of October 28, 1987, in appeal in writ of mandamus No. 109,706, *Defensa—Indústria de Defensivos Agrícolas S.A. v. Federal Government.*

[77] Fifth Chamber of the Federal Court of Appeals, decision of May 9, 1988, in appeal in writ of mandamus No. 109,899, *Indústria de Confecçoes Vila Romana S.A. v. Federal Government.*

News Items

BRAZIL

President,
National Institute of Industrial Property

We have been informed that Mr. Paulo Afonso Pereira has been appointed President of the National Institute of Industrial Property.

MALAYSIA

Registrar of Trade Marks and Patents

We have been informed that Mr. Abdul Rahim Ali has been appointed Registrar of Trade Marks and Patents.

SOVIET UNION

Chairman, State Committee for Inventions and Discoveries

We have been informed that Dr. Y.A. Bespalov has been appointed Chairman of the State Committee for Inventions and Discoveries attached to the USSR State Committee for Science and Technology.

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1989

October 9 to 13 (Moscow)

International Forum on the Role of Industrial Property in Economic Cooperation Arrangements (organized jointly with the State Committee for Inventions and Discoveries of the Soviet Union)

The Forum will deal with questions of industrial property in joint ventures among enterprises in industrialized and developing countries having different economic and social systems, and other cooperative economic arrangements, particularly in the field of the transfer of high technology, trade in goods bearing trademarks and franchizing of services.
Invitations: The Forum will be open to the public. Participants, other than representatives of governments, will be requested to pay a registration fee.

November 1 and 2 (Beijing)

Worldwide Symposium on the International Patent System in the 21st Century (organized jointly with the Chinese Patent Office)

The Symposium will be conducted in three half-day sessions, each dealing with one of the following three topics: internationalization of the patent system; computerization of the patent system; patent documentation, search and examination.
Invitations: States members of WIPO, certain intergovernmental organizations and non-governmental organizations having observer status in WIPO.

November 6 to 10 (Geneva)

Committee of Experts on Model Provisions for Legislation in the Field of Copyright (Second Session)

The Committee will continue to consider proposed standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.

November 13 to 24 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Seventh Session)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

November 27 to December 1 (Geneva)

Committee of Experts on the Harmonization of Laws for the Protection of Marks (First Session)

The Committee will examine draft treaty provisions on the harmonization of laws for the protection of marks and will consider the proposed further contents of the draft treaty.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1989

October 16 (Geneva)

Consultative Committee (Fortieth Session)

The Committee will prepare the twenty-third ordinary session of the Council.
Invitations: Member States of UPOV.

October 17 and 18 (Geneva)

Council (Twenty-third Ordinary Session)

The Council will examine the program and budget for the 1990-91 biennium, the reports on the activities of UPOV in 1988 and the first part of 1989.
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

Other Meetings Concerned with Industrial Property

1989

December 5 to 9 (Munich) — European Patent Organisation (EPO): Administrative Council