

HUNGARY

Response to Question 1 :

Trademarks

Under Article 5(1)(a) of Act No. XI on the Protection of Trademarks and Geographical Indications (hereinafter referred to as "the Trademarks Act") a sign may not be granted protection if it would infringe earlier personal rights of others. This provision might be asserted as a route to protect TK holders, inasmuch as there is the possibility for their obtaining legal personality (e.g. in the form of an association as provided for in Article 61 of the Civil Code), on the basis of which it is viable to claim protection under the general clause contained in Article 86(3) of the Civil Code providing for the protection of intellectual property not covered by *lex specialis*. More importantly, Part IV of the Trademarks Act contains detailed legislation on collective marks (Articles 96 -100) and certification marks (Article 101). TK holders may seek protection both as members of a social organization, public body or association holding a collective mark and by having a certification mark registered the authorized use of which will be subject to compliance with the prescribed quality or other requirements.

Geographical indications

Article 103 of the Trademarks Act provides for protection of geographical names of a region or locality designating a product the specific quality, reputation or other characteristics of which are essentially due to that geographical origin. In the case of appellations of origin, protectability is expressly linked to the inherent natural and human factors of the geographical environment, therefore this title of protection may be particularly appropriate in respect of TK holders.

Patents

Article 8(1) of the 1995 Patents Act enables that an association of TK holders be the rightsholder of a patent application as successor in title of the members of such association.

Copyright and related rights

The Hungarian Copyright Act (Law No. LXXVI of 1999) excludes expressions of folklore from protection under copyright law. Under Article 1, para. (7) of the Act: "The expressions of folklore may not enjoy copyright protection. However, this may not prejudice copyright protection due to the author of a folklore-art-inspired work of individual and original nature." This provision reflects the practice that has developed on the basis of the former legislation. The majority of legal systems, thus also Hungarian law, excludes works of folk art and folk poetry because their author(s) is (are) unknown, they are lost in the mists of time, and the works survive and are effective as the collective cultural wealth of peoples and ethnic groups. Hungarian legal literature also takes the view that an expression of folklore can never be a work of authorship, since its main characteristic is not the reflection of the unique personality of an author, but the unchanged representation of the features of cultural public domain. As a consequence, copyright protection is not applicable to folklore.

Unfair competition

Article 4 of Law No. LVII of 1996 on the prohibition of unfair competition and restrictive business practices contains detailed provisions on the protection of trade secrets.

Response to Question 2: There is no *suigeneris* legislation providing for the protection of traditional knowledge.