

PORTUGAL

In his letter of November 22, 2001, to the Secretariat of the World Intellectual Property Organization (WIPO), the Chairman of the Board of Directors of the National Institute of Intellectual Property passed on the following comments made to the Ministry of Economy:

“In view of the fact that ‘Industrial property has the social function of guaranteeing fair competition by conferring (...) private rights (...), as well as to prevent unfair competition’ (Article 1 of the Industrial Property Code (CPI), approved by Decree -Law No. 16/95 of January 24, 1995), the various forms of intellectual property in general, and individual or collective marks, appellations of origin and geographical indications in particular, play an important role in the absence of any specific legislation on the subject, apart from which there is copyright, whose protection in Portugal is the responsibility of a body other than the National Institute of Industrial Property.

“It should therefore be pointed out, in the case of trade marks, that the protection granted has nothing to do with the product itself. It is a form of indirect protection of the subject matter which for the most part seeks to avoid or prevent the registration of marks or ‘distinctive signs’ that relate to the designation of the ‘traditional knowledge’ concerned.

“A more elaborate form of protection may be found in collective marks (CPI Article 172), association marks (CPI Article 173) and certification marks (CPI Article 174), all of which may consist of signs or designations used commercially to designate the geographical origin of the goods or services concerned, particularly where the ‘producers’ of a piece of traditional knowledge in a given locality or region intend to form a group or come to an agreement to certify that knowledge.

“In Portugal for instance it should be pointed out that the Association of Producers of Arraiolos Carpets are the holders of a registered association mark for their product.

“However, traditional knowledge has an even more effective and more direct form of protection available in the institution of appellations of origin and geographical indications.

“Appellation of origin means the name of a region or a specific locality, or in exceptional cases a country, used to designate or identify a product whose quality or characteristics are essentially or exclusively due to the geographical environment, including natural and human factors, and the production, transformation and development of which are carried out in the demarcated geographical area (CPI Article 249(1)). In Portugal, rights of this kind protect the wines of Oporto and Madeira, the cheeses of Serpa or Azeitão, in other words essentially agricultural products which draw on the natural environment (the specific properties of the soil or climate, for instance), and also on the human environment, for their specific character.

“Where the natural factor is not the determining factor but the product has a reputation, specific quality or other characteristic that can be attributed to that geographical origin, or where the production, transformation or development is carried out in the demarcated geographical area, protection has to be provided by way of a geographical indication (CPI Article 249(3)).

“At the same time attention has to be drawn to the fact that Portuguese legislation, like that of all Member States of the European Union owing to the issue of Directive 98/71/EC of the European Parliament and Council which took place on October 13, 1998, is going to consider the possibility of registering handicraft as a design (Article 1 of the Directive). However, for protection to be obtained for craft products and indeed for all industrial products, those products have first to be new and individual in character (Article 3).

“There are a number of products in Portugal that belong to our cultural heritage but which, for want of novelty, cannot be given design protection, in spite of some of them being already considered handicraft.

“A new Industrial Property Code is in the process of being completed within the Assembly of the Portuguese Republic; it introduces a new regime for designs and will lay down new conditions for the protection of handicraft.

“The appellation of origin and geographical indication, once registered, become the common property of those persons who have their residence or headquarters in the locality, region or territory, and give them the right to prohibit third-party use, in the designation or presentation of a product, of any sort of indication or suggestion that indicates or suggests that the product in question originates in a geographical region other than its true place of origin, or to proceed against any act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention (CPI Article 251).