Worldwide Symposium on Geographical Indications

Marketing and Protecting Geographical Indications Around the World – The View From The Scotch Whisky Association

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The Scotch Whisky Association

- Origins go back to 1912
- 51 members representing over 90% of the Scotch Whisky industry
- Members include distillers, blenders and brand owners
- Aim is to protect and promote Scotch Whisky at home and abroad
Economic Importance

• 108 distilleries licensed to produce Scotch Whisky

• More than 1,000 million bottles sold each year

• 90% of all sales exported

• Scotch Whisky one of UK’s top 5 manufactured exports

• Scotch Whisky supports 1 in 50 Scottish jobs

• Over one million visitors a year to Scotch Whisky distilleries

• In 2011 exports valued at over $6.6 billion
PROTECT EARLY
A Zero Tolerance Policy – Why?

- Consistent action required worldwide
- Prompt action assists speedy resolution
- Unimportant markets may become important
- Inaction encourages, firm action deters
- Counterfeits are traded internationally
- ‘playing safe’ results in erosion of protection
A Zero Tolerance Policy – Why?
Grants Regal Scotch Whisky

BLENDED WHISKY
This old style Whisky is mild and mellow.
It is a product of a master distiller
and its Quality is unsurpassed.
Be assured of its complete excellence.

0.33 Liter • 43% vol.

IMPORTED PRODUCED FOR D.G. SCOTLAND
Distribution of GRANT’S REGAL
Infringements – what do we do?

- Not brand protection
- Principal function – protection of GI, Scotch Whisky
- Protection from all unfair competition
- Trade mark applications – monitor & oppose
- Around 70 court actions current worldwide
- More than 300 current trade mark oppositions worldwide
- Many other administrative complaints and proceedings
- Hundreds of investigations worldwide
What action do we take?

- Most effective – and cost effective – type of action in each country
- Common law countries – civil action – passing off
- Civil law countries – civil action – unfair competition
- Some common law countries now have unfair competition laws
Methods of deception

Description “Scotch Whisky” itself

Australia
Scottish indications of origin
Methods of Deception

Scottish names or devices

South Africa
WTO TRIPS Agreement

Article 22.2

• “In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;”
“Although Thai people do not descend from Scotland or the United Kingdom, the public are now well educated, increasingly communicate with foreigners, travel abroad, and are able to receive more information from books, the Internet and product advertisements........... Thais are not limited to know only information relating to Thailand............The word “Mc” implies a person from Scotland. The facts previously presented show that Scotch Whisky is widely recognised in Thailand and the public realise that Scotch Whisky is related to its origin; i.e. Scotland.............Hence, the Thai public.............who become familiar with whisky can conclude that the prefix “Mac” or “Mc” is used in relation to whisky from Scotland or Scotch Whisky only.”

(Unofficial translation)
Methods of Deception

Selective references to Scotch Whisky content

India
Belgium
EU definition of whisky

• distilled from cereals

• distilled at an alcoholic strength of less than 94.8% vol. so that it has the aroma and taste derived from the raw materials used

• aged for at least 3 years in wooden casks of 700 litres capacity or less

• retains the colour, aroma and taste derived from the production process

• a minimum alcoholic strength of 40% abv

• contains no added flavouring or sweetening or other alcohol

(Annex II(2) of EC Regulation 110/2008)
Spain
What other action do we take?

• More than 30 countries outside the EU have introduced legislation recognising Scotch Whisky

• In the USA: “a distinctive product of Scotland manufactured in Scotland in compliance with the laws of the United Kingdom”

• Some countries have introduced specific laws protecting GIs

• Sometimes protection requires registration of the GI
Australia
Trade mark monitoring

- intelligence
- pre-emptive action
- defending the principle
- cheaper than cancellation
- useful evidence
- deemed notice
- build up precedents

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Advice on Compliance

• Why necessary?

  - Compliance with the labelling and marketing rules for Scotch Whisky
  - Legislation cannot anticipate every innovation
  - Compliance with traditional practice

• Guidance issued
Protect and Promote