



ANHEUSER



BUSCH

Companies

***A Way Forward for
Geographic Indications
by
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A Way Forward—Finding our way

A Quote by Yogi Berra:

Baseball Player, Philosopher

- **“If you don’t know where you are going, you will wind up somewhere else.”**



The Competing Interests in the GI War

To figure out the “where we are going,” we need to know the “why we are going there.”

The Four Interested Parties:

- **Consumers**
- **GI Users**
- **Other Producers, including trademark owners and users of generic geographic terms**
- **Governments**



The Interest of the Consumer

The Consumer wants:

- **to avoid being confused;**
- **to avoid being misled;**
- **decision-making economy; and**
- **competition—to insure choice, high quality and low prices**



The Interest of the GI User

The GI user wants:

- **Ease of protection;**
- **Broad scope of protection, both in terms of:**
 - Broad coverage against a wide scope of uses, and
 - More terms to be eligible for protection;
- **“Label economy”**



The Interest of Other Producers

The Other Producers, including trademark owners and generic geographic term users, want:

- **Avoid loss or cancellation of their trademarks;**
- **Avoid forced coexistence with confusingly similar GI's;**
- **“Product identification economy”**
- **“Label economy”**



The Interest of Governments

The Governments want:

- **Protection of health, welfare and human rights of their citizens;**
- **Consumer protection**
- **Domestic economic interest protection**



The Interest of Governments (cont.)

Domestic Economic Interest Protection

- **Not all protections are appropriate;**
- **E.g: National treatment protections of TRIPs**

Quote from TRIPs: We must “ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.”



Abolish First in Time/First in Right?

The Question: Should an earlier protected trademark be able to be cancelled by a later protected GI? Should the principle of priority, or first in time/first in right, be abolished?

Look at the question from the perspective of the four groups mentioned above: the consumer, the GI user, other producers and governments.



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Abolish First in Time/First in Right?

- **Interest of the consumers: opposed**
- **Interest of gi users: in favor**
- **Interest of other producers: opposed**
- **Interest of the government: mixed, but generally opposed**



Abolish First in Time/First in Right?

The EU's Answer: Coexistence of an earlier trademark with a later GI.

- **Interest of the consumers: even more opposed**
- **Interest of GI users: in favor**
- **Interest of other producers: opposed**
- **Interest of the government: mixed, but generally opposed**



Abolish First in Time/First in Right?

The way forward regarding the relationship of trademark and geographic indications:

- **Given the strong policy considerations against giving precedence of GI's over earlier trademarks, the age old priority principle, first in time/first in right should remain intact.**



Wine and Spirits GI Register

- **Interest of the consumers: opposed**
- **Interest of gi users: in favor**
- **Interest of other producers: opposed**
- **Interest of the government: mixed, but generally opposed**



Wine and Spirits GI Register

5 Principles to Reduce Opposition

- **Priority principle**
- **Genericness refusal**
- **Territoriality**
- **Due Process**
- **Equal Protection**



A Way Forward—Finding our way

A Quote by Voltaire:

“The perfect is the enemy of the good.”

The way forward?: It depends!

- **If only perfect protection accepted—
impasse**
- **If interests of other parties are
considered, and “good” rather than
“perfect” protection accepted, then
progress will be made**