

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

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PROTECTION OF COUNTRY NAMES AGAINST REGISTRATION AND USE AS TRADEMARKS: PRACTICES, APPROACHES AND POSSIBLE AREAS OF CONVERGENCE

Document prepared by the Secretariat

I. INTRODUCTION

1. From its twenty-first session (June 22 to 26, 2009) to its thirty-fourth session (November 16 to 18, 2015), the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) considered a number of working documents concerning the Protection of Country Names Against their Registration and Use as Trademarks.
2. The documents were based on information provided by SCT members in their replies to the Questionnaire Concerning the Protection of Names of States Against Registration and Use as Trademarks, presented in document SCT/24/6 (hereinafter referred to as the "Questionnaire"), as well as on additional written submissions by SCT members on national law and practice concerning the protection of country names.
3. The Revised Draft Reference Document on the Protection of Country Names Against Registration and Use as Trademarks (SCT/34/2 Prov.2) was adopted by the SCT and published as document WIPO/Strad/INF/7 in accordance with the Summary by the Chair of thirty-fourth session of the SCT (reference is made to paragraph 9 of document SCT/34/7).
4. At the thirty-fourth session of the SCT (November 16 to 18, 2015), the Chair requested the Secretariat to prepare a new document, based on document SCT/34/2 for discussion at its thirty-fifth session under this agenda item, identifying different practices and approaches, and

existing areas of convergence in regard of the protection of country names. Accordingly, the Secretariat has prepared the present document, which draws on the information contained in document SCT/34/2 and suggests areas of convergence¹ that may arise in this field.

II. COUNTRY NAMES: UNDERSTANDING THE TERMS

5. When adopting the final version of the “Questionnaire Concerning the Protection of Names of States Against Registration and Use as Trademarks” (document SCT/23/4) the SCT understood that the expression “names of States” intended to cover the short name of the State or the name that is in common use, which may or may not be the official name, the formal name used in an official diplomatic context, translation and transliteration of the name as well as use of the name in abbreviated form and as an adjective².

6. At its twenty-third session, the SCT also agreed to replace the term “official names of States” for “names of states” and decided that the questionnaire would not address the issue of non-commercial use of names of States since trademarks are signs which are used to distinguish goods and services of one undertaking from those of other undertakings and their validity is dependent on their use in commerce. Therefore, non-commercial use of names of States appears to be outside the ambit of trademark law.

7. In the relevant series of SCT documents, the expressions “country names” and “names of States” have been used interchangeably to refer to the subject matter covered by the different questionnaires, summaries, and studies produced by the International Bureau of WIPO for discussion during SCT sessions and in the different proposals and submissions received from SCT members. Moreover, and unless otherwise indicated, the word “trademark” was intended to cover marks that apply to both goods and to services.

III. PROTECTION AGAINST REGISTRATION AND USE AS TRADEMARKS

8. Protection of country names, where not individually considered as a ground for refusal of registration of marks consisting of or containing such terms³, may also be found as a sub-item of the more general ground according to which it is possible to refuse the registration of marks that consist exclusively of signs or indications which may serve, in trade, to designate *inter alia* the place of origin of the goods claimed in the application⁴. The extent to which the expression “place of origin” includes the official name, the short name, the formal name of a State or a translation, transliteration, abbreviation or adjective thereof, may vary from country to country.

¹ The term “area of convergence” has been used by the SCT in the past in order to name documents that describe the outcome of the work of the SCT in specific areas of trademark law. See in particular documents WIPO/Strad/INF/3 on Representation of Non-Traditional Marks and WIPO/Strad/INF/4 on Trademark Opposition Procedures at <http://www.wipo.int/sct/en/wipo-strad/>.

² Reference is made to paragraph 4 of document SCT/23/4 and Footnote 1 of document SCT/24/2.

³ Forty-four SCT members responded to this part of the questionnaire in the affirmative, namely: Albania, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Canada, Chile, China (and Hong Kong SAR), Dominican Republic, Estonia, Georgia, Germany, Greece, Iran (Islamic Republic of), Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lithuania, Malaysia, Montenegro, New Zealand, Nigeria, Norway, Oman, Poland, Portugal, Republic of Korea, Republic of Moldova, Serbia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Syrian Arab Republic, Trinidad and Tobago, Turkey, Ukraine, United Republic of Tanzania and Uruguay.

⁴ Reference is made to Article 6*quinquies* B.2 of the Paris Convention for the Protection of Industrial Property (hereinafter “the Paris Convention”). This international standard is generally included in national laws and in regional treaties binding the States party to the Paris Convention.

EXAMINATION OF APPLICATIONS

9. Generally speaking, the registration of a trademark is based on a formal application filed directly or indirectly with a national or regional trademark registration authority. Like any other sign applied for registration as a trademark, a sign consisting of or containing the name of a State will be examined by the competent authority in light of formal and substantive legal requirements. The scope of examination by offices and, in particular, the nature of the possible grounds for refusing the application that are examined by the office or that may be raised in opposition procedures, are provided for in the applicable law.

(a) General Exclusion from Protectable Subject-matter

10. This approach has been followed in the laws of certain countries, by creating an absolute bar to the registration of signs which consist of or contain country names, independently of any other consideration regarding the nature of the sign (e.g., whether it is descriptive or misleading as to the geographical origin of the goods or services). In such systems, it is possible to avoid this type of refusal by providing proof of consent to the use of the sign by the competent authorities of the country named in the application⁵. However, according to some replies to the Questionnaire, even where authorization is produced, the mark would still need to be assessed against other grounds for refusal contemplated in national law, such as: lack of distinctive character or non-conformity of the mark with public policy or morality.

(b) Consideration of Other Elements of the Mark

11. In systems where such a general exclusion does not exist, examination practice usually differentiates between applications in which the country name is the sole element of the mark and applications including additional matter, and between word and composite marks (word and device mark). In their individual replies to the Questionnaire⁶, their individual submissions⁷ and interventions over several sessions of the SCT, several members⁸ indicated that where the country name is the sole element of the mark, a refusal could be raised. However, if the country name is part of a composite mark, the prominence of this element in the mark would need to be analyzed against other grounds for refusal such as lack of distinctive character or likelihood of deception. If the other elements of the mark are sufficiently distinctive, the mark as a whole may be acceptable in principle and in certain jurisdictions the office might require the applicant to disclaim the country name⁹.

⁵ The Model Law for Developing Countries on Marks, Trade Names and Acts of Unfair Competition, which was adopted on November 1, 1966 by the Second Model Law Committee established by the United International Bureaux for the Protection of Intellectual Property (BIRPI), contained the following provision: "*Section 5: Marks Inadmissible on Objective Grounds*: (1) Marks cannot be validly registered: ... (f) which reproduce or imitate the armorial bearings, flags and other emblems, initials, *names or abbreviations of names of any State* or any intergovernmental international organization or any organization created by an international convention, *unless authorized* by the competent authority *of that State* or international organization." (Emphasis added). BIRPI Publication No. 805(E), Geneva, 1967, at p. 24.

⁶ Reference is made to the additional comments provided by SCT members when responding to the Questionnaire. These comments are reproduced below the respective tables of document SCT/24/6 entitled: "Summary of the Replies to the Questionnaire Concerning the Protection of Names of States Against Registration and Use as Trademarks".

⁷ See the individual Member State submissions at <http://www.wipo.int/sct/en/comments/>.

⁸ See the interventions of several SCT members, as recorded in the reports of the following sessions of the SCT: Australia (SCT/21/8, paragraph 322 and SCT/27/11) and Republic of Moldova (SCT/22/9, paragraph 187).

⁹ See in particular paragraphs 27 and 48 of document SCT/29/5 Rev.

(c) Lack of Distinctive Character

12. The basic function of a trademark is to distinguish the products or services of one undertaking from those of other undertakings and the lack of distinctiveness of a trademark prevents it from performing that basic function. An overwhelming majority of returns to the Questionnaire (94.1 per cent) indicated that names of States were excluded from registration as trademarks if they lacked any distinctive character. One of the most important criteria to assess the distinctive character of a mark is the absence of descriptive features.

13. A term may be considered descriptive if it merely provides information about the objective characteristics of the goods or services covered by the mark and in particular, the place of production of the goods or the place where the services are rendered. National and/or regional trademark practice has developed practical ways to assess the descriptive character of geographical terms, including country names. For example, it may be necessary to take into account whether the average consumer of the goods or services concerned understands the country name (without being a specialist in geography) and whether the name designates a place which is currently associated with the claimed goods or services or whether it is reasonably expected that it will be associated with them in the future¹⁰.

14. This is the most commonly used ground for refusal of trademarks consisting of or containing country names as with other descriptive terms more generally, there is a public interest that such indications are not the subject of trademark rights and remain available for use by any trader wishing to provide information about the goods offered for sale or the services to be rendered.

(d) Misleading, Deceptive, False (Incorrect) or Otherwise Not Registrable

15. In addition to being descriptive, trademarks consisting of or containing country names may also be likely to mislead the public as to the origin of the goods or services. A false representation through a mark that goods or services originate from a particular place may expose that mark to refusal, if in fact the goods or services have no connection with the country name. The boundaries among the terms misleading, deceptive or false are not clearly defined, and there is a degree of overlap in the subject matter that can be characterized as the one or the other.

16. According to the quantitative summary of replies to the Questionnaire¹¹, 98.5 per cent of the responding countries indicated that country names were excluded from registration as trademarks if the use of the name of a State could be considered to be misleading as to the origin of the goods and 77.3 per cent said that names of States would be excluded if they could be considered incorrect as to the origin of the products for which registration is sought¹².

17. Under the national laws of several States, geographical terms, or names, as well as abbreviations thereof, cannot be registered as trademarks where such indications are likely to mislead the consumers or create confusion concerning the origin of the goods or services goods¹³. In addition, geographical place names and figurative trademarks indicating geographical origin, as well as variations of these, where the geographical place has a

¹⁰ Reference is made to the Guidelines of the Office for Harmonization in the Internal Market (Trade Marks and Designs (OHIM) Guidelines on Current Trade Mark Practice, Part B, Section 4, Absolute Grounds for Refusal, N°2.3.2.6 Geographical Terms, pp. 45 to 47. In accordance with Regulation (EU) No 2015/2424 of the European Parliament and the Council amending the Community trade mark regulation, the office will be renamed the European Union Intellectual Property Office (EUIPO) as of March 23, 2016, when the regulation enters into force.

¹¹ See the replies to Question I(1)(c), in Annex II of document SCT/24/6, pp. 1 and 2.

¹² See the replies to Question I(1)(e), in Annex II of document SCT/24/6, pp 4 and 5.

¹³ See Article (3)(1)(g) of EC Council Directive 2008/95 and the Laws of Bulgaria, Brazil, Canada, Mexico and the United States of America.

reputation for the goods or services applied for, are also objected, since the use of a geographical place name in circumstances where it has a reputation creates an “expectation” in the mind of the consumer which could lead to deception if that expectation is not fulfilled¹⁴.

18. Apart from cases where use of a country name may be understood by the relevant public as descriptive of the place of production of the goods or the place where the services are rendered, and cases where the name denotes a place that has widespread recognition and even fame for the quality of its products or services, there may be other cases where use of the country name in circumstances where there is no connection with the goods and services named in the application, may lead to deceptive use¹⁵ or use of indications that are objectively false or incorrect¹⁶.

19. Trademarks consisting of or containing country names could be refused registration in accordance with other grounds that are applied to all kinds of trademarks, such as a conflict with other existing signs, generic character or bad faith. Public order or morality, which is a universally accepted ground in trademark law, can also be invoked to prevent the registration of such trademarks. The laws of certain countries indicate that trademarks whose use may be interpreted as criticizing, insulting or being likely to defame, a nation¹⁷ are prevented from registration. The laws of other countries provide that the registration of marks which would disparage national symbols, bring them into contempt or disrepute, or are detrimental to the image of the country concerned¹⁸ should be refused. The duty to respect and safeguard the honor of other nations has also been stipulated in at least one national law¹⁹.

OTHER PROCEDURAL STEPS

(a) Opposition

20. The availability of opposition procedures is a common feature of trademark registration regimes that is desirable and useful not only for applicants, rights holders and other interested parties but also for trademark administrations and the public at large²⁰. Opposition procedures introduce an element of internal checks and balances and enable third parties to provide information and evidence which could prevent the registration of a particular sign as a trademark and which trademark offices otherwise may not have at their disposal²¹.

¹⁴ Reference is made to the submission by the Delegation of the United Kingdom, which is available at <http://www.wipo.int/sct/en/comments/>.

¹⁵ Reference is made to the United States Patent and Trademark Office Trademark Manual of Examination Practice (TMEP), N°1210.01(b) Geographically Deceptively Misdescriptive Marks – Test and Trademarks Examination Manual of the Canadian Intellectual Property Office, N° IV.6.13 Place of Origin, p. 4.

¹⁶ Reference is made to Note 11 *supra*.

¹⁷ Reference is made to Article 7(1)(ii) of the Trademark Law of the Republic of Korea, of November 28, 1949, as amended on May 21, 2009.

¹⁸ See the submissions by the Delegations of Italy, Trinidad and Tobago and United States of America, which are available at <http://www.wipo.int/sct/en/comments/>.

¹⁹ See the submission by the Delegation of Colombia, which is available at <http://www.wipo.int/sct/en/comments/>.

²⁰ See Trademark Opposition Procedures – Areas of Convergence, document WIPO/STrad/INF/4, Area of Convergence No. 1.

²¹ See Trademark Opposition Procedures – Key Learnings, document SCT/18/3, p. 2.

21. Opposition procedures can therefore present an additional opportunity for preventing the registration as a trademark of a sign incorporating a country name in cases where the *ex officio* examination of the trademark office alone would not result in a refusal. Providing an additional opportunity to raise a specific point is a characteristic of opposition procedures irrespective of whether a national system provides for pre-registration or post-registration opposition²².

22. In order for opposition procedures to be able to offer an additional avenue for protecting country names, two conditions must be met under national trademark law: firstly, such law must contain a ground for refusing signs from registration as a trademark that consist of or contain a country name and secondly, claiming inconsistency with that provision must be recognized as a ground for filing an opposition.

23. According to the replies to the Questionnaire²³, in the majority of SCT members whose trademark laws contain a ground for refusing an applied-for sign consisting of or containing a country name, this ground could also be claimed in opposition procedures. Notably, 67.2 per cent of the replies received stated that if the name of a State is excluded from registration as a trademark in respect of goods (67.7 per cent in respect of services), this ground can be raised by third parties in opposition procedures.

(b) Observations

24. A further potential avenue for claiming that an applied-for sign should not be registered because it consists of or contains a country name may be the filing of observations. The laws of some SCT members foresee that written observations may be submitted in relation to trademark applications. The person presenting the observation does not become a party to the proceedings and, usually, offices do not reply to observations. Observations are intended to provide an Office with any information that could lead to the refusal of the registration of an applied-for sign. This may be particularly helpful and effective where the issue raised is not known to the examiner, for example in situations in which the descriptiveness of an applied-for sign is known to a more restricted sector of the public.

25. Where national laws allow for the submission of observations, the grounds upon which such observations can be based are usually not limited although some jurisdictions exclude claims based on prior third-party rights. As the question of whether or not a country name can be registered arises irrespective of any third-party rights, observations appear to be suitable means of protecting a country name from registration as a trademark or as part of a trademark in all national systems providing for a possible ground for refusing such signs and allowing observations.

26. The replies to the Questionnaire in relation to the availability of observations indicate that these are filed only in about 50 per cent of the responding members²⁴. Although the filing of observations is not normally subject to any standing requirements, lack of sufficient knowledge about this procedural avenue may explain the low rates of reply.

(c) Invalidation, Cancellation or Revocation

27. Where a sign consisting of or containing a country name was registered as a trademark although the relevant national trademark law provides for possible grounds for refusing such registration, invalidation proceedings offer a final avenue to protect the country name in

²² Whether a national system allows for oppositions before or after the registration for a trademark is a policy choice dictated by strategic factors. For an overview of the advantages and disadvantages of either variant see Trademark Opposition Procedures, document SCT/17/4, p. 14.

²³ See the replies to Questions I(3)(b) and I(4)(b) in Annex II of document SCT/24/6, pp 17 to 18 and 23 to 24.

²⁴ See the replies to Questions I(3)(c) and I(4)(c) in Annex II of document SCT/24/6, pp 20 to 21 and 26 to 27.

question. Through invalidation proceedings, the claimant seeks to cancel an existing registration from the register. Amongst national trademark systems no uniform terminology exists and proceedings aimed at invalidating a granted registration may also be referred to as cancellation, nullification, or revocation.

28. More important than the respective terminology is the effect with which a trademark may be removed from the register. As a general rule, if a trademark is removed on grounds that already existed at the time of registration, upon removal the sign is treated as if it had never been registered. If a trademark is removed on grounds, the conditions of which are only satisfied at a certain point in time after registration, the sign will only be removed with effect from the moment in which the removal was requested. As far as country names are concerned, where the registration of a sign is removed on the basis that the sign consists of or contains a country name, this is a circumstance which in all likelihood will already have been present when the sign was registered. In such a case, the sign should have never been registered as a trademark, and as a consequence of the invalidation, it will be treated as if it had never been registered.

29. The replies to the Questionnaire²⁵ suggest that in SCT members whose trademark law contains a possible ground for refusing an applied-for sign consisting of or containing a country name, non-compliance with this provision would be a valid ground for requesting invalidation. Notably, 93.8 per cent of the replies received stated that if the name of a State is excluded from registration as a trademark in respect of goods (92.6 per cent in respect of services), this ground can be raised by third parties in post-registration invalidation procedures.

USE AS A MARK

30. In addition to the protection granted to names of States against registration as trademarks, SCT members decided to inquire, through the Questionnaire, about the applicable law and the practice of Member States in relation to “use” of such signs in the market place as trademarks or parts thereof, i.e., to distinguish goods and services from one undertaking from those of other undertakings. Although this part of the Questionnaire may not be universally applicable, it was considered relevant for the survey.

31. Generally speaking, use as a mark of the name of a State follows the same principle that applies to registration. A sign consisting of or containing a country name could not be used on products or in relation to services if it is of such a nature as to deceive the public, for instance concerning the nature, quality or geographical origin of the goods or services. If a trader made a false representation that his goods came from a particular country, such misrepresentation could deceive the consumers of the goods and influence their purchasing decisions. Consideration of the potential deception of consumers regarding the origin of the goods and services seemed to be an important issue for respondents to the Questionnaire and it is covered by 69 returns. The breakdown of those returns shows 82.6 per cent positive answers and 17.4 per cent negative answers²⁶.

32. Although several SCT members provided negative replies to the question of whether or not use of country names was generally excluded under statutory law, at least two returns, which provided a negative reply²⁷, included comments to the effect that although they did not generally exclude names of States from use as trademarks for goods and/or for services, the act of misleading the public as to the source, origin or quality of the products was prohibited under specific laws, or that remedies were available for third parties.

²⁵ See the replies to Questions I(3)(d) and I(4)(d) in Annex II of document SCT/24/6, pp 20 to 21 and 26 to 27.

²⁶ See the replies to Question II(11) in Annex II of document SCT/24/6, pp 40 to 41.

²⁷ See the replies to Questions II(10) to II(12) in Annex II of document SCT/24/6, pp 40 to 43.

33. One such remedy could consist in bringing a civil law action, which would prevent the use of signs or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which was likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association of such person with another person, as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities of another person.

34. The use of a country name may also be prohibited under legal bases other than trademark law. One such basis may be found in tort laws or laws against unfair competition. Article 10*bis* of the Paris Convention for the Protection of Industrial Property (hereinafter “the Paris Convention”) binds the countries of the Paris Union to assure effective protection against unfair competition. The replies to the Questionnaire showed that in 51.7 per cent of the countries in which the use of country names as a trademark was excluded this exclusion was based on the law against unfair competition²⁸ and in 48.1 per cent of the countries it was based on general tort law or passing off.

35. Rules to prevent false indications of products are another area of law through which the use of a country name may be restricted. Article 10 of the Paris Convention provides that it may be a ground for seizure if goods bear false indications of their source. The vast majority of countries that replied to the Questionnaire (82.6 per cent) considered the use of country names as trademarks on goods and/or services as a potential case of application of the provision²⁹.

IV. POSSIBLE AREAS OF CONVERGENCE

36. As stated in paragraph 1 of the present document, the SCT has been working on the protection of country names from its twenty-first session (June 22 to 26, 2009). It has been concerned with this issue over practically thirteen sessions³⁰ during which the members have provided significant input on their laws and practices that address this question at several steps of the registration procedure and in post-registration actions with the trademark office or with judicial and other national authorities charged with the administration of justice or with the control of goods bearing indications that are relevant in this area.

37. During their discussions, SCT members have also elaborated on existing approaches to the protection of country names. The following are possible areas where convergence may be found among the laws and practices of different members. Some of those areas could be considered to constitute “a body of reference”³¹ that could be beneficial to all national and regional authorities that are called to decide cases involving the registration or use as trademarks of signs that consist of or contain country names.

²⁸ See the replies to Question II(9) in Annex II of document SCT/24/6, pp 37 to 38.

²⁹ See the replies to Question II(12) in Annex II of document SCT/24/6, pp. 40-41.

³⁰ Reference is made to the SCT document series: SCT/21/6 and SCT/21/8, paragraphs 308 to 343; SCT/22/4 and SCT/22/9, paragraphs 171 to 193; SCT/23/3 and SCT/23/7, paragraphs 83 to 114; SCT/24/2, SCT/24/6 and SCT/24/8, paragraphs 202 to 233; SCT/25/4 and SCT/25/7, paragraphs 211 to 231; SCT/26/9, paragraphs 321 to 356; SCT/27/5 and SCT/27/5 Corr., SCT/27/6, SCT/27/7 and SCT/27/11, paragraphs 222 to 247; SCT/29/5 Rev. and SCT/29/10, paragraphs 272 to 294; SCT/30/4 and SCT/30/9, paragraphs 267 to 286; SCT/31/4, SCT/31/5 and SCT/31/10, paragraphs 134 to 156; SCT/32/2 and SCT/32/6, paragraphs 72 to 86; SCT/33/6, paragraphs 76 to 96; SCT/34/2 Prov.2 and SCT/34/8, paragraphs 97 to 127.

³¹ Reference is made to paragraphs 15 to 24 of document SCT/19/9 containing the Report of the nineteenth session of the SCT.

38. The following possible areas of convergence are submitted for consideration by SCT members:

Possible Area of Convergence No. 1
Notion of Country Name

At least for the purposes of examination of marks, and unless the applicable law specifies otherwise, a country name may cover: the official or formal name of the State, the name that is in common use, translation and transliteration of that name, the short name of the State, as well as use of the name in abbreviated form and as an adjective.

Possible Area of Convergence No. 2
Non-registrable if Considered Descriptive

At least for the purposes of examination, trademarks consisting solely of a country name should be refused where the use of that name is descriptive of the place of origin of the goods or services.

Possible Area of Convergence No. 3
Non-registrable if Considered Misleading, Deceptive or False

At least for the purposes of examination, trademarks consisting of or containing a country name should be refused where the use of that name renders the mark as a whole misleading, deceptive or false in relation to the origin of the goods or services.

Possible Area of Convergence No. 4
Consideration of Other Elements of the Mark

At least for the purposes of examination and unless the applicable law specifies otherwise, trademarks consisting of a country name, among other elements, should be refused where the use of that name renders the mark as a whole non-distinctive, misleading, deceptive or false in relation to the origin of the goods or services.

Possible Area of Convergence No. 5
Invalidation and Opposition Procedures

The grounds for refusal described in possible areas of convergence No. 2, 3 and 4 above should constitute grounds for invalidation of registered marks, and where the applicable law so provides, also grounds for opposition.

Possible Area of Convergence No. 6
Use as a Mark

Appropriate legal means should be made available for interested parties to prevent the use of country names if such use is likely to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services and to request the seizure of goods bearing false indications as to their source.

Note

The seizure of goods in cases of direct or indirect use of an indication of the source of goods is provided for in Article 10 of the Paris Convention³².

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³² Article 10 of the Paris Convention provides : “(1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.

(2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.”