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## **Protecting ‘Single-Origin Coffee’ within the Global Coffee Market: The Role of Geographical Indications and Trademarks**

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Over the past decade, coffee producers have been struggling with the world market's low and unstable coffee prices. Some coffee producing countries try to overcome this crisis by moving from pure commodity exports to higher-price exports of niche market quality products, like “single-origin coffee”, protected by intellectual property tools. Such protection can take the form of trademarks or geographical indications. At present within the single-origin coffee sector, a trend to use the latter form can be observed. For example, “Café de Colombia” was registered as a Protected Geographical Indication under Council Regulation (EC) No 510/2006. Another recent example is the Ethiopian Fine Coffee Trademarking and Licensing Initiative. In order to protect its coffee industry, the Ethiopian government has filed trademark applications for the country's most valuable brands in over 30 countries, including all major coffee markets. This article suggests that both concepts offer mixed blessings. The particularities of the global coffee market might in some cases be better accommodated by a trademark scheme whilst in other cases by a geographical indication system. However, in order to ensure the individual farmer benefits from the higher price paid for single-origin coffee on the world coffee market, further steps have to be taken.

Keywords: Colombia, Ethiopia, geographical indications, single-origin coffee, trademarks

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## Introduction

After oil, coffee is the second largest commodity in the world and is mainly produced in developing countries. The situation on the world coffee market over the last decade may be described as a “coffee paradox”.<sup>1</sup> Whereas many Western countries – the consuming countries – have experienced a coffee boom, the producing countries have faced serious problems, one being the unstable nature of coffee prices. Even though the global coffee market is slowly recovering from the crisis that lasted from 2000 until the end of 2004, coffee prices are still far from high. The problem of under-priced coffee has possibly been worsened by the weakness of the U.S. dollar against the currencies of many major coffee exporting nations. A solution could be to move from pure commodity exports to higher-price exports of niche market quality products protected by intellectual property tools. Generally, there are two ways of ensuring regions legal protection: either by way of trademarks or by way of geographical indications. At present within the single-origin coffee sector, a trend to use the latter option can be observed. Still, there are instances in which trademarks are preferred. The present article is aimed at presenting both systems of IP law and at outlining the advantages of both strategies with regard to the protection of single-origin coffee. Following a brief overview of the global coffee market in section two, the relevant law of the key coffee markets – i.e., Japan, the United States and the European Community – will be examined in section three. In section four, two current examples of IP law protection in the field of single-origin coffee – Café de Colombia and the Ethiopian Fine Coffee Trademarking and Licensing Initiative – will be presented. Finally, in a comparative section five, the main advantages and disadvantages of each protection mechanism will be outlined in light of the above mentioned examples of IP protection in the coffee sector.

## The Global Coffee Market

Until 1989, coffee was traded on a regulated global market governed by the International Coffee Agreement (ICA). The first International Coffee Agreement of 1962 was followed by another agreement in 1968, signed by most coffee producing and consuming countries, e.g., the United States and Brazil. Although clearly it favoured the producing countries, consumer countries had a decisive influence on the setting of the production quotas.<sup>2</sup> Further coffee agreements were signed in 1976 and 1982. Each of the four agreements had specific duration and established export quotas to achieve reasonable market prices and stable supplies.<sup>3</sup> However, none of them succeeded in stabilising coffee market prices over an extended time period.<sup>4</sup>

In 1989, negotiations concerned with yet another coffee agreement failed. As a result, the coffee market has since the 1990s seen a crisis of oversupply that led – especially from 2000 to the end of 2004 – to price drops unprecedented in recent history. For instance, whereas the International Coffee Organisation (ICO) composite indicator price for coffee in the 1980s averaged 127.92 U.S. cents per lb., the average price dropped to 54.33 cents during the period 2000-2004. Even though the global coffee market is now slowly recovering, with the ICO composite indicator price mostly above 100 cents per lb., prices for green coffee are still far from high.<sup>5</sup>

While the present markedly low price for green coffee has led to the worst coffee crisis ever seen from the perspective of growers' income,<sup>6</sup> the situation of the coffee roasters is the exact opposite. In the last decade, the coffee market in the Northern countries has experienced a "latte revolution". Not only is the coffee itself marketed, but also ambiance and social positioning. Consumers in Western countries are paying well in order to choose from numerous combinations of coffee variety, origin, brewing and grinding methods, flavouring, packaging and "social content".<sup>7</sup> Particularly with the proliferation of cafés and gourmet coffee retailers that began in the 1990s, retail coffee prices continue to rise in the specialty market, and even in the mainstream market the price has remained stable. Hence, the coffee industry in importing countries has flourished, new products have been developed, the profit of the retail markets has more than doubled and profits have risen.<sup>8</sup>

The reasons for this so-called coffee paradox<sup>9</sup> – a coffee boom in consuming and a coffee crisis in producing countries – are manifold. However, two main factors are generally emphasised: (i) the constant oversupply of the market and (ii) the specific structure of the market itself.

(i) The constant oversupply of the world coffee market is much a result of advancements in technology, including new strains of coffee plants as well as new intensive farming methods and – as already mentioned above – the absence of export quotas.<sup>10</sup> In particular, Brazil and Vietnam have been able to flood the market with low-quality robusta beans.<sup>11</sup> Consequently, coffee prices have gone down and roasters have been able to raise their profit margins. However, a paradox within this coffee paradox is that whereas the global coffee market is flooded with low-quality coffee, there is a dire shortage of the high-quality coffee that generates the sales growth.<sup>12</sup>

(ii) The second primary reason for the decrease in price is the specific and complex structure of the world coffee market itself. The coffee industry is an oligopsony, in which a few global corporations (like Starbucks, Kraft, Proctor & Gamble or Nestlé) acquire beans from a number of small producers, relying

solely on a limited group of elite exporters from which the corporations get their beans.<sup>13</sup> On the global coffee market, coffee beans often pass through as many as five different entities before reaching the consumer (farmer – local speculator – exporter – roaster – retailer – consumer).<sup>14</sup> Generally, farmers have the weakest negotiating position within this coffee chain, where each actor tries to gain maximum profit. Small farmers often lack knowledge of the coffee market price and are unable to market and distribute their crops themselves. As a result, local speculators (so-called coyotes) are able to retain most of the profit from their coffee sale.<sup>15</sup>

Both of these two explanatory approaches consider – as reasons for the coffee paradox – the current market conditions on the global coffee market. Daviron and Ponte,<sup>16</sup> however, argue persuasively that it must also be taken into consideration that the coffee sold on the international commodity market and the coffee sold as a final product to Western consumers are becoming increasingly different from each other. Not only is the “material” quality of the coffee sold by roasters, retailers and cafés, but also the “immaterial”, i.e., the “symbolic” quality attributes such as territory, a story, ideas, and the exotic as well as in-person service provision through agro-tourist networks, safari-and-coffee farm tours, and the establishment of coffee chains controlled by producer organisations. In particular, the gourmet coffee market is characterised by such “immaterial” production, which represents a clear move away from the pure commodity market. This, they argue, explains the coexistence of the coffee boom in consuming countries and the crises in producing countries.

At the same time, a way of overcoming the dilemma of the coffee paradox for growers/farmers could be to move from pure commodity exports to higher-price quality exports of niche market products. This way they could participate not only in the commodity market, but also in the “immaterial” niche markets. One niche market product is “specialty coffee”, also known as “gourmet” or “premium” coffee. The special characteristics of these coffees (in particular taste, production processes, marketing conditions or origin) correspond with the demands of specific coffee roasters and consumers. In addition there is a dire shortage of speciality coffee on the global market. Taken together, these factors mean that speciality coffee can be sold at higher prices and that it has remained unaffected by the current coffee crisis.<sup>17</sup>

One type of specialty coffee is “single-origin coffee”. Unlike blended coffee, which constitutes the bulk of coffee on the selling market, single-origin coffee is produced only in certain areas, i.e., a certain country, region or even plantation. On today’s global market, the distinction of products and their origins has become a decisive factor influencing purchase decisions.<sup>18</sup> For confidence in the origin of a

product – viewed as synonymous with quality and special characteristics – the consumer is willing to pay more.

## **IP Protection of Geographical Terms: Geographical Indications and Trademarks**

In order to profit from the higher price paid by the consumers of single-origin coffees, there is a need for producing countries to protect their geographical designations. Equally, it must be guaranteed that only coffee which really originates from a certain place is sold under such a designation.<sup>19</sup> Protection for single-origin coffee could be provided by intellectual property tools, i.e., geographical indications (GIs) and trademarks (TMs). In the following, both concepts will be briefly examined; subsequently, the relevant law in the key markets for coffee, i.e., Japan, the United States and the European Community, will be outlined.

### ***1. The Basic Concepts of Geographical Indications and Trademarks***

The geographic origin of goods is generally protected by the legal concept of geographical indications, which are a form of intellectual property.<sup>20</sup> The protection of the indications of geographical origin of products has evolved in different ways under different national and international law. At present there are a number of international agreements regulating the protection of geographical indications. Apart from numerous bilateral agreements and regional systems of GI protection, such as the EC Council Regulation 510/2006, the most important multilateral agreement is that on Trade-Related Aspects of Intellectual Property Rights of 1994 (TRIPS Agreement) administered by the WTO, which is the only agreement addressing the issue from a global perspective. It sets out standards to regulate international intellectual property protection and enforcement and establishes international minimum standards for “geographical indications”, which are defined as indications that a good or service originates in the territory of a particular country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.<sup>21</sup> The main obligation under the TRIPS Agreement with respect to all geographical indications is that interested parties must provide the legal means to prevent use of indications that mislead the public as to the geographical origin of the good, as well as use that constitutes an act of unfair competition (Article 22(2) TRIPS). However, the agreement does not specify the legal means to protect geographical indications, and it is up to the member states to decide the most appropriate method.

In certain cases a geographical term might also fulfil the qualifications of a trademark. In general terms, trademarks are signs<sup>22</sup> that are used in order to distinguish the goods or services of one undertaking from the goods or services of another undertaking.<sup>23</sup> With regard to trademarks, one can further distinguish between individual and collective trademarks. Whereas an individual trademark is owned by a specified natural or legal person, the latter category belongs to a public or private collective (trade association or other group). This collective usually does not conduct commercial or industrial activity on its own account; rather, the mark is used by its members. A collective trademark is principally designed to guarantee certain product characteristics (quality, nature or origin) for consumers.<sup>24</sup> In order that it do so, its registration requires the application to include rules governing the use of the collective mark. The members of the association may only use the mark if they comply with these rules.<sup>25</sup> A concept similar to a collective mark is that of the certification mark,<sup>26</sup> which is found in common law countries.<sup>27</sup>

A certification mark is the property of a group that does not trade in the relevant products. A certification mark indicates that the products on which it is used have been made or obtained subject to given standards, e.g. origin, material, mode of manufacture or quality. These standards are defined and inspected by the owner of the mark, which is usually an independent enterprise, institution or governmental entity. The main difference between collective marks and certification marks is that the former may be used only by particular enterprises, while the latter may be generally used by anybody who complies with the defined standards.<sup>28</sup>

The common purpose of geographical indications and trademarks is to distinguish products for consumers and vis-à-vis competitors.<sup>29</sup> Both concepts rely on the same principal economic rationales – the protection of goodwill against free riding by third parties and the reduction of consumer search costs.<sup>30</sup> Trademarks and geographical indications can be considered as business branding tools aimed at promoting product recognition, customer loyalty and repeat business. They are meant to enhance the reputation of the product and its producer and to capture economic benefits for a business.<sup>31</sup>

Still, there are a number of substantial differences between the two concepts. Whereas trademarks personalise and identify the producer of a product or service, geographical indications identify the place of origin of a good and the characteristics that are derived from that geographic origin.<sup>32</sup> In contrast to geographical indications, trademarks can be created by an “intent to use” or by the mere lodgement of an application with a registration system. Moreover, trademarks are personal intellectual property, whereas geographical indications cannot be owned by any individual but

rather are a fixture to the region or locality they represent. Finally, trademarks can be sold or licensed to third parties, which geographical indications cannot.<sup>33</sup>

From an international intellectual property law perspective, it should be borne in mind that, despite numerous systems facilitating the filing, registration or enforcement of trademark rights in more than one jurisdiction (on a regional<sup>34</sup> or international<sup>35</sup> basis), it is still not possible to file and obtain a single trademark registration that applies worldwide. The same is true for geographical indications.<sup>36</sup> According to the principle of territoriality, trademark laws as well as the laws of geographical indications still apply only in their applicable country or jurisdiction.<sup>37</sup> The inherent limitations of the territorial application of these laws have been eased by various intellectual property treaties, particularly by the TRIPS Agreement (see above), which establishes legal compatibility between member jurisdictions by requiring the harmonisation of the national (or regional) applicable laws. However, even if the TRIPS Agreement has succeeded in harmonising the applicable laws to a certain extent, there are still fundamental differences on national (and regional) bases.<sup>38</sup>

## 2. *The Law in the Main Export Markets*

Considering the just mentioned lack of complete harmonisation on an international level, the following sections will outline the relevant national law of the key markets for single-origin coffee – the United States, the European Community and Japan.

### a) United States

In the United States, geographical indications are primarily protected under the existing trademark regime,<sup>39</sup> which provides for registration of geographical indications either as trademarks, as collective marks or as certification marks. In addition, GIs in the United States also enjoy a certain common law protection.<sup>40</sup>

*Trademarks.* Under the U.S. trademark regime it is possible to register geographical indications as trademarks,<sup>41</sup> although this is relatively rare.<sup>42</sup> According to well-established U.S. trademark law, geographic terms or signs are not registrable as trademarks if they are geographically descriptive or geographically misdescriptive of the origin of the goods (or services).<sup>43</sup> However, if a geographic sign is used in such a way as to identify the source of the goods/services and if consumers eventually start recognising it as identifying a particular company or manufacturer or group of producers,<sup>44</sup> the geographic sign can no longer be said to describe only where the goods/services come from; rather, it describes also the “source” of the goods/services.<sup>45</sup> In other words, the sign has then “acquired distinctiveness” or developed a “secondary meaning”.<sup>46, 47</sup> A descriptive sign that has a secondary

meaning to consumers has a source-identifying capacity and is therefore protectable as a trademark.<sup>48</sup>

In order to register a trademark it must therefore be determined on a case by case basis whether the term is used as a geographic designation or as a last name (primarily geographical), whether it misdescribes the origin of the good (misdescriptive) and whether consumers are deceived by such a use (deceptive).<sup>49</sup>

In any event and regardless of whether a geographical term has acquired distinctiveness, the term cannot be registered as a trademark if it is generic for a type of goods/services. Generic terms are terms that the relevant purchasing public understands as the common or class name for the goods or services<sup>50</sup> and are therefore by definition incapable of indicating a particular source of the goods or services. The registration of a generic term as a trademark “would grant the owner of the mark a monopoly, since the competitor could not describe his goods as what they are.”<sup>51</sup>

*Collective trademarks.* The term “collective trademark”<sup>52</sup> is used to describe goods produced or provided by members of an association.<sup>53</sup> More specifically, a collective trademark is “a mark adopted by a ‘collective’ (i.e., an association, union, cooperative, fraternal organization or other organized collective group) for use only by its members, who in turn use the mark to identify their goods and distinguish them from those of non-members.”<sup>54</sup> The collective itself neither sells the goods nor performs any services under a collective trademark, although the collective may advertise or otherwise promote the goods or services sold or rendered by its members under the mark.<sup>55</sup>

Just as regular trademarks do, collective trademarks thus indicate commercial origin of goods or services. However, unlike regular trademarks, collective marks indicate origin in members of a group rather than origin in any one member or party. Since all members of the group use the mark, no one member can own the mark and the collective holds the title to the mark for the benefit of all members.<sup>56</sup>

*Certification marks.* Although geographic names or signs are generally considered as primarily geographically descriptive and therefore unregistrable as trademarks or collective marks without a showing of “acquired distinctiveness” in the United States, the U.S. Trademark Act provides that geographic names or signs can be registered as so-called certification marks. Such a certification mark is any word, name, symbol or device used by a party or parties other than the owner of the mark to certify some aspect of the third parties’ goods/services.<sup>57</sup> In particular, a certification mark is used to identify the nature and quality of the goods/services and certify that these comply with a given set of standards.<sup>58</sup> In this way it informs purchasers that the

goods/services of the authorised user possess certain characteristics or meet certain qualifications or standards.<sup>59</sup>

Three types of certification mark may be registered in the United States:

- (i) certification marks used to indicate regional or other origin;
- (ii) certification marks used to indicate material, mode of manufacture, quality, accuracy or other characteristics of the goods/services; or
- (iii) certification marks used to indicate that the work or labour on the goods/services was performed by a member of a union or other organization.

The same mark can be used to certify more than one characteristic of the goods/services in more than one certification category.<sup>60</sup>

In the U.S. Trademark Act certification marks are distinguished from trademarks on the basis of two characteristics:<sup>61</sup> first, unlike trademarks, certification marks may not be used by their owners, as the certification mark owner does not produce the goods or perform the services in connection with which the mark is used. Consequently, any entity satisfying the relevant certification standards and with authorization from the owner of the certification mark is entitled to use the mark. Second, unlike trademarks, certification marks do not indicate commercial source or distinguish the goods or services of one person from those of another person. However, rather than indicating the origin in a single commercial or proprietary source, certification marks are source identifying in the sense that they identify the nature and quality of the goods and affirm that these goods have met certain defined standards.

Like applications for trademarks and collective marks,<sup>62</sup> applications for federal registration of certification marks are examined at the United States Patent and Trademark Office (USPTO) where, following review of the accompanying specimens of use and evidence, it is determined whether the geographical sign is being used as a certification mark to indicate the geographical origin of the goods/services in relation to which it is used. If the specific sign in question has a principal significance as a generic term denoting a type of goods/services, registration will be refused. However, if use of the sign is controlled by the certifier and is limited to goods/services meeting the certifier's standards of regional origin, and if purchasers furthermore perceive the sign as referring only to goods/services produced in the particular region, then the sign functions as a regional certification mark. Should however, the USPTO before registration become aware of the fact that the applicant does not have the authority to exercise control over use of the certification mark, registration will be refused *ex officio*.<sup>63</sup>

Two matters are generally of special concern for the authority (in most instances a U.S. governmental body or a body operating with governmental authorisation) exercising control over the use of a geographical term as a certification mark: (i) preserving the freedom of all persons in the region to use the term and (ii) preventing abuses or illegal uses of the mark that would be detrimental to all those entitled to use the mark.

Affected parties such as competitors and consumers can oppose registration or seek to cancel registrations within the existing U.S. trademark regime. Hence, if a party believes that the certifier is not following its own standards or is discriminating by denying use of the mark to a qualified party, that party can file an opposition or cancellation proceeding against the certification mark or an action in federal court.<sup>64</sup>

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*Common law.* In the United States, geographical indications are also protected through the common law without being registered by the USPTO.<sup>66</sup> For example, it has been held that “Cognac” is protected as a common law (unregistered) certification mark in the United States.<sup>67</sup>

## b) European Community (EC)

Within the European Community (EC) geographical indications are protected by a bundle of *sui generis* laws. For example, Council Regulation (EC) 1493/99 (which brings together a number of earlier regulations) provides for the protection of wine names. Council Regulation (EC) 1576/89 sets out a similar provision for the protection of spirit names. Another important regulation relating to the protection of geographical indications is EC Council Regulation 510/2006<sup>68</sup> on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, which also covers single-origin coffee. However, under the Community trademark (CTM) regime (stipulated by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark; CTMR), it is also possible to register geographical terms as trademarks and collective marks.<sup>69</sup>

### (1) Council Regulation (EC) 510/2006

Since 1992, the European Community has provided for effective protection measures for geographical indications for agricultural products and foodstuffs by establishing a unitary regime for GIs binding upon all member states of the European Community.<sup>70</sup> Under this regime, which is stipulated by Council Regulation (EC) 510/2006, only geographical terms that qualify as Protected Designations of Origin (PDOs) or Protected Geographical Indications (PGIs) are protected.

*PDO/PGI.* In this context a “designation of origin” is defined as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff. To qualify for protection, the product must originate in that region, specific place or country, and it is necessary to show that the quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, as well as that the production, processing and preparation take place in the defined geographical area.<sup>71</sup>

A “geographical indication” is also defined as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff, but it differs from a PDO. To qualify as PGI, the product must originate in that region, specific place or country, and it must possess a specific quality, reputation or other characteristics attributable to that geographical origin. To qualify for the protection, it is necessary to show that the production and/or processing and/or preparation take place in the defined geographical area.<sup>72</sup>

*Registration procedure and publication.* Regarding the registration/application for a product that relates to a geographical area in an EU member state, the party seeking the registration must file the application with the authorities in the relevant member state. The competent authorities scrutinise the application by appropriate means to check that it is justified and meets the conditions of this regulation.<sup>73</sup>

Where the registration application, however, concerns a geographical area situated in a third country, a party seeking GI registration must file an application with the EU Commission, either directly or via the authorities of the third country concerned.<sup>74</sup>

Names that have become generic may not be registered.<sup>75</sup> However, once registered, a denomination is protected from turning into a generic term.

Should an application for the registration of a PDO/PGI pass the above mentioned scrutiny, it will be published together with the specifications for such a GI in the Official Journal of the European Union.<sup>76</sup> Within six months from the date of publication any member state or third country may object to the registration proposed by lodging a duly substantiated statement with the Commission.<sup>77</sup> The regulation also permits any natural or legal person having a legitimate interest, established or resident in a member state other than that applying for the registration or in a third country, to object to the proposed registration. Whereas natural or legal persons established or resident in a member state have to file their objection statements with the competent authorities in their home countries, such of third countries are expected to file their objections with the EU Commission.<sup>78</sup> If the proposed PDO/PGI survives this examination and objection process, the commission will register the name and publish the registration in the Official Journal of the European Union.<sup>79</sup>

*Scope of protection.* Council Regulation (EC) 510/2006 bars any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name.<sup>80</sup> It also proscribes any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar.<sup>81</sup> In addition, the regulation prohibits any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin.<sup>82</sup> Finally, it bars any other practice liable to mislead the consumer as to the true origin of the product.<sup>83</sup>

*Relation to trademarks.* The registration of trademarks that conflict with registered PGIs or PDOs is generally prohibited by Article 14 Council Regulation (EC) 510/2006.<sup>84</sup> However, if a trademark has obtained bona fide protection in an EU member state prior to registration of a conflicting geographical indication, or prior to 1 January 1996, the trademark may coexist alongside the duplicative, and thus conflicting, registered GI.<sup>85</sup>

## **(2) The Community Trademark (CTM) System**

The CTM system<sup>86</sup> creates a unified trademark registration system in Europe, whereby one registration provides protection in all member states of the EU.<sup>87</sup> However, the CTM system does not replace the national trademark registration systems; it rather runs parallel to the trademark legislation of each national member state of the European Community (“bundle of national rights”). Nevertheless, the CTM gives proprietors exclusive rights, which enable them to prohibit any third parties from using the sign in their commercial or industrial activities.

*Community trademarks.* According to Article 4 CTMR, a European Community trademark may consist of any sign capable of being represented graphically (particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging), provided such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.<sup>88</sup> The wording of the provision therefore does not exclude geographical indications from being registered as European Community trademarks. However, this is only possible within confined limits. Pursuant to Article 51(1)(a) CTMR, a Community trademark shall be declared invalid on application to the office or on the basis of a counterclaim in

infringement proceedings where the Community trademark has been registered contrary to the provisions of Article 7.

Under Article 7(1)(c) CTMR, no trademarks may be registered “which consist exclusively of signs or indications which may serve, in trade, to designate the ... geographical origin ... of the goods or service ....” In 1999, the provision was clarified by the European Court of Justice (ECJ) in its “Windsurfing Chiemsee” decision.<sup>89</sup> There the court held that it is in the public interest that signs or indications which may serve to designate the geographical origin of specific categories of goods, in particular geographical names, remain available. However, the trademark will not be refused registration or be declared invalid if it has acquired a distinctive character through use. In order to assess the distinctive character of a mark, the court held the following to be of importance.<sup>90</sup>

- (i) the market share held by the mark,
- (ii) how intense, geographically widespread and long-standing the use of the mark has been,
- (iii) the proportion of the relevant class of persons who, because of the mark, identify the goods as originating from a particular undertaking,
- (iv) the amount invested by the undertaking in promoting the mark and statements from chambers of commerce and industry or other trade and professional associations.<sup>91</sup>

Furthermore, according to Article 7(1)(d) CTMR no trademarks may be registered which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade. In other words, the provision prohibits generic terms to be registered.

Article 7(1)(g) CTMR stipulates that no trademarks may be registered which are of such nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services. This provision tends to be applied to distinctive marks containing some kind of suggestion or allusion that is inaccurate. However, the risk of deception must be a real one.<sup>92</sup>

Finally, pursuant to Article 7(1)(k) CTMR no trademarks may be registered which contain or consist of a PDO or PGI registered in accordance with Council Regulation (EC) No 510/2006 when they correspond to one of the situations covered by Article 13 of the said regulation and in relation to the same type of product, provided the application for registration of the trademark has been submitted after the date of filing with the Commission of the application for registration of the PDO or PGI. The provision therefore ensures that registered PDOs and PGIs are protected against all evocation, even if the true origin of the product is indicated. Evocation, as referred to

in Article 13(1)(b) of Council Regulation (EC) 510/2006 (see above), covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected.<sup>93</sup>

*Community collective marks.* The CMTR also provides for the registration of European Community collective marks, Article 64. In derogation from Article 7(1)(c), the provision stipulates that signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute Community collective marks within the meaning of paragraph 1.<sup>94</sup> A collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters. In particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.<sup>95</sup>

### c) Japan

Under Japanese law, protection of geographical indications is provided by different (positive and negative) protective measures,<sup>96</sup> particularly by the Prevention of Unfair Competition Act,<sup>97</sup> the Act against Unjustifiable Premiums and Misleading Representations,<sup>98</sup> the Notification No. 4 of the National Tax Administration for Wine and Spirit Names<sup>99</sup> and the Trademark Act.<sup>100</sup>

*Trademarks and collective marks.* Until 2006, positive protection (or registered protection) for geographic terms was only provided by the Japanese Trademark Act.<sup>101</sup> However, although the act permits the registration of geographical marks in certain situations, it normally prevents the registration of geographical terms. Pursuant to Article 3 of the Japanese Trademark Act, trademarks that “consist solely of a mark indicating ... the place of origin” cannot be registered, unless “as a result of the use of the trademark, consumers are able to recognise the goods and services as those pertaining to a business of a particular person” i.e., unless the goods or services have acquired a “*secondary-meaning*”. As the standard set for secondary meaning is high – it is required that the applicant proves that his mark is famous throughout the country – geographical terms are most often excluded from registration as trademarks. A further limitation is presented in Article 26 of the act, which states that a trademark right shall have no effect on generic terms. Generic use occurs when a geographical term is used for a kind of product rather than an indication of the place of origin of that product.

In its section 7, the Japanese Trademark Act also provides for the protection of collective marks. Yet a collective mark may only be registered if it satisfies the trademark requirements presented above.

*Regionally based collective marks (RCMs).* With regard to positive protection of geographical labels and marks through registration, a significant development took place on 1 April 2006, when the first legislation specifically targeting geographical labels and marks entered into force.<sup>102</sup> The so-called Regionally Based Collective Marks Act<sup>103</sup> – a modified part of the general trademark system – came into effect in April 2006 and thereby introduced a special type of regional collective mark indicating commercial origin of goods or services from members of a group who satisfy relevant conditions of membership.<sup>104</sup> More specifically, the new act

- enables a legal entity that is also a cooperative association recognised by law with open membership to apply for a collective mark used by the members of the applicant association;<sup>105</sup>
- requires the mark to consist of both the place and product name;<sup>106</sup>
- stipulates that the mark can only be granted in relation to goods or services from, or in close connection to, the geographic area named;<sup>107</sup>
- requires the mark to be well known through use at least in the regional area and nearby prefectures;<sup>108</sup>
- requires that all other conditions for registration specified in the Trademark Law be fulfilled;<sup>109</sup>
- imposes strict limits on the transfer or assignment of the collective marks;<sup>110</sup>
- sets out a “fair use” right for prior users from the area so that they may continue using the mark;<sup>111</sup>
- stipulates that marks registered contrary to the requirements of the act can be opposed, or, if the marks in question have already been granted, they can be invalidated.<sup>112</sup>

The effect of RCMs – like that of trademarks – is that the owners of the rights have exclusive rights to use the registered marks and to prevent third parties from using marks similar or identical to the registered marks.<sup>113</sup> It is important to note however that the RCM is not an exclusive right of any individual member of the regional association.<sup>114</sup> The owner of the collective right may only grant non-exclusive licence rights.<sup>115</sup>

## IP-Protection of Single-Origin Coffee – Two Case Studies

The decision regarding which intellectual property route to follow is difficult. Even if, within the single-origin sector, different strategies can be observed, there are several instances in which GI protection has been chosen. For example, “Café de Colombia” was recently registered as a Protected Geographical Indication (PGI) under Council Regulation (EC) No 510/2006. However, an example for a pure trademark strategy also exists, i.e., the Ethiopian Fine Coffee Trademarking and Licensing Initiative. With a view to outlining the advantages and disadvantages of each strategy, both cases will be considered below.

### 1. *Café de Colombia and Juan Valdez*

Colombia is one of the leading coffee growing countries in the world.<sup>116</sup> This is especially due to the quality of its coffee<sup>117</sup> and the marketing strategy<sup>118</sup> of the National Federation of Colombian Coffee Growers (FNC).

The FNC was initially founded in 1927 by a group of Colombian coffee growers who sought assistance from each other. The federation (at that time so-called guild) is a non-profit, non-political and democratic cooperative.<sup>119</sup> The ambition of the FNC is to stabilise the market for Colombian coffee and to undertake research, social assistance and promotion programs<sup>120</sup> on behalf of Colombia’s more than 300,000 independent *cafeteros*.<sup>121</sup> In particular, the federation has succeeded, under the supervision of the country’s government and financially supported by the National Coffee Fund, in protecting the Colombian coffee growers against falling coffee prices by buying the crops, storing them and putting them on the market again after they have risen above a certain price minimum.<sup>122</sup> The FNC further guarantees the farmers to always purchase their coffee. In addition, all coffee growers in the different villages can call the federation’s contact centre to find out the current price for their coffee beans (which depends on the final daily price on the New York Stock Exchange for the Colombian coffee). This helps to raise their income because they know the exact price that the federation is paying and may then compare this to the price set by the local buyer.

Previously, the FNC’s marketing strategy for Colombian coffee relied only on trademark protection. In many countries, e.g. in the EC and the United States, the FNC filed several figurative marks relating to “Café de Colombia”<sup>123</sup> and the word mark “Juan Valdez”, which is also flanked by various figurative marks.<sup>124</sup>

The logo of Juan Valdez, a fictitious character representing the typical Colombian coffee farmer, was already developed in 1981.<sup>125</sup> The purpose of the logo is to serve as a seal of guarantee that the brand does indeed consist of 100 percent Colombian

coffee as approved by the FNC.<sup>126</sup> Individual companies can use the logo, in addition to their trademarks, by entering into licence agreements. The logo is licensed to be used only on whole bean or ground roast coffee, caffeinated or decaffeinated, without flavour enhancers.<sup>127</sup> These coffee brands are subject to quarterly quality control tests by the FNC, which can in the case of failure lead to the revocation of the trademark licence.<sup>128</sup>

However, the FNC recently decided to rely not only on trademark protection, but also on geographical indication protection to increase market shares on the global market. In 2005, “Café de Colombia” therefore obtained geographical indication protection as a “denomination of origin” (*Denominación de origen*)<sup>129</sup> in Colombia.<sup>130</sup> In addition, within the same year, the FNC filed – as the first third country to do so – an application for “Café de Colombia” as a geographical indication<sup>131</sup> with the European Commission. In December 2006, the summary application was published in the Official Journal of the European Union.<sup>132</sup> Since no statement of objection was received in the following six months, “Café de Colombia” was registered as a Protected Geographical Indication (PGI) under Council Regulation (EC) 510/2006 in September 2007.<sup>133</sup>

This change in Colombia’s marketing strategy does not imply that the FNC is turning away from its trademark strategy. In fact, trademark protection remains a core element of the federation’s protection strategy.<sup>134</sup> The FNC rather decided to rely on a two-fold strategy – trademark and geographical indication protection – in order to better defend the reputation and value of the product<sup>135</sup> and to further develop Colombian coffee by building up a stronger product identity.<sup>136</sup>

## ***2. Ethiopian Fine Coffee Trademarking and Licensing Initiative***

Ethiopia is Africa’s largest coffee producer and is widely recognised as the birthplace of the coffee bean.<sup>137</sup> Around 50 percent of Ethiopia’s export revenues are derived from coffee, and approximately 25 percent of the country’s 80 million population live off the coffee farming industry.<sup>138</sup> Ethiopian coffee is predominantly produced by small farmers in altitude regions. Arabica coffee is grown in almost all administrative regions of Ethiopia, in conditions ranging from the semi-savannah climate of the Gambela plain (550 m above sea level) to the continuously wet forest zone of the southwest (2200 m).<sup>139</sup> The production methods have hardly changed over the time, so that nearly all of Ethiopia’s coffee bean production is still by hand, from the planting of new trees to the final picking.<sup>140</sup> However, the use of these completely traditional production methods together with the unique growing conditions in Ethiopia (i.e. landscape and climate) assure the coffee’s high quality. This is especially true of the

coffee produced in Harrar/Harar (so-called garden coffee), but the coffees originating in Sidamo and Yirgacheffe are also famous for their excellence.

Whereas the large majority of coffee producing regions tend to seek protection for their coffees through geographical indications systems,<sup>141</sup> Ethiopia is driving a different strategy, the Ethiopian Fine Coffee Trademarking and Licensing Initiative. The strategy was initiated by a consortium of stakeholders led by the head of the Ethiopian Intellectual Property Office (EIPO) and including representatives of farmers' cooperatives, coffee exporters and government bodies. The project has been financially supported by the U.K.'s Department for International Development (DFID), technically advised by the Washington-based NGO Light Years IP<sup>142</sup> and legally assisted by a U.S. law firm.<sup>143</sup>

In order to protect its coffee industry, the Ethiopian government has filed trademark applications for the country's most valuable brands (Harrar/Harar, Sidamo and Yirgacheffe) in 34 countries, including all major coffee markets.<sup>144</sup> Whereas all three trademarks were immediately registered in the EC,<sup>145</sup> in Japan only "Sidamo" and "Yirgacheffe" were approved by the Japan Patent Office (JPO).<sup>146</sup> The decision on the "Harrar" appeal is still pending.<sup>147</sup> In the United States, the initiative was strongly opposed by the National Coffee Association (NCA)<sup>148</sup>. Initially, only "Yirgacheffe" was approved by the USPTO. On 27 March 2007, the registration of the country's most valuable brand, "Sidamo", was refused by the USPTO on the grounds that the proposed mark was generic for the goods.<sup>149</sup> Also, "Harrar" was refused registration on the same grounds, i.e., "the mark is incapable of serving as a source-identifier for the applicant's goods, namely 'coffee'." However, the rebuttal of the EIPO in the first case was successful; "Sidamo" was recently registered as a trademark by the USPTO. "Harrar" and "Harar" are still pending with the examining attorney, who is reviewing a recently submitted response from the applicant.<sup>150</sup>

Already before the registration of these two brands, and arguably due to the high public pressure (especially by the development charity Oxfam), Starbucks signed, like many of its competitors before, a voluntary licence agreement with the Ethiopian Intellectual Property Office (EIPO).<sup>151</sup> The agreement means that Starbucks acknowledges Ethiopia's ownership of the three coffee brands, although Starbucks is not required to pay royalties for using them.

Ethiopia's Trademarking and Licensing Initiative is, according to the website of the Ethiopian Coffee Network,<sup>152</sup> already producing some important impacts both within Ethiopia and on the global market. Several different stakeholders in the coffee sector have united in a new public-private grouping (the Ethiopian Fine Coffee Stakeholder Committee)<sup>153</sup> within Ethiopia to support the country's three trademarks

and to prepare for the investment in production and promotion of these coffee brands.<sup>154</sup>

### **Protection of Single-Origin Coffee: Geographical Indications or Trademarks?**

In order to profit from the higher price paid by consumers, it is clear that countries producing single-origin coffee have to protect their geographical designations. This raises two questions, first, which IP route to follow and second, how to ensure the individual farmer receives the benefits gained by this protection.

In order to answer the first question it has to be ascertained whether the geographic term meets the criteria of both a trademark and a geographical indication. Only if this is the case will it be relevant to determine, on a case by case basis, which scheme better accommodates the needs of the producer.

As outlined above, it is possible under the law of all three major coffee markets to acquire trademark protection for geographical terms. However, such protection is limited to certain cases. In particular, trademark law requires a “secondary-meaning” (“acquired distinctiveness”), demanding a certain degree of consumer awareness. If a geographic term has not had the use in commerce necessary to acquire such a secondary meaning, single-origin coffee can be protected as a trademark neither in the United States, Japan nor the European Community. In the United States and the European Community the geographic term may nonetheless gain protection as a geographical indication, i.e. as a U.S. certification mark or in the EC as a PDO/PGI. By way of contrast, in Japan, without showing acquired distinctiveness throughout the country (or in the case of a regional collective mark in a regional area), a geographic term may not gain protection through registration. Finally, neither in geographical indication regimes nor in trademark regimes can protection be obtained for generic terms.

If it is determined that the geographic term may be protected both as a trademark and as a geographical indication, it is relevant to determine which IP tool is more advantageous. This decision must be made not only with regard to the market control provided by the respective protection mechanism, but also in consideration of possible marketing options, the guarantee of quality of the product, enforcement, costs and time needed to establish the system.

*Market control.* According to Ethiopia’s Intellectual Property Office (advised by a U.S. law firm and the NGO Light Years IP), a trademark scheme is the only way to control the market. Unlike trademarks, geographical indications do not award

exclusive rights to the names and would therefore not give Ethiopia's coffee coalition control over coffee prices.

Yet, even if it is true that a certification mark may not grant an exclusive right in terms of transferability (in particular, the GI certification mark cannot be sold), the effectiveness of such a mark depends much on how the owner structures the GI certification regime. In order to ensure that all those using the mark are using it under the control of the certifier and under the terms set by the certifier, the certification mark regimes in the United States are generally structured much like trademark licensing systems.<sup>155</sup> Consequently, the use of the mark requires an agreement comparable to a licence agreement, authorising those wishing to use the mark to do so subject to them paying fees to the certifier. The use is thus not authorised merely because the user meets the standards set by the certifier.<sup>156</sup> Unauthorised use can be prevented by the owner of the certification mark if the use is likely to cause confusion as to the source of the goods.<sup>157</sup> Hence, just like a trademark owner, a certification mark owner may authorise who may use the mark and how they may use it. Further, in the case of a term used as a descriptive component of another mark, the certification mark owner's consent will be required even when it is used accurately to describe the product.<sup>158</sup> In other words, the certification mark program may incorporate licence agreements that are used down the distribution chain, all the way to the retailer. Used in such a way, a certification mark may surely also be considered an adequate instrument to control the market.

The protection of geographical indications within the European Community is – as outlined above – not provided by certification marks but by a *sui generis* system. Unlike a (European Community) trademark a PDO/PGI is not transferable. It provides for effective protection mechanisms, since PDOs and PGIs protect geographical names as such and prevent any commercial misuse of the protected names against all evocation.<sup>159</sup> Even if the protection therefore is more comprehensive than that of a trademark, the market cannot be controlled in the same way as through a licence agreement. However, this might not always be necessary. In the case of Ethiopia, an essential part of the licence agreement is the marketing clause, i.e., that the licensee has to use its best efforts to undertake advertising, marketing and other promotional activities to enhance the value of the mark. Colombia has chosen a different way. It developed the immaterial quality of its product through a comprehensive marketing strategy including the establishment of various logos. Since the logo is well established on the market, the FNC is able to combine it with the geographical indication (PDO/PGI) and may thus gain the advantages of both concepts, i.e., the

comprehensive protection of a PDO/PGI with a licence agreement for the use of the logo.

In this context it is also worth mentioning that unlike a geographical indication system, which is open to all legitimate producers (“open shop”), the owner of a trademark could, in theory, act to restrict otherwise geographically legitimate producers from accessing a particular national market. Although such a scenario is unlikely to arise, it cannot be ruled out that an owner of a trademark could design a licence agreement which is not in the interest of all legitimate producers. For instance, restrictions could be imposed on how the coffee has to be marketed.

*Marketing.* However, in order to control the market and to participate in terms of not only the above mentioned “material quality” of the coffee, but also the “symbolic” attributes, producers have to ensure that the coffee’s origin is well marketed. While countries like Colombia do this successfully by licensing the geographic name together with a logo (in particular the Juan Valdez logo), which is to indicate that the brand does indeed consist of the said coffee and the said quality, poorer countries like Ethiopia depend much on the promotion of the distributors, retailers and roasters. In the case of a place or a country already famous for its coffee, distributors/retailers/roasters will have an interest of their own in stressing the product’s origin and will therefore be willing to sign a licence agreement like that used in Ethiopia. Still, one should keep in mind that the public knowledge of the origin of a coffee in these cases generally is due to the existing market strategy of a distributor/roaster/retailer within the foreign market.<sup>160</sup> Ethiopia’s single-origin coffees, for example, are known to U.S. consumers because Starbucks used them in commerce (along with others from Africa, Indonesia and Central America). The negotiating position of the producers is thus much a result of a brand, which is built up by the roaster/distributor/retailer itself. However, if and when demand for Ethiopian coffee reaches a certain market level, Ethiopia’s coffee coalition may charge fees or royalties for the use of its trademarks and may set other terms and conditions. As long as the use of the brands guarantees that certain value is added to the product, this will be accepted by the global corporations.<sup>161</sup> However, if those corporations are of the opinion that the brand does not add adequate extra value to the product, the brand will not be used in commerce and the value attributed to the origin of the coffee will be reduced.

*Guarantee of quality.* Nonetheless, single-origin coffee can be valuable in terms other than marketing terms. In contrast to trademarks, using a geographical indication (certification) scheme would guarantee origin as well as a certain quality and production process. This might be in the interest not only of consumers but also of

roasters of blended coffee, as they are assured a raw material with relatively stable characteristics, thus making it unnecessary to reformulate their blend. Geographical indications may also reduce the costs of quality controls at the marketing level, with the effect that retailers are prepared to pay a higher price.<sup>162</sup>

*Enforcement.* In the case of Ethiopia, it is further argued that a GI certification scheme would be impossible to enforce.<sup>163</sup> The certification mark owner has to observe the activities of those who use the mark in order to ensure compliance with its standards and to prevent the public from being misled.<sup>164</sup> This might in fact be problematic in the case of Ethiopia, since an estimated 600,000 Ethiopian farmers in remote areas grow specialty coffees and distribute their coffee themselves by carrying it in bags on foot for many kilometres.<sup>165</sup> This means that it would be difficult (and rather costly) for the certifying body to ensure compliance with its standards, i.e., that the coffee originates from Sidamo, Yirgacheffe or Harrar/Harar and that the appropriate historic production methods are used. A certification mark might therefore not be an ideal option for such small-scale productions. By way of contrast, a plantation system (like the system in Colombia) is easier to monitor and thus suits a certification scheme better.

*Costs and time factors.* Finally, differences worth mentioning between the two systems include costs and time factors. The establishment of a geographical indication scheme is rather expensive and is therefore generally considered to be more of a long-term investment. Not only does the relevant legislation have to be enacted, but also an operational infrastructure must be established (in particular quality-supervising institutions and enforcement authorities). Filing a trademark on the other hand is much less expensive, since no certification body is needed. Consequently, filing a trademark is generally a more rapid process than acquiring geographical indication protection. For example, in the case of Ethiopia, the GI route – compared with a trademark scheme – would take a lot longer, since the country would have to start from scratch. For Café de Colombia, in contrast, a global GI strategy would not take longer than filing trademarks, since a certifying body (the FNC) is already established and since protection as a Designation of Origin already exists in Colombia.<sup>166</sup>

As described above, single-origin coffee is detached from the (New York) commodity price for coffee. Through trademark and geographical indication schemes, producing countries are able to connect the export price to the retail price. However, since the coffee chain does not end at the producing country's border, from a producer's point of view the question arises whether these benefits trickle down to the individual producer, increasing the price of the product available at the farm (the so-called farm gate price). The answer depends on how the coffee market within the

producing countries is structured and in particular on the manner in which the coffee is produced, i.e. in a plantation system or through small-scale production. In a plantation system there are generally fewer different local, regional and national entities within the producing country involved, and the farmer may know the price that can be achieved for his product in terms of offer and demand. Within a small-scale production system like Ethiopia, local speculators and exporters may retain most profit from the coffee sale. The weak negotiating position depends much on the lack of knowledge of the coffee market price. In addition, small-scale farmers are unable to distribute their crops themselves, so that there often is no alternative for them but to sell to the local speculator at a low price, even if the farmer is aware of what his product is worth. A solution to this problem might be to sell not to the market directly but to the governmental body or to a farmers' cooperative that is able to negotiate a better price. However, considering the high demand and the resulting shortage of single-origin coffee within the market, it could be disadvantageous for individual farmers (especially for large-scale producers) if they were forced to sell to a governmental body or to a farmers' cooperative, since they might gain a better price on the market. Therefore, the strategy of the FNC seems to be an adequate solution to overcome this problem by providing the necessary information about the coffee price and by giving the farmer the option to sell not on the market but to the FNC directly.

## Conclusion

To conclude, producing a niche market quality product such as single-origin coffee is one possible way to overcome the current coffee crisis. Regional legal protection may be ensured by intellectual property law, either by way of trademarks or by way of geographical indications. Whereas in the United States and Japan, geographical indications are treated as a subcategory of trademarks (in particular as certification marks and as regionally based collective marks respectively), the EC provides for *sui generis* protection. Under the laws of all three major coffee markets it is also possible to acquire trademark protection for geographical terms, although this is limited to certain cases. For instance, trademark law requires a "secondary-meaning", which demands a certain degree of awareness. In addition, neither in geographical indication regimes nor in trademark regimes can protection be obtained for generic terms.

When it comes to ensuring better protection for single-origin coffee, both the geographical indication and trademark strategies can be seen to represent mixed blessings. Whereas the particularities of the global coffee market are sometimes better accommodated by trademark schemes, the market characteristics are in other cases

better accommodated by geographical indication systems. However, as demonstrated by the example of Café de Colombia, a preferable alternative to protect and develop the reputation and value of coffee on a long-term basis could be a two-fold strategy, which would rely on both trademark and geographical indication protection. In any event, the decision of which intellectual property route to follow must be reached on a case by case basis, considering several factors, particularly the existing goodwill of the product, the existing legal system within the country of origin, the manner in which the coffee is produced (by small-scale production or a plantation system) as well as the possible costs and the time needed to gain protection through the specific IP tool.

However, in most cases neither geographical indications nor trademark systems are able to secure for individual farmers the benefits of the higher price paid for single-origin coffee on the world coffee market. In the absence of other measures, profits are generally retained by other actors within the coffee chain. To break this pattern, farmers could either sell their coffee collectively (for example through the government), or their negotiating position could be strengthened, in particular by ensuring that they are provided with information on coffee market prices.

## Endnotes

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1. See *Daviron/Ponte*, *The Coffee Paradox*, 2005, Zed Books: London & New York.
2. See *Steinrücken*, “Funktioniert fairer Handel? Ökonomische Überlegungen zum alternativen Handel mit Kaffee”, Diskussionspapier Nr. 32, TU Ilmenau, Institut für Volkswirtschaftslehre, p. 2.
3. See in detail *Foli*, *International Coffee Agreements and the elusive goal of price stability*, 4 Minn. J. Global Trade 79.
4. Compare *DeAngelis*, *Coffee, Mexico’s other bean: an examination of the globalization of the coffee industry, its impact on Mexican villages, and the possibility of surviving the grind*, 3 Wash. U. Global Stud. L. Rev. 887, 896; *Foli*, *International Coffee Agreements and the elusive goal of price stability*, 4 Minn. J. Global Trade 79.
5. Compare *International Coffee Report*, Vol.22, No.3/ 05.07.2007, p. 35.
6. *Osorio, Néstor*, Submission to UNCTAD XI, São Paulo, Brazil, June 2004, “Lessons from the world coffee crises: A serious problem for sustainable development”, p. 1.
7. *Daviron/Ponte*, *The Coffee Paradox*, 2005, Zed Books: London & New York, xvi.
8. *Osorio, Néstor*, Submission to UNCTAD XI, São Paulo, Brazil, June 2004, “Lessons from the world coffee crises: A serious problem for sustainable development”, p. 1.
9. See in detail *Daviron/Ponte*, *The Coffee Paradox*, 2005, Zed Books: London & New York.
10. See *Draeger*, *Perking up the Coffee Industry through Fair Trade*, 11 Minn. J. Global Trade 337, 341.
11. *Brown*, *Making coffee good to the last drop: laying the foundation for sustainability in the international coffee trade*, 16 Geo. Int’l Envtl. L. Rev. 247, 252.
12. *Ponte*, *Standards, Trade and Equity: Lessons from the Specialty Coffee Industry*, CDR Working Paper 02.13, November 2002, 14; *Daviron/Ponte*, *The Coffee Paradox*, 2005, Zed Books: London & New York, xvi.
13. See *Draeger*, *Perking up the Coffee Industry through Fair Trade*, 11 Minn. J. Global Trade 337, 343.
14. Compare the example of Honduras: *Fromm/Dubón*, Submission to the Conference on International Agricultural Research for Development, University of Bonn, 11 to 13 October 2006, “Upgrading and the Value Chain Analysis: The Case of Small-scale Coffee Farmers in Honduras”, available at <http://www.tropentag.de/2006/abstracts/full/99.pdf> (last visited January 27, 2008).

15. See *Draeger*, Perking up the Coffee Industry through Fair Trade, 11 Minn. J. Global Trade 337, 343.
16. *Daviron/Ponte*, The Coffee Paradox, 2005, Zed Books: London & New York, xvii.
17. Gerz/Avelino, Costa Rican Arabica coffee: Legitimacy for specialty, p. 65, in: Van de Kop/Sautier/Gerz, Origin-Based Products, KIT/CIRAD. Bulletin 372. KIT Publishers Amsterdam.
18. See in detail *Rangnekar*, The Socio-Economics of Geographical Indications – A Review of Empirical Evidence from Europe, UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development, October 2003.
19. For example, it has been reported that 50 mn lbs. of Antiguan coffee is traded internationally, whereas Antigua produces only 6mn lbs. See *Rangnekar*, The Socio-Economics of Geographical Indications – A Review of Empirical Evidence from Europe, UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development, October 2003.
20. For a different opinion see *Stern*, Are GIs IP?, E.I.P.R. 2007, 29(2), 39-42.
21. See Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).
22. A trademark may be constituted of a vast choice of signs, e.g., letters, words, numerals, devices including drawings and symbols, audible signs and even distinctive smells.
23. Compare Article 15(1) of the TRIPS Agreement.
24. *OECD*, Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and Legal Implications, December 21, 2000, COM/AGR/APM/TD/WP (2000)15/FINAL, p. 9.
25. Compare *WIPO Intellectual Property Handbook*, Policy, Law and Use, 2<sup>nd</sup> edition, 2004, WIPO Publication NO. 489 (E), p. 69.
26. See in detail *WIPO – Secretariat*, 2002: The Definition of Geographical Indications, Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Ninth Session, Geneva, 11 to 15 November 2002, SCT/9/4.
27. See *OECD*, p. 9. It is important to note that “certification mark” is not defined in the same manner in all countries.
28. It is important to note that “certification mark” is not defined in the same manner in all countries. For example, in the United States a certification mark may only be used by enterprises that have been authorised to use the mark by its owner.
29. See *OECD*, p. 9.

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30. Compare *WIPO* – International Bureau, Economic Importance of Trademarks and Geographical Indications and Their Use in Commerce, WIPO National Seminar on the Protection of Trademarks and Geographical Indications, Beirut, 17 to 19 March 2003, WIPO/TM/BEY/03/3.
  31. Compare *Mendes/Thomas*, Marketing and Branding Strategies: Use of Trademarks, Geographical Indications, and Industrial Designs for Business Success: Case Studies, 15 to 17 December 2004 (Shanghai, China), WIPO/SMES/SHA/04/2.
  32. *O'Connor*, Geographical indications in national and international law, Monographs in Trade Law, Number 6, March 2003, p. 60.
  33. *Stern*, The conflict between geographical indications and trade marks, or Australia once again heads off down the garden path, Address to the Annual Conference of the Intellectual Property Society of Australia and New Zealand, September 2004, p. 3.
  34. See, e.g. the European Community trademark system (outlined below).
  35. In particular, the “Madrid system” – the major international system for facilitating the registration of trademarks in multiple jurisdictions – offers a trademark owner the possibility of having his trademark protected in several countries by filing only one application directly with his own national or regional trademark office. An international mark registered in this way is equivalent to an application or a registration of the same mark effected directly in each of the national markets chosen by the applicant. If protection is not refused by the relevant national authority within a specified period, the mark is protected to the same extent as if it had been registered by the national office in question.
  36. For example, see European Council Regulation 510/2006 (see below), the 1891 Madrid Agreement and the 1958 Lisbon Agreement. Note that within the WTO context it is currently controversially debated whether or not a multilateral system for the notification and registration for geographical indications for wines and spirits should be established. Compare *Goebel*, Geographical Indications and Trademarks – The Road from Doha, 93 TMR 964 (976 ff.).
  37. Compare *WIPO – Secretariat*, 2002: Geographical Indications and the Territoriality Principle, Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Ninth Session, Geneva, 11 to 15 November 2002, SCT/9/5.
  38. For example, the United States and most common law jurisdictions grant trademarks on the basis of first use. By contrast, civil law jurisdictions (e.g., France) usually grant trademarks on the basis of first to register.
  39. The Trademark Act of 1946, as amended (Lanham Act), 15 U.S.C. 1051, et seq.

40. It is important to note that there is no separate non-trademark legal status that gives rights related to geographical indications in the same manner as provided for by the European Union system; see *McCarthy*, *McCarthy on Trademarks and Unfair Competition*, 4<sup>th</sup> edition, § 14:1.1 Geographical Indications.
41. See USPTO, Geographical Indication Protection in the United States, Glossary, available at [www.uspto.gov](http://www.uspto.gov) (last visited 27 January 2008); see also *Brauneis/Schechter*, *Geographic Trademarks and the protection of Competitor Communication*, 96 *Trademark Rep.* 782.
42. *Beresford*, *Geographical Indications: The Current Landscape*, 17 *Fordham Intel. Prop. Media & Ent. L.J.* 979, 984.
43. See 15 U.S.C. 1127.
44. Thus, geographic terms cannot be registered as trademarks without extensive use in commerce.
45. See Section 2(f). 15 U.S.C. § 1052(f).
46. The primary meaning to consumers is the geographic place; the secondary meaning to consumers is the producing or manufacturing source.
47. One key factor in deciding whether a sign of geographical origin should be excluded is the size of the place, since this affects how consumers are likely to understand the sign. See *Sherman/Bentley*, *Intellectual Property Law*, 2004, 2<sup>nd</sup> edition, Oxford University Press, p. 831.
48. See *Zacher*, *Pass the Parmesan: Geographic Indications in the United States and the European Union – Can There be a Compromise?* 19 *Emory Int'l L.Rev.* 427, 439.
49. *OECD*, *Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and Legal Implications*, 21 December 2000, COM/AGR/APM/TD/WP (2000)15/FINAL, pp. 41 f.
50. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Circ. 2001).
51. *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1569, 4 USPQ2d at 1142 (Fed. Circ. 1987).
52. If services are concerned the term “collective service mark” is used.
53. See *USPTO*, *Collective Marks*, Glossary, available at [www.uspto.gov](http://www.uspto.gov) (last visited 27 January 2008).
54. See 15 U.S.C. 1127.

55. See the Trademark Trial and Appeal Board (TTAB) (a USPTO administrative tribunal) in *Aloe Creme Laboratories, Inc. v. American Society for Aesthetic Plastic Surgery, Inc.*, 192 USPQ 170, 173 (TTAB 1976).
56. *Beresford*, Geographical Indications: The Current Landscape, 17 Fordham Intel. Prop. Media & Ent. L.J. 979, 984.
57. 15 U.S.C. 1127.
58. See *USPTO*, Certification Marks, Glossary, available at [www.uspto.gov](http://www.uspto.gov) (last visited 27 January 2008).
59. The message conveyed by a certification mark, when it is applied to goods or used in connection with services, is that the goods/services have been examined, tested, inspected or in some way checked by the certifier/owner, who is not the producer of the goods/services, by methods determined by the certifier/owner. The placing of the mark on goods or its use in connection with services thus constitutes a certification by someone other than the producer that the prescribed characteristics or qualifications of the certifier for those goods/services have been met. See PTO, p. 3.
60. E.g. the mark “Roquefort” (U.S. Registration No. 571,798) is used to indicate that the cheese has been manufactured from sheep’s milk and cured in the caves of the Community of Roquefort (France) in accordance with their long-established methods and processes.
61. Compare *USPTO*, Geographical Indication Protection in the United States, Glossary, available at [www.uspto.gov](http://www.uspto.gov) (last visited 27 January 2008).
62. The difference between a certification mark and a collective mark in the United States relates to the purpose of the marks. Whereas the latter one refers to the membership of its users in a particular organisation, the certification mark refers to certain standards of products or services.
63. Compare *Cotton/Morfesi*, Key Ingredients for Geographical Indications: Collectivization and Control – How Market-Based Trademark Systems Encourage Collectivization and Control, Paper presented on WIPO GI Symposium, Beijing, June 2007, pp. 6 ff.
64. Any party who would be aggrieved by the registration of a trademark, collective mark or certification mark, or would be damaged by the continued existence of a U.S. registration, may institute a proceeding at the TTAB, an administrative body at the USPTO. The TTAB has jurisdiction over opposition and cancellation proceedings as well as over appeals from an examining attorney’s final refusal to register a mark in an application. The losing party at the TTAB level may appeal the TTAB’s decision to the Court of Appeals for the Federal Circuit, a court with jurisdiction, *inter alia*, over

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intellectual property matters. From that court, the losing party may appeal to the U.S. Supreme Court.

65. *Beresford*, Geographical Indications: The Current Landscape, 17 Fordham Intel. Prop. Media & Ent. L.J. 979, 984.
66. In the case of common law protection, the onus of proof will be on the plaintiff trademark owner attempting to protect his rights against a third-party holder of a confusingly similar mark. In fact, this means that the enforcement of the right might be extremely expensive.
67. *Institut National Des Appellations v. Brown-Forman Corp*, 47 USPQ2d 1875, 1884 (TTAB 1998) (“Cognac” is a valid common law regional certification mark, rather than a generic term, since purchasers in the United States primarily understand the “Cognac” designation to refer to brandy originating in the Cognac region of France, and not to brandy produced elsewhere, and since opposers control and limit use of the designation, which meets certain standards of regional origin.)
68. Council Regulation (EC) 510/2006 of March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, O.J. (L 93) 12 (EC) superseded Council Regulation 2081/92 of July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, O.J. (L208) 1 (EC).
69. See CTMR Article 64 ff.
70. See in detail *Kur/Cocks*, Nothing but a GI Thing: Geographical Indications under EU Law, Fordham Intell. Prop. Media & Ent. L.J. Vol 17 (999); *O’Connor*, The Legal Protection of Geographical Indications, Intellectual Property Quarterly 2004, pp. 35-57.
71. Council Regulation (EC) 510/2006, Article 2(1)(a).
72. Council Regulation (EC) 510/2006, Article 2(1)(b).
73. Council Regulation (EC) 510/2006, Article 5(4).
74. Council Regulation (EC) 510/2006, Article 5(9).
75. Council Regulation (EC) 510/2006, Article 3(1).
76. Council Regulation (EC) 510/2006, Article 6.
77. Council Regulation (EC) 510/2006, Article 7(1).
78. Council Regulation (EC) 510/2006, Article 7(2).
79. Council Regulation (EC) 510/2006, Articles 7(4) and (5).
80. Council Regulation (EC) 510/2006, Article 13(1)(a).
81. Council Regulation (EC) 510/2006, Article 13(1)(b).

82. Council Regulation (EC) 510/2006, Article 13(1)(c).
83. Council Regulation (EC) 510/2006, Article 13(1)(d).
84. See in more detail *O'Connor*, Geographical indications in national and international law, Monographs in Trade Law, Number 6, March 2003, pp. 57 ff.
85. *Kur/Cocks*, Nothing but a GI Thing: Geographical Indications under EU Law, Fordham Intell. Prop. Media & Ent. L.J. Vol 17 (1999), p. 1000.
86. The CTM system is administered by the OHIM, which is located in Alicante (Spain).
87. Compare CTMR Article 1(2); see also in detail *Bentley/Sherman*, Intellectual Property Law, Oxford University Press 2004, p. 779.
88. CTMR Article 4.
89. *ECJ Cases C-108/97 and C-109/97*, Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots- und Segelzubehör Walter Huber (C-108/97), Franz Attenberger (C-109/97), Windsurfing Chiemsee, judgment of 4 May 1999; see also *Gielen*, European Community: Trade Marks – Protection of geographical indications as a trademark, E.I.P.R. 1999, 21 (10), N182-183.
90. See *Cases C-108/97 and C-109/97*, Windsurfing Chiemsee, para. 51.
91. Note that the use of an opinion poll for guidance in making this assessment, a method currently frequently used in Germany, is not precluded.
92. *Bentley/Sherman*, Intellectual Property Law, Oxford University Press 2004, p. 843.
93. See *ECJ, Case C-87/97 of 4 March 1999*, Consorzio per la Tutela del Formaggio Gorgonzola v Käserei Champignon Hofmeister GmbH & Co. KG, Eduard Bracharz GmbH, *Gorgonzola*.
94. CTMR Article 64 para. 2 sentence 1.
95. CTMR Article 64 para. 2 sentence 2.
96. See *Gangjee*, Protecting Geographical Indications as Collective Trademarks: The Prospects and Pitfalls, IIP Bulletin 2006, 112, 116; *OECD*, Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and Legal Implications, 21 December 2000, COM/AGR/APM/TD/WP (2000)15/FINAL, p. 45.
97. Law No. 47 of 19 May 1993 (as amended).
98. Law No. 134 of 15 May 1962 (as amended).
99. Notification from 28 December 1994 under Law No. 7 of 1953 (Law Concerning Liquor Business Associations).
100. Law No. 127 of 19 April 1959 (as amended).

101. Compare *Rademacher*, Der Schutz geographischer Bezeichnungen in Japan, GRUR Int 2006, 384 ff.
102. For an analysis of the proposals of the act see *Tessensohn/Yamamoto*, Setting out the stall, T.W. 2005, 177, 10-11.
103. Law No. 56 of 15 June 2005 amending the Japanese Trademark Law.
104. For the requirements for registration as a regional collective mark see Article 7 of the Japanese Trademark Act.
105. An agricultural cooperative is an example of such a collective organisation and it would hold the title for the benefit of all members of the group, who can use it. See *Gangjee*, p. 117 and *Toyosaki*, Summary of Revisions of the Japanese Trademark Law – Protecting Regional Brands, 2005, pp. 4-6.
106. The mark should in other words consist of a combination of a GI and a generic name: e.g., *Kona Coffee*, *Kobe Beef* or *Uonuma-san Koshihikari Rice*, comp. Articles 7(1) to (3) Japanese Trademark Act. See *Gangjee*, p. 117 and *Toyosaki*, pp. 4-6.
107. There should be a close relationship between the geographical name in the mark and the goods/services. See *Gangjee*, p. 117 and *Toyosaki*, p. 6.
108. The difference between “well known through use” for a regional collective mark and “secondary meaning” under Article 3(2) of the Trademark Act is that the latter requires the applicant to prove that his mark is famous throughout the country. By way of contrast, a regionally based collective mark need only be “well known” in the particular regional area and nearby regions, which means that a degree of consumer awareness is required.
109. See *Toyosaki*, p. 6.
110. See *Gangjee*, p. 117
111. Ibid.
112. Ibid.
113. Third-party rights are protected by virtue of prior use under Article 32 bis.
114. See *Toyosaki*, p. 6.
115. *Tessensohn/Yamamoto*, Japan: Trade Marks – Japan’s New Regional Collective Trade Mark System Will Protect Famous Goods and Services from Regional Communities, E.I.P.R. 2006, 28 (8), N145.
116. Café de Colombia holds, for example, over 40 percent of the specialty coffee market in the United States; see *Kotler/Gerntner*, Country as brand, product and beyond: a place marketing and brand managing perspective, in: Morgan/Pritchard/Pride,

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Destination Branding: Creating the Unique Destination Proposition, 2<sup>nd</sup> edition, Elsevier LTD (Oxford) 2004, p. 42.

117. The quality and features of Café de Colombia are achieved by using only Arabica coffee and are a result of several common factors: “the wet method of processing coffee, selective harvesting involving a significant amount of manual work, cultivation by long-established and skilled coffee growers, and the use of careful selection and classification processes”; see publication of the registration application of “Café de Colombia” as a PGI pursuant to Article 6(2) of Council Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs in the Official Journal of the European Union, 2006/C 320/09, para. 4.6.
118. The so-called 100% Colombian Coffee Program; see in detail <http://www.juanvaldez.com/menu/100percent/index.html> (last visited 27 January 2008).
119. See the FNC’s website <http://www.juanvaldez.com/menu/history/federation.html> (last visited 27 January 2008).
120. For example, as part of its marketing strategy the FNC started opening Juan Valdez cafés in the United States (New York) selling Café de Colombia.
121. Ibid.
122. Ibid.
123. Originally there were two versions of the logo. The North American version was “100% Colombian Coffee”; the international version, however, was “Café de Colombia”. In 1995, in order to globalise the brand, the FNC decided to phase out the English version of the logo, even if Northern American marketers that feature the logo on their packages are not yet required to change it.
124. See, e.g., the U.S. word mark “Juan Valdez” available at <http://tarr.uspto.gov> (last visited on 27 January 2008); several figurative CTMs for “Juan Valdez” and “Café de Colombia” can be accessed at [http://oami.europa.eu/CTMOnline/RequestManager/en\\_Result\\_NoReg](http://oami.europa.eu/CTMOnline/RequestManager/en_Result_NoReg) (last visited 27 January 2008).
125. Compare the logo at <http://www.juanvaldez.com/MENU/logo.html> (last visited 27 January 2008).
126. See *ibid.*
127. Ibid.
128. Ibid.

129. The denomination does not cover the final product; rather, protection is only provided for green coffee.
130. See *Schulte*, Smelling the Coffee, at [http://www.lovells.com/Lovells/MediaCentre/Articles/Smelling+the+ coffee.htm](http://www.lovells.com/Lovells/MediaCentre/Articles/Smelling+the+coffee.htm) (last visited on 27 January 2008).
131. Initially the application was filed for a PDO. Since “Café de Colombia” obviously does not fulfil the legal requirements for the registration of a PDO, the application was changed to a PGI application.
132. See Official Journal of the European Union (2006/C 320/09); available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:320:0017:0020:EN:PDF> (last visited on 27 January 2008).
133. EC-Publication OJ L 240, 13.9.2007, p. 7; see [http://ec.europa.eu/agriculture/qual/en/1360\\_en.htm](http://ec.europa.eu/agriculture/qual/en/1360_en.htm) (last visited on 27 January 2008).
134. See *Schulte*, Smelling the Coffee, at [http://www.lovells.com/Lovells/MediaCentre/Articles/Smelling+the+ coffee.htm](http://www.lovells.com/Lovells/MediaCentre/Articles/Smelling+the+coffee.htm) (last visited on 27 January 2008).
135. In contrast to PGIs, trademarks or certification marks do not provide for protection against the use of the words like Colombian “style” or “blend”.
136. Compare *Garrido de la Grana*, Geographical Indications and Trademarks: combined efforts for a stronger product identity, International Symposium on Geographical Indications, Beijing, 26 to 28 June 2007, WIPO/GEO/BEI/07/4.
137. See *Cousin*, Ethiopia Coffee and Trade, TED Case Studies, Volume 7, Number 2, June 1997 (Case No. 397), p. 2.
138. *Gresser/Tickell*, Mugged: Poverty in Your Coffee Cup, Oxfam Academic: 2003, p. 8.
139. *Ameah*, Significance of Ethiopian coffee genetic resources to coffee improvement, in: Engels/Hawkes/Worde: Plant Genetic Resources of Ethiopia, Cambridge University Press: 2002, p. 355.
140. See *Cousin*, p. 2.
141. For example, such systems for coffee have been developed or are under formulation for “Jamaica Blue Mountain”, “100% Colombian Coffee”, “100% Kona Coffee” (Hawaii/USA), “Antigua Coffee” (Guatemala), “TORAJA” (Indonesia), “CAFÉ VERACRUZ” and “CAFÉ CHIAPAS” (Mexico).
142. See at [http://www.lightyearsip.net/ethiopiacoffee.shtml](http://www.lightyearsip.net/ethiopiacooffee.shtml) (last visited on 27 January 2008).

143. See *March*, Making the Origin Count: Two Coffees, WIPO Magazine 5/2007, p. 1; see also the website of the Ethiopian Coffee Network <http://www.ethiopiancoffeenetwork.com/about7.shtml> (last visited on 27 January 2008).
144. Since Ethiopia is not a member, it cannot profit from the Madrid system for the international registration of marks.
145. See at <http://oami.europa.eu/en/db.htm> (last visited on 27 January 2008); Trademark No. 004348751 (Sidamo), 004348744 (Yirgacheffe) and 004348736 (Harrar).
146. See at [http://www.ipdl.inpit.go.jp/homepg\\_e.ipdl](http://www.ipdl.inpit.go.jp/homepg_e.ipdl) (last visited on 27 January 2008), Registration No. 4955561 (Sidamo) and 4955560 (Yirgacheffe).
147. A prior claim by a Japanese company was already abandoned.
148. In the reporting media, Starbucks, the largest purchaser of Ethiopian coffee (esp. Sidamo), was considered to be the driving force behind the NCA's objection. However, the objection and the reactions of Starbucks evoked a broad public discussion about the pros and cons of Ethiopia's trademark strategy. See Economist, 30 November 2006 (Storm in a Coffee Cup); New York Times, 6 October 2006 (The Global Coffee Trade, a Bitter Brew for the Poor); Der Spiegel, 16 November 2006 (A hot cup of money – Starbucks, Ethiopia, and the Coffee Branding Wars); or The Guardian, 26 October 2006 (Starbucks, the coffee beans and the copyright row that cost Ethiopia £47m).
149. As evidence, seven Google sites were attached that were meant to show that the proposed mark "Sidamo" was incapable of being used in connection with coffee because it is a recognised type of coffee and coffee bean. Guidance in making this assessment by using an opinion poll (an instrument common in Germany) was not sought.
150. See at <http://tarr.uspto.gov> (last visited on 27 January 2008), Serial No. 78589307 (Sidamo), 78589325 (Yirgacheffe) and 78589312 (Harrar).
151. The EIPO provides for Model Trademark Licence Agreements for the United States, the EU and Australia; accessible at <http://www.ethiopiancoffeenetwork.com/licensing3.shtml> (last visited on 27 January 2008).
152. <http://www.ethiopiancoffeenetwork.com/licensing.shtml> (last visited on 27 January 2008).
153. The committee includes farmers' cooperatives, private exporters and representatives of organisations that are directly responsible for Ethiopia's coffee sector.

154. Another positive “side-effect” of Ethiopia’s Trademark and Licensing Initiative was the broad media coverage, which greatly furthered public knowledge of Ethiopian coffee.
155. *Cotton/Morfesi*, Key Ingredients for Geographical Indications: Collectivization and Control – How Market-Based Trademark Systems Encourage Collectivization and Control, Paper presented on WIPO GI Symposium, Beijing, June 2007, p. 7.
156. *Ibid.*, p. 7.
157. However, this situation can be contrasted with discriminately refusing to certify the goods of any person who meets the standards that such mark certifies, which constitutes a ground for opposition or cancellation.
158. *Ibid.*, p. 8.
159. Compare trademark regimes, which do not prevent other producers from registering similar signs, provided that they do not result in a likelihood of confusion.
160. Generally, without advertising, the goodwill of a trademark or a geographical indication could hardly be established. Even if GI protection is generally related to existing wealth, i.e., certain goodwill is already established, advertisement often is the only way to also obtain “global goodwill”.
161. The coffee’s origin often serves as an ingredient brand. These are brands that are used as one component “ingredient” of another branded product (or service). The ingredient is revealed to the end consumer through a distinctive sign (e.g., a name or a logo), with the effect that the perceived value of the offering is increased. A problem from a producer’s point of view is, however, that even if the consistent promotion of single-origin coffee turned these coffees into powerful and valuable brands, they would generally not have legal standing as trademarks, since two out of three have not been recognised in the United States as legal commercial entities. See *Holt*, Brand Hypocrisy at Starbucks, available at [www.sbs.ox.ac.uk/starbucks](http://www.sbs.ox.ac.uk/starbucks) (last visited 27.01.2008).
162. *Gerz/Avelino*, Costa Rican Arabica coffee: Legitimacy for specialty, p. 73, in: Van de Kop/Sautier/Gerz, Origin-Based Products, KIT/CIRAD. Bulletin 372. KIT Publishers Amsterdam.
163. *Holt*, Brand Hypocrisy at Starbucks, available at [www.sbs.ox.ac.uk/starbucks](http://www.sbs.ox.ac.uk/starbucks) (last visited 27 January 2008).
164. See *Cotton/Morfesi*, Key Ingredients for Geographical Indications: Collectivization and Control – How Market-Based Trademark Systems Encourage Collectivization and Control, Paper presented on WIPO GI Symposium, Beijing, June 2007, p. 7.

165. *Holt*, Brand Hypocrisy at Starbucks, available at [www.sbs.ox.ac.uk/starbucks](http://www.sbs.ox.ac.uk/starbucks) (last visited 27 January 2008).

166. Compare Article 24 para. 9 of the TRIPS Agreement.

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