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TRADE MARK YEARBOOK 2002, MANAGING INTELLECTUAL PROPERTY

In Mexico, certain types of geographical names are protected by the concept of appellations of origin. This protection is provided for in the Mexican Law of Industrial Property. Article 156, which reads:

Understood as an appellation of origin is the name of the geographic region of the country which is used to designate a product that originates there, and the quality or characteristics of which are due exclusively to the geographic medium, which includes natural and human factors.

This definition is compatible with that set forth in Article I of the Lisbon Agreement for the Protection of Appellations of Origin and their international registration.

The protection of a geographic name as an appellation of origin may be requested by persons or corporations devoted to the production or manufacturing of the product, by the chambers or associations of manufacturers or producers, by the agencies or entities of the federal government and by the entities of the federation, under Article 158 of the Industrial Property Law. The Mexican government will analyze the application in order to determine whether it fulfills the principles and standards of the Lisbon Convention and the Mexican Industrial Property Law. If the government finds that the name could indeed qualify for the protection it will proceed, declaring it accordingly.

Under the Mexican Law, the title holder of the appellation of origin shall be the Mexican state, the use of the same being regulated by the following entities.

MEXICAN INSTITUTE OF INDUSTRIAL PROPERTY

- In charge of stating the protection of a given appellation of origin.

- In charge of the registry of said appellation in coordination with the Ministry of Foreign Affairs, which is in charge of obtaining its recognition in foreign countries under international treaties.
- In charge of granting authorization for the use of a specific appellation, to persons or companies which produce the product within the region.

STANDARDS AND NORMALIZATION BURO

- Sets forth the standards (NOM or official regulations) for the creation of regulatory councils or associations devoted to the monitoring of the manufacturing of a specific appellation of origin.

REGULATORY COUNCILS OR ASSOCIATION

- In charge of testing the product for the required quality, assuring that such quality is observed during the manufacturing process.
- In charge of supervision as verifying organisms, designated for the testing of the product from every producer.

The Mexican government has protected a number of appellations of origin, duly declared by the Mexican Institute of Industrial Property (IMPI). “Tequila” is the most important among them, as it is a leading product in sales in Mexico and in exports, with a great recognition from international consumers.

TEQUILA

The authorized use of the appellation of origin Tequila is obtained through the filing by the interested party of an applicant before the Institute, proving that he devotes himself to the manufacturing of the protected product, within the protected territory established for that purpose, complying with the standards set forth by the NOM or by the official regulations.

The right to use the appellation may be transmitted through the registration of an agreement between the user designated by the government and its distributor or marketers, before the Institute. After proving that the authorized user complies with the terms and conditions provided by the law, the user may, in turn, authorize the use of the appellation to distributors or marketers of the products of its trade marks.

The entity designated to control the commercialization of Tequila is the Tequila Regulatory Council which is in charge of:

- Ensuring the compliance of the NOM-Tequila through verification.
- The guarantee to the consumer that the product is genuine.
- Certifying the compliance with the NOM-Tequila, safeguarding the appellation of origin in Mexico and foreign countries.

INTERNATIONAL CONFLICT

Since at least six or seven years ago, Tequila has increased in popularity, not only at the national level, but also in the export market.

This fact has caused the emergence of new Tequila manufacturers both in the territory authorized by the appellation and in territories of other countries such as South Africa and Japan, among others, which do not recognize the right Mexico has in the use and sale of the product.

INSUFFICIENT PROTECTION

As mentioned above, the specific provisions for the protection of appellations of origin in Mexico are based essentially on the principles of the Lisbon Agreement for the Protection of Appellations of Origin and their international registration, published in the Federal Official Gazette dated December 31, 1962.

Said agreement states that the countries will agree to protect in their territories the appellations of origin of products of the other countries of the Union, through registration in the international office designated by the agreement for such purpose.

Unfortunately, there is a problem for which the protection of the Lisbon Agreement does not comply with the needs of a whole international protection. This is due to the number of signatory countries that, until October 25, 2001, were only 20.

The lack of participation of more countries in this Agreements has three causes. First, the lack or pressure by the bodies defending intellectual property rights to countries whose laws do provide for the concept of appellation of origin but for some reason do not wish to be members of the agreement. Pressure could be exerted through the exchange of commercial benefits in agreements of greater magnitude, as has occurred in the past in agreements among countries which are members of free trade agreements or agreements similar to TRIPs.

Second, what some nations intend by not signing the Agreement of Lisbon is to manufacture specific appellations of origin within their territories. According to their criteria, they possess the geographic characteristics required for the manufacture of a given product, along with the fact that said product may provide the region or the entire country with an income.

Finally, another reason why some countries do not subscribe to the Lisbon Agreement is because their laws do not provide for the concept of appellation of origin, but their protection is based on similar figures with some different characteristics, such as the geographic indication. This difference means that a clause accepted as indispensable for the protection of an appellation of origin be contradictory and harmful for a nation with a differently protected figure.

GEOGRAPHIC INDICATION

Accordingly to Article 22 of TRIPs, a geographical indication is that which

identifies a product as originally coming from the territory member of a region or locality of this territory, when a given quality, reputation or feature of the product is essentially imputable to its geographic origin.

Even if the principle of appellation of origin and geographic indication are very similar figures, the concept of the latter is much broader since it allows greater interpretations, therefore adapting to a greater number of laws in various countries, without infringing the essential principles thereof.

PROTECTING MEXICAN APPELLATIONS OF ORIGIN IN FOREIGN COUNTRIES

As we have mentioned before, the need for the Mexican government to protect appellations of origin, specially Tequila, has become an urgent issue. This is due to commercial globalization and the increase in media allowing far-reaching advertising for a product, which leads to the need to adapt the Mexican legislation to an international framework. An example of this could be the geographic indication.

Even if it is true that after the execution of TRIPs, the Law of Industrial Property was examined so as to include the basic concepts of said agreement, no change was made.

With the purpose of wholly protecting, its appellations of origin, Mexico has subscribed to agreements such as TRIPs and NAFTA, which base their rulings in the concept of geographic indication.

These treaties have recognized the protection of indications of origin as known in the Madrid Agreement dated April 14 1891, and which reads as follows:

(An indication of origin) is every sign used with the purpose of indicating the place of manufacture, obtention, extraction and collection of a product, regardless of the quality or features of said product or who produces it.

From the above-mentioned analysis of the international treaties, it can be deduced that even though the name tequila is well protected in the corresponding chapter of the Industrial Property Law, the fact that the agreement has only 20 members can be regarded as a disadvantage. It is therefore extremely important that Mexico places more emphasis on the system of geographical indications, so that it can harmonize standards with the other member countries of NAFTA and TRIPS and really benefit from this form of protection.