

Law Audience Journal, Volume 3 & Issue 1, 4th July 2021,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-1/>, Pages: 290 to 302,

Title: Geographical Indications: “Say Cheese and Drink Tequila”,
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Cite this article as:

MS. SAKSHI JOLLY, *Geographical Indications: “Say Cheese and Drink Tequila”*, Vol.3 & Issue 1, Law Audience Journal, Pages 290 to 302 (4th July 2021), available at <https://www.lawaudience.com/geographical-indications-say-cheese-and-drink-tequila/>.

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Publisher Details Are Available At:

<https://www.lawaudience.com/publisher-details/>

Editorial Board Members Details Are Available At:

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(E-ISSN: 2581-6705)

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ABSTRACT:

*“Intellectual Property Rights refer to the creation by one’s intellect i.e., one’s mind. Copyrights, Trademarks and Patents are the most common type of creative works protected by these rights. However, Intellectual Property’s main focus is the originality. The originality simply means bringing something into existence. One of such IPRs is named Geographical Indication which indicates the origin of a product. This paper will focus on the intersection between law and geographical indication. It will be pertinent to see how wide coverage geographical indication has in terms of international exposure. The emphasis will be put on two such products from different jurisdictions. One of these will be the **Parmigiano Reggiano Cheese of Italy, and the other will be the Tequila of Mexico.** The protection offered by these jurisdictions as well as over the world will be analyzed, along with the question of why these products are capable of deserving the said protection. These two case studies will help us to understand the concept and history of geographical indication better”.*

I. INTRODUCTION:

Geographical Indication, the meaning lies behind the name. To simply state, anything which is an indication towards particular geography, territory or community for a product and which can easily connect the dots between such product and the place of origin. As stated by the World Intellectual Property Organization, ***“A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.”***¹ It basically can be divided into two main features²; Natural Factor and Human Factor.

The formerly included characteristics like soil, climate, seasonal change and anything and everything related to nature whilst the latter includes traditional knowledge, and specific skills. Before jumping the gun, it is significant to look at the history of GI as apparently, the

¹ World Intellectual Property Organization, https://www.wipo.int/geo_indications/en/.

² The French are familiar with this concept under the names of ‘Terroir’ and ‘Savoir Faire’ respectively.

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recognition of such geographic products³ started with France in the year 1351 and gained importance under the law of Appellation of Origin in the year 1919. Since then, the laws and treaties kept evolving bringing o the year 1995 and the TRIPS⁴ agreement, giving us all the new version of *Appellation of origin (hereinafter referred to as AOO)* as Geographical Indication.

The only difference between the two was that AOO was stricter than GI. Why stricter? AOO required the product to have ‘*essentially*’ and ‘*exclusively*’ a linkage with the geographical origin that means from supplying of raw materials to processing-all steps should have been compiled by in the origin whereas, GI would be given even when only one of the single criteria is present or satisfied in a product. Thus, the process and registration of a GI are much simpler than that of an AOO.

However, it is to be noted that the TRIPS agreement gave in the way for a GI, but did not define the protection system and left it on to the discretion of the respective nations. Thus, it only laid down the ‘minimum standards.’ Countries like the USA follow the system of Trademarks Law for the protection of a GI, whereas India and EU follow the sui generis system. It is interesting to note that the EU’s system of protection is a little different from the normal lawmaking.

Under Regulation no. 1151/2012 (article 5), the European Union divides its GI registrations into two broad aspects: PDO & PGI⁵. PDO or the Protected Design of Origin is on the similar lines as AOO and requires all the steps to be followed in the same origin, whereas PGI or Protected Geographical Indication requires one of the steps, i.e., either natural or human to have taken place in the geographic region. With this brief boundary, the aim of this paper is to revolve around two case studies; The Parmigiano Reggiano Cheese of Italy and the Tequila of

³ Earlier, the product referred to here only included the drink Wine which was famous in the France region.

⁴The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) was negotiated in the WTO as part of the Uruguay Round of Negotiations which were concluded on 15 April 1994.

⁵ European Certification System, Association des producteurs fruits et légumes du Sud-Ouest, <https://www.pdopgi.eu/european-certification-system/>.

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Mexico. This paper establishes the unknown of both of the above and aims to cater to every question, a sound mind would raise upon these IP protected products.

II. PARMIGIANO REGGIANO OF ITALY:

What if someone tells you, with three ingredients you could create a recipe of the king of the like? In the world and trend of preservatives and additives, does this seem even possible? Yes, it is. Parmesan cheese or Parmigiano Reggiano cheese is said to be the king of cheese for this very reason. Since the 12th century when a few monks decided to create a kind of cheese which could last longer and preserved effectively, this product has won hearts and stomachs of everyone around Italy⁶. As aforementioned. With only three ingredients; Milk, Salt and Calf rennet this cheese is ‘made and not produced’ in the words of the cheesemakers.

As a well-deserved result, Parmesan cheese has become the world’s famous and wanted in every-kitchen kind of a product, making the Italians and especially the cheesemakers immensely elated. From the human factor which is the craftsmanship of the cheesemaker to the natural factor which is the soil used to produce the fodder on which the cows graze in turn giving their milk for the production of this cheese, all factors together combine to form this very delicacy of the Northern-Italy⁷.

“Diversity is the key to our story as the seasons might differ, and the craftsmanship of the cheesemakers as well; But we do maintain the standard of the cheese” as said the cheesemakers when asked if the same quality of cheese has been produced over the years. The honesty in their statements makes the listeners feel connected to the provinces, no wonder the consumers have bestowed their trust in Parmesan Cheese over a thousand years now. Being so in-demand in the market, the dairy farmers of the above-mentioned provinces in 1934, decided to lay their rights in the hands of a consortium⁸ which would make the imitations of Parmigiano Reggiano

⁶ The history, Parmiano Reggiano- The One and Only, CONSORZIO DEL FORMAGGIO PARMIGIANO REGGIANO, <https://www.parmigianoreggiano.com/product-history/>.

⁷ The provinces of Parma, Reggio Emilia, Modena, Bologna and Mantova.

⁸ Conzorzio del Formaggio Parmigiano-Reggiano.

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disappear and also act as a right holder for those working day and night to make the best product.

As mentioned before, it takes only milk, rennet and the salt to make this product. However, the art of making wheels of cheese, cutting it diligently and putting it to the salt process for a period of 20 days, requires a serious amount of dedication and traditional knowledge. After being processed in the dairy, the cheese is taken to storage for maturing for a minimum period of 12 months. “They cannot perform miracles if they do not have good milk” thus, the cheesemakers recognise the importance of soil as well as the blessing of cows and the climate, along with recognizing their traditional knowledge.

Thus, Parmesan cheese is clearly the king of cheese. However, this paper will further analyze if the European Union has bestowed on it the registration of a GI, if yes then of which kind. If it is registered in any other country along with infringements, if any. It would be definitely intriguing to see the struggles and victories of such a desired product.

II.I REGISTRATION UNDER THE EU:

The prospects of a Geographical Indication have been dealt with by this paper in the introduction itself. To brief, a GI not only acts as a boon for the producers who wish to protect their product from imitations and counterfeiting but also the consumers who bestow a particular amount of faith and trust in that product. Thus, the two-fold aspect of GI remains at the threshold of the producers and consumers. Having established the fact that in the present scenario, all the business of the Parmesan Cheese is taken care of by the Consortium or the Consorzio as the Italians call it. The work of the Consortium was not to enjoy the power but to bring that power into action when needed, thus the Consortium acted as a watch-dog for infringements but also a responsible power holder who would register the Parmesan Cheese, if and when needed under one or any treaty. Thus, in the year 1951 with the coming of International Convention on the Use of Appellations of Origin and Denominations of Cheeses also known as the “Stresa Convention”, the Consortium with no time wasted got registered the

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Parmigiano Reggiano under the title of an Appellation of Origin. This convention was a great development for the products with generic names. Cheese like Parmesan, Feta, Cheddar and the like were recognized as generic by the consumers hence, not recognizing the true value behind the production and making of this product. With the coming in of this convention, such products got registered under the domain of AOO. It was the time of happy updates when in 1955 the Italian government supported the claims of dairy workers and the consortium and stated that only the cheese complying with the standards and produced in the Parmigiano Reggiano region can be registered as AOO, thus eliminating the bad faith competition and unfair practices.

As stated before, the law is always evolving and so are the treaties in today's time of globalization. With the year 1995 and the TRIPS agreement, the Consortium had the power to go for a widely recognized registration under the GI tag. As said, the European Union follows the PDO and PGI outcomes and here in this case the Parmesan Cheese got registered itself as the PDO under the European Union. By PDO it meant, that from the supplying of raw materials to processing, from the natural factor to the human, all the steps should be taken in the territory of the product with which it is linked. The cheese wheels before going for maturity are stamped with the indication of 'PDO', 'Parmigiano Reggiano' along with the year and month of the making.

The indication of a PDO or a recognition mark because of GI is not only beneficial for the producers but in more so for the consumers. The cheesemakers stated that 'If the consumers are cheated, they themselves feel cheated' which shows that the consumer welfare is at number one priority for the cheesemakers. The Consortium is always on its toes going for one or the other registrations. Not only did it cover the EU sector, but also through the Lisbon Agreement of 1958, it got recognized in various nations through the single filing system. The heart of this Consortium is always around Parmesan Cheese living for it, beating for it and fighting for it;

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that is probably one of the reasons why this product was one of the first 10,000 registered GIs in the world.⁹

II.II PROTECTION IN DIFFERENT COUNTRIES VIA **DIFFERENT REGIMES:**

As it is known to the IP professionals and largely the learned producers that since the coming of the TRIPS agreement, GI protection has been recognized, sure however, that certainly does not mean that the same process or regime is followed across nations. Widely, before the coming of the GI protection, common law was followed under the guise of unfair competition and consumer law. Presently, the scenario has changed and there have emerged two broad categories of protection systems for GI. One being the sui-generis system wherein the nations form a unique law for the protection of their product in GI or the Trademark system wherein the products are protected under the trademark law of the nation, being certification mark or collective mark. The former is seen in countries like India, EU while the latter is seen in countries like the USA, Australia.

Contemplating the protection of Parmesan cheese has received, the research led this paper to analyse the importance of diversity and how beautifully the Consortium shielded the product across various nations with different set of regimes. Starting with the USA not the sui generis system but the trademark system came in handy for the Consortium. US is a believer and always has been of protecting the products under the category of certification marks and collective marks, which means protection will be given to the product and the name could be used by those products which satisfy the requirements and characteristics of the certification mark. Thus, in the US, the Consortium was successful in registering the product under the certification trademark and aim at protecting its product further. Although, they had even attempted to protect the word ‘Parmesan’ with the USPTO office, the application failed as it was claimed to be a generic word by the registry. In a country like India, where there is a sui-

⁹ The King of Cheese and its IP Crown, World Intellectual Property Organization, (NOV 19, 2013), <https://www.wipo.int/ipadvantage/en/details.jsp?id=3664>.

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generis system of GI protection, the Consortium did not leave any stone unturned and paved a way in the developing countries for protection as well. Under the GI Act of 1999, Parmigiano Reggiano got registered under the application number 351 and claimed its superiority in India as well.

Not only did the Consortium go by the sui generis protection and the trademark protection but also, got its hands over the Bi-Lateral treaties as well. In Switzerland, the protection of Parmesan Cheese is through bi lateral agreement between the EU and Switzerland to respect and protect the product’s legacy. It is indeed significant to mention that GI registrations was not the only priority for the Consortium. Along with these protections, it has got various domain names registered in various countries especially where the commercialization angle is at stake showing every other product and producer around that ‘where there is a will, there is a way’ It did not let the variety and exhaustive protection measures hinder the protection and legacy of Parmigiano Reggiano.

II.III BRANDING AND INFRINGEMENT:

The Consorzio has kept its name and the brand intact and to keep it going they have come up with a rather interesting way of differentiating and recognizing the registered cheese. Not only have they colour coordinated but also have value coordinated so that it is just for the consumers who are clearly a fan of the Parmesan cheese. As aforementioned, before going for maturing and after salting, the wheels of cheese are stamped with printed material suggesting it to be a PDO with the year and month of the making of the cheese. The branding of the cheese is done in three forms, i.e., Red, Silver and Gold.

<u>Coloured labels:</u>	<u>Maturing age:</u>	<u>Cost:</u>
Red	Over 18 Months	Best Value Product
Silver	Over 22 Months	Slightly Higher
Gold	Over 30 Months	Premium Quality

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Thus, the Consorzio is very prompt and diligent whilst making and selling Parmigiano Reggiano Cheese. However, every good thing faces an obstacle in its journey, and this stands true for Parmesan cheese as well. It was in 2008 when the European Court of Justice, gave its decision in a case¹⁰ wherein German producers were selling cheese under the name of ‘Parmesan Cheese’ and were filed a suit against by the Commission of European committees for infringing the GI of the Italian producers.

The court gave a half full-half empty glass judgement, wherein they rejected the claim of the German producers saying ‘Parmesan’ was a generic name and thus could not be held of infringing any other product and said that the cheese if Parmesan should only and only be coming from Italy i.e., the regions which make it otherwise no producer would be able to use the tag of this cheese on their product.

It was half empty as the Court said, it was not the duty of the German government to police and monitor the usage and selling of such products, and that it was the duty of the Commission to make them known of such infringing activities. However, it was still deemed to be a major victory for the Parmesan producers of Italy.¹¹

Not only in Germany, but also in Mexico and the US the situation is the same. While in Mexico, the company using ‘Parmesan’ was held liable because of the registered trademark, in the US situation is still a little different. USA¹² refuses to recognise ‘*Parmesan*’ as an intellectual property and gives only the right of a certification holder as it claims it to be of generic nature. However, things might change, EU might enforce stricter laws and maybe someday, US comes around to recognise the actual right holders and not the ones who claim under them in fake

¹⁰ Case C-132/05 Commission of the European Communities vs Federal Republic of Germany.

¹¹ Mark Tran, Only One Parmesan Court Rules, THE GUARDIAN, (Feb 26, 2008, 9:41 GMT) , <https://www.theguardian.com/world/2008/feb/26/italy.germany>.

¹² Larry Olmsted, Most Parmesan Cheese in America are Fake: Here’s Why, Forbes, (Nov 19, 2012, 07:56 am), <https://www.forbes.com/sites/larryolmsted/2012/11/19/the-dark-side-of-parmesan-cheese-what-you-dont-know-might-hurt-you/?sh=247d561c4645>.

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voices. After all, *“What’s kept in a name, would only be known to the ones struggling to keep it.”*

III. TEQUILA OF MEXICO:

Imperialism is not always bad and the discovery of the tequila of Mexico is the perfect example for the same. In the fifteenth century when the Spanish conquered Mexico, a drink known as the Mezcal spirit was produced. The tequila which is drunk in today’s times is a further distilled version of Mezcal.¹³ The Tequila city of the Jalisco state in Mexico, has the premium and supportive kind of red soil which is appropriate to produce this drink. The soil helps offers the needed atmosphere for the plantations of the ‘blue agave’ It is to be noted that this tequila can only and only be produced from juices derived after the fermentation of blue agave and no other. It is also interesting to note that this drink dates back to 200 years ago, doing wonders starting from the regional taste to the present time when it has become a world-classic taste.¹⁴

Whilst in the present times most of the producers use the modern distilleries to produce the best of its product, there are still some people operating at a lower level working with the same traditional knowledge without the fancy tools. The blue agave needs at least 8-14 years to mature so that the its core (also known as the piña) is ready to distil the perfect tequila. When we talk about geographical indication, we talk about two factors which make it worth being considered as a GI i.e., the natural factor and the human factor.

Having mentioned the natural factor being the soil, the environment and climate of the city of Tequila, it brings us to analyse the human factors of the said product. The selection of the core, cutting, fermenting, yeasting are all the steps which are needed to be followed with great caution and care and can only be performed by people with this gathered knowledge of traditional times.¹⁵

¹³ Ryan Thomas, Tequila a Bit of History, LosCabos Guide, (Oct 15, 2002), <http://www.loscabosguide.com/tequila-a-bit-of-history/>.

¹⁴ Intellectual Property As a Lever For Economic Growth The Latin American and Caribbean Experience, WIPO Magazine, (Jan-Feb 2004),

https://www.wipo.int/export/sites/www/wipo_magazine/en/pdf/2004/wipo_pub_121_2004_01-02.pdf#page=7.

¹⁵ Liquid Gold from The Agave, World Intellectual Property Organization, (Sep 3, 2010),

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‘Just like a single-malt scotch, tequila too is nicer when aged’ Thus, there are variety of this product available all depending on what kind and type and time it took to age, ferment and distil. The regulation of the Mexican government states that all tequilas have to age for 14-21 days after which it can be sold and ready for consumption.

III.I REGISTRATION IN THE COUNTRY OF MEXICO:

Just like the Consortium of Parmesan cheese, the producers of Mexico were no behind in fact Tequila was the first Appellation of Origin to be registered in Mexico in the year 1974. Thus, the registration of the product dates back to the 1970’s showing how protection was always wanted and recognized by these producers along with the Mexican government. Under the AOO title, only 5 entities were allowed to produce the ‘tequila’ and these entities were shortlisted after cross checking the factors; both human and natural, and environmental conditions in each of these provinces bringing it down to the Mexican government holding all the rights over the word and use of ‘*Tequila.*’ As mentioned before, tequila developed from a region and spread over world-wide so did its protection. With the coming of the Lisbon agreement in 1958, Mexico was no behind and gained a good reputation among nations through the single filing system and got itself registered under the Lisbon in 1978.

III.II INTERNATIONAL REGISTRATION AND IP **ENFORCEMENT:**

When a country is hard-working and diligent in getting its products the kind of protection they should receive, such countries are not behind when it comes to protecting the product internationally as well. The same is true in the present case. The NAFTA¹⁶ agreement is the first agreement that should be recognized in this context. This particular free trade agreement removed all the trade barriers between three countries, i.e., the USA, Mexico and Canada. Thus, this agreement acted in favor of Mexico when we talk about the protection of tequila as it did

<https://www.wipo.int/ipadvantage/en/details.jsp?id=2611>.

¹⁶ The North American Free Trade Agreement (NAFTA) is a treaty entered into by the United States, Canada, and Mexico; it went into effect on January 1, 1994.

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not have to go through any special registration process in the US, the agreement took care of the protection in itself. Both the other countries recognize Tequila of Mexico and take stringent actions when they find an infringing use taking place in their territories.

Apart from the USA, in countries like India and EU where there is a sui generis system of registration, the Mexican government did not leave its way and got the product registered. In India, it was registered in the year 2011 under the application number 243 in the register of Geographical Indications. Interestingly, with the European Union a bilateral agreement was signed between both the parties however, enforcement and protection were a little less with no permanent reasons whatsoever. But a good thing which took place recently¹⁷ was the recognition of Tequila from Mexico by the EU in totality in their register of Geographical Indications.

They stated that the EU understood the most of anyone what it is to have the protection of spirits and thus happily bestowed the title of GI on the Tequila of Mexico. With registrations, Mexican government was no behind in enforcing these rights as well. After all, what is the use of these rights if one cannot make use of them at the time of difficulty? Through the *Mexican Institute of Industrial Property also known as IMPI and the Tequila Regulatory Council of Mexico (CRT)*, the government uses its rights and keeps a check on unfair practices and counterfeiting especially on the ‘pseudo tequilas’.¹⁸

It is intriguing to note that despite these stringent measures the counterfeiting took place at a large scale. It is said that amidst the 1990 period, around 3 million litres of ‘Pseudo Tequila’ were sold in Europe which will now not be seen happening at such a massive level because of the direct protection received by the EU to this product. It is also to be noted that according to

¹⁷ The Commission approves protected geographical indication from Mexico, European Commission, (Mar 20, 2019), https://ec.europa.eu/info/news/commission-approves-protected-geographical-indication-mexico-2019-mar-20_en.

¹⁸ Id at 14.

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studies, South Africa is the biggest producer and exporter of these pseudo tequilas.¹⁹ It is pertinent to mention the bravery of the Mexican government during the WTO negotiations as well when Chinese government could have easily taken away the tequila power from the Mexican government as they too have the required atmosphere and climatic conditions for ‘blue agave’ however, the Mexican government were successful in protecting and negotiating the protection of Tequila and thus today in light of the same, it is known only and only as Mexican Tequila.

III.III BRANDING AND QUALITY-CHECK:

Before diving into the varieties of tequilas and their branding process, one of the most interesting facts to note about the Mexican tequila is the bottling of this drink. *“The producers use artisans to create crystal, ceramic, hand-blown glass or Talavera pottery bottles for their cherished tequila.”*²⁰ This signifies that not only are the producers and the government interested in protecting the drink but also the bottle which carries it.

Bestowing so much attention on the little intricacies makes the traditional drink a lot more fascinating and intriguing. As mentioned before, the government taking full part in the process has issued certain guidelines and regulations which should be complied with if and when a producer claims to have produced tequila.

Briefly which is the aging requirement and the production from blue agave only, the other that at least 38% content of the drink should be alcohol to be able to make it to ‘Tequila’. To check if all the regulations and procedures have been complied with or not, the CRT or the IMPI take in control this very power and ensure no unjust is done to the consumers or other producers. Along with the check on bottling, they make sure the variety of tequila is divided carefully and

¹⁹ El Benni, Nadja & Reviron, Sophie, *Geographical Indications : review of seven case-studies worldwide*, NCCR Trade, 2009, at 7, 75.

²⁰ Id at 12.

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sold as per their process. The tequila is classified²¹ by the government and the producers as Silver. Young or Gold. Aged. Extra Aged. Ultra-Aged each depending upon the contents and the time given for distilling. As for instance, it is said that Aged and Extra Aged should have been distilled for a period of 1 and 3 years respectively.

Thus, making sure the best and needed product is reaching the market and in turn the consumer. It has not only increased the sales and reputation of the Mexican government, but also upheld the tradition and not compromised on its product or quality, making it the best of the drinks.

IV. CONCLUSION:

The purpose behind these case studies was to analyse the fact that be it the European Union or Mexico or any other country for that matter, the protection of traditional knowledge among other intellectual property works has become the need of the hour. Accepting the fact that GI and AOO are as important as other industrial property and copyright, was the main aim of this paper. The things we eat and drink are subject to protection and they should be entitled to that protection just like a brand's name is.

Because of receiving such status in the world, Parmigiano Reggiano of Italy and the Tequila of Mexico are the common taste of every tongue with the respective countries happily supplying the products to others.

Even if generic or of an inspired nature, a geographical indication is a true outcome of a country's tradition and culture. Hence, the respect for their tradition and custom calls for a good glass of Mexican tequila with a side of Italy's Parmesan Cheese which ought to keep the people merry and happy.

²¹ Classification of Tequila, Consejo Regulador del Tequila, <https://www.crt.org.mx/index.php/en/el-tequila-2/clasificacion>.