

Reçu par OMPI

23 FEV. 2010

Received by WIPO

To: World Intellectual Property Organization

Att.: Mr. Francis Gurry

Director-General

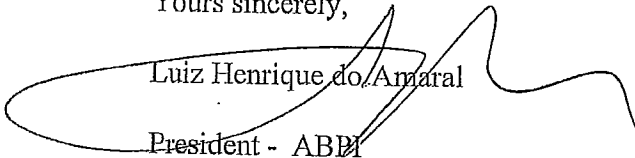
Dear Mr. Gurry,

Thank you for your letter dated October 21, 2009 regarding the Survey on the Lisbon System.

As per your request, ABPI has provided its answers to the said Survey as outlined below.

In the event that you need any clarification from our side, please let us know.

Yours sincerely,

  
Luiz Henrique do Amaral

President - ABPI

**1) Question 1: Should the basis for protection in the country of origin in Article 1(2) of the Agreement and Rule 5(2)(a)(vi) of the Regulations be revised, in view of the different means of protection existing around the world for geographical indications?**

ABPI is of the opinion that the basis for protection in the country of origin in Article 1(2) of the Agreement and Rule 5(2)(a)(vi) of the Regulations should not be revised, since the phrase "recognized and protected as such" in Article 1(2) of the Lisbon Agreement is not to be interpreted as restrictive to eligibility for registration and protection under the Agreement. ABPI's understanding is that all countries which constitute a Special Union under the Lisbon Agreement undertake to protect the appellations of origin of other member countries which have been recognized and protected as such in their country of origin and registered at the International Bureau of Intellectual Property.

**2) Question 2: Should the definition provisions of Article 2 of the Lisbon Agreement be amended?**

ABPI is of the opinion that the definition provisions of Article 2 of the Lisbon Agreement should be amended, since it provides protection only for geographical names of a country, region or locality. The definition provided for in Article 2 of the Lisbon Agreement should be broader, so as to encompass names with geographical connotation as well. In Brazil, for instance, the geographical indication "cachaça" - which is not a geographical name - is protected by means of Decree no. 4.062 of December 21st, 2001.

*Handwritten initials/signature*

**3) Question 3: Should Article 3 of the Lisbon Agreement be amended so as to address the protection of appellations of origin against use on products that are not of the same kind and, if so, on the basis of what criteria?**

ABPI is of the opinion that Article 3 of the Lisbon Agreement should be amended so as to address the protection of appellations of origin against use on products that are not of the same kind based on unfair competition. The suitable criteria would be unfair competition, which is a very broad concept and would, therefore, encompass any kind of unlawful use of a geographical indication.

**4) Question 4: What amendments would be necessary to Article 3 in connection with the answer to questions 1 and 2 above?**

ABPI is of the opinion that Article 3 of the Agreement should be amended in order to protect appellations of origin against use on products that are not of the same kind, so as to read as follows (the amendment is provided in bold type, so as to facilitate its visualization):

"Protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by term such as "kind", "type", "make", "imitation", or the like. **The protection ensured by this Article also applies to the unlawful use of the appellation of origin on products that are not of the same kind.**

**5) Question 5: As regards point (a) above, are there elements in the application and registration procedures requiring improvement and, if so, which are these elements?**

ABPI is of the opinion that as far as point (a) above is concerned, there is no need of improvement in the application and registration procedures.

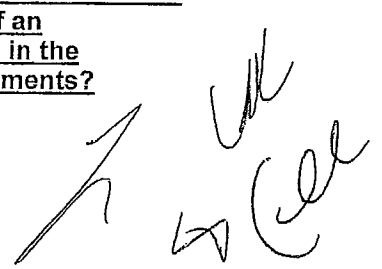
**6) Question 6: As regards point (b) above, are there elements in the procedures for the notification of refusals, withdrawals of refusals and statements of grant of protection requiring improvement and, if so, which are these elements?**

ABPI is of the opinion that there is no need of improvement in the procedures of notification of refusals, withdrawals of refusals and statements of grant of protection.

**7) Question 7: As regards point (c) above, would there be a need to amend Article 6 of the Lisbon Agreement, in order to allow for certain exceptions, or does the phrase "cannot, in that country, be deemed to have become generic" provide sufficient leeway in that respect?**

ABPI is of the opinion that there is no need to amend Article 6 of the Lisbon Agreement, as the phrase "cannot, in that country, be deemed to have become generic", bears a wording which is to be deemed as sufficient in that respect.

**8) Question 8: Are there elements in the procedures of Rule 16 of the Regulations under the Lisbon Agreement concerning the notification by a member country of an invalidation of the effects of an international registration and its recording in the International Register requiring amendment and, if so, which are these elements?**



ABPI is of the opinion that Rule 16 (1) (i) of the Regulations under the Lisbon Agreement concerning the notification requires amendment as per wording suggested below:

"(i) the number of the international registration concerned, accompanied by other information enabling the identity of the international registration to be confirmed, namely the name of the appellation of origin, the name of the legal entity entitled to use the appellation of origin (if applicable according to the legislation of the country of origin), the products in which it is applied to and any other information which may be useful in this respect".

**9) Question 9: Would there be a need to amend Article 5(6) of the Lisbon Agreement, or does the fact that Article 5(6) of the Lisbon Agreement and Rule 12 of the Regulations under the Agreement only apply in case a member country does not notify a declaration of refusal provide sufficient leeway in this respect?**

ABPI is of the opinion that Article 5 (6) of the Lisbon Agreement needs to be amended, so that the competent Office of the country where the appellation has already been used by third parties in **good faith** on condition that it advises the International Bureau accordingly within the period of one year provided for in paragraph (3) of Article 5. For that amendment ABPI suggests the following wording:

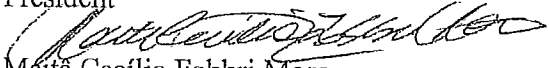
"If an appellation which has been granted protection in a given country pursuant to notification of its international registration has already been used by third parties in good faith in that country from a date prior to such notification, the competent Office of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advise the International Buereau accordingly within the period of one year provided for in paragraph (3), above".

**10) Question 10: What other issues concerning law or practice directly or indirectly related to the functioning of the Lisbon system do you consider require amendment or modification of the existing Lisbon Agreement and would you like to bring to the attention of the working Group on the Develement of the Lisbon System?**

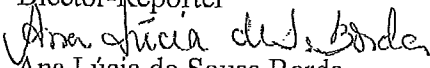
ABPI has no further suggestions or comments.

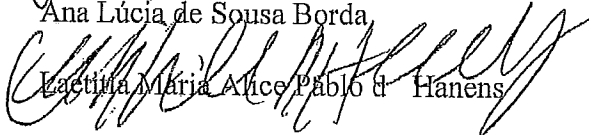
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