

**UNITED STATES
PATENT AND TRADEMARK OFFICE**

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GI Systems only Like Other GI Systems **Problems with International Protection for GIs**

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PATENT AND TRADEMARK OFFICE

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Problems for Two Sets of US Stakeholders

US GI Owners



Can't get US certification marks recognized in other countries with GI or appellation of origin systems because they are not protected "as such".



They have a need for an international filing system that does not require government substantiation of the GI or a special form of protection.

Generic Term Users



Aren't provided with an opportunity or grounds to object in foreign markets to protection of GIs that conflict with generic terms already in use in that market.



They have a need for a mechanism at the national level that allows them to bring evidence of prior generic use to the attention of relevant officials.

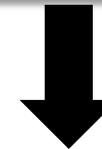
Domestic GIs as Agriculture Standards of Identity

At the national level, standards of identity are the mandatory requirements set by a governing body that determine what a food product must contain to be marketed under a certain name in commerce. "Recipe"

Following rule-making,
with public notice and
comment...

Enforcement is by
administrative action paid
for by public funds...

**Domestic interests make policy choices
and decide to prevent "non-
conforming" uses of the recipe to
protect consumers.**



**Non-conforming competitive goods are
eliminated from marketplace**

Standards of Identity Reflect Domestic Policy Choices



Standards of Identity look like and can become domestic GIs

GI Equation Changes in Export Markets

1) Eliminating “value” examination effectively requires reciprocity between GI systems. This raises *national treatment* concerns because it discriminates against US GI owners.

Country of Origin

**Recipe +
Origin +
Value = GI**



Receiving Countries

**Recipe +
Origin = GI**

2) Eliminating “value” examination means bypassing national examination as to the local significance of the term. This raises concerns about *overprotection* for foreign geographic terms.

1) **Reciprocity**: GI Systems only like other GI Systems

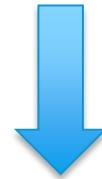
Country of Origin

Recipe +
Origin + Value
= GI

Using GI = Recipe + Origin makes it easier for the receiving country to rely on foreign protection without further evaluation.

Receiving Countries

Recipe +
Origin = GI



Some foreign governments have refused to issue GI protection for US certification marks of regional origin because the registrations do not reflect a US Government-established standard of identity for a food product.

In US, Control Reflects and Creates Value

US certification marks of regional origin provide protection for geographical indications against uses that would likely cause confusion...as long as the owner is controlling the use of the term on conforming goods and enforcing against non-conforming goods.

Recipe + Origin + Control = ®

USPTO examines whether applicant is controlling use because control reflects and creates value. Relevant evidence:

Evidence of significant amount of non-conforming goods on the market.

Prior applications or registrations containing the term.

Evidence of consumer perception that the term is understood as generic, i.e., goods that can come from anywhere.

2) Oversimplifying the Equation **Overprotects** Foreign GIs

Country of Origin

**Recipe +
Origin + Value
= GI**

GI = Recipe + Origin eliminates an evaluation of geographic significance because the meaning is presumptively geographic.

Receiving Countries

**Recipe +
Origin = GI**

Arbitrary Use

Trademarks

Obscure or Remote

Generic Terms

Reservation system for foreign GI owners and businesses without a corresponding benefit to local consumers.

Takeaways

Geographical indication protection was created to capture the value that the origin of a good has for local consumers.



Recipe +
Origin + Value
= GI

Public consultations recognize and capture value through exclusivity.

To make it simpler to obtain and grant protection in foreign markets, some governments have deleted the "value" factor out of the equation.



Recipe +
Origin = GI

1) Discriminates against non-GI systems. 2) Bypasses examination tests.

Problems arise when domestic and foreign GIs have different equations.

