

Confusion over Appellations of Origin

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Decision 486, which regulates the industrial property of member countries in the Andean Community, defines an appellation of origin in Article 201.

It is defined as a geographical indication consisting of the name of a particular country, region, or locality; or of a name which, without being that of a particular country, region, or locality, refers to a specific geographical area, and is used to identify a product originating there. Further, the qualities, reputation, or characteristics of a product must be exclusively or essentially attributable to the geographical environment in which it is produced, including both natural and human factors.

This decision states that in order to provide legal protection, they should avoid the impediments contained in Article 202. The appellations of origin may not be declared if they:

- a) Do not conform to the definition contained in Article 201;
- b) Are common or generic terms that distinguish the product concerned—that is, terms considered as such both by persons with knowledge of the area concerned and by the general public;
- c) Are contrary to good manners or public order; or
- d) Are liable to mislead the public as to the geographical source, nature, means of manufacture, or quality, reputation, or other characteristics of the products in question.

In addition to these impediments, Legislative Decree No. 1075, which reiterates these provisions for Peru, indicates that protection cannot be granted to any appellation of origin which is confused with any brand which has been registered in good faith.

It is in light of this provision that one of our clients, requesting protection for the origin appellation 'Navarra' for wines and spirits, was opposed by a supposedly similar mark that included the name 'Navarro'. The opposition was based on the idea that consumers could be confused about the entrepreneurial origin of the products under these distinctive signs.

After the respective defence against said opposition was filed, the Peruvian patent and trademark office (INDECOP) proceeded to evaluate the possible risk of confusion. INDECOP found out that there was no likelihood of confusion between them because they are not similar in a visual, phonetic or conceptual way.

Regarding the phonetic and graphic likelihood of confusion, INDECOP pointed out that the presence of the letters A and O at the end of each denomination had a different impact on consumers.

With reference to the conceptual similarity, INDECOP stated that the appellation 'Navarra' refers to a Spanish autonomous community, whereas the word 'Navarro' has a different meaning in Spanish.

It can mean 'originating in the Navarra community', and it is the name of a dialect (Navarro-Aragonese), as well as a variety of Spanish spoken in Navarra. Finally, the most important ground is

that the word 'Navarro' is a very common Spanish last name. Taken together, these differences mean there is no likelihood of confusion between 'Navarra' and 'Navarro'.

It is important to point out the significance that INDECOPI attached to the conceptual aspect in the case. From our point of view the concept issue in this case was a decisive factor for settling the difference between the appellations, and allowing them to coexist in the market. It added to the consumers' cultural awareness of the products that are covered by the signs, which helps them to make the right choices when they buy the products.

We welcome this approach and we hope INDECOPI keeps this trend in order to facilitate trade development in the Peruvian market.

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