

Report Q191

in the name of the Australian Group
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Relationship between trademarks and geographical indications

Preliminary - note of correction

The Australian Group notes that in the Working Guidelines under the heading 'Discussion' at paragraph 15), the reference to the content of TRIPS Article 22(3) contains an error. The requirement to invalidate or refuse the registration of a trade mark which consists of a geographical indication ("GI") is cumulative, rather than in the alternative as set out in 15). That is, the requirement applies if the goods do not originate in the territory indicated *and* (not "or") if use of the GI in the trade mark is liable to mislead the public as to the origin of the product.

Introduction - the general position

As a general proposition, Australian law protects trade marks and GIs either on the basis of a prohibition against misrepresentation; at common law under the law of passing off, under the Trade Practices Act prohibiting engagement in misleading or deceptive conduct, or by the grant of a proprietary right under the Trade Marks Act. To establish a right at common law (or in the case of the Trade Practices Act, an offence) it is necessary to show that by virtue of a reputation established, or some other circumstance, use of a sign or expression by another is likely to mislead. Under the Trade Marks Act, a trader must satisfy the Registrar of Trade Marks that the mark is capable of distinguishing that trader's goods from those of others. Where the mark is a geographical name, it may be registered under the Trade Marks Act only if it can be shown to be distinctive or capable of becoming distinctive, ie if the geographical significance is suppressed to the extent that the mark is capable of achieving a recognition in the market such that its use by another would be likely to be misunderstood as indicating a connection with the trade mark owner.

Trade mark rights, generally speaking, take a chronological order, ie the first user or first registrant will generally take precedence. Whilst concurrent rights may reside in two separate traders, a trade mark owner will not be deprived of those rights by a subsequent user or registrant unless through some blameworthy conduct on the part of the owner the rights are forfeited. If the mark is a geographic name, the rights of others to the bona fide use of that name to indicate the origin of goods is preserved.

Guidelines have been issued under the Trade Practices Act by the Australian Competition and Consumer Commission in relation to the use of the expression "Made in Australia". The Commerce (Imports) Regulations require that the country of origin be shown on certain imported goods.

Prior to 1993, GIs were not protected as such, but as indicated above, misleading use could be restrained.

The position outlined above remains substantially unaltered in respect of goods other than wines. In respect of wines however, the position was substantially altered when Australia and the European Community entered into the EU/Australia Wine Agreement ("the Wine Agreement") and the *Australian Wine and Brandy Corporation Amendment Act 1993* ("the AWBC Act") was passed to give effect to the provisions of that Agreement. Further modification of the law in this respect arose

out of Australia's entry into the World Trade Organisation ("WTO") and the accession to the Agreement on Trade Related Aspects of Intellectual Property rights ("the TRIPS Agreement") and Australia – US Free Trade Agreement ("the FTA").

Questions

I) Analysis of current legislation and case law

- 1) *Do your country's laws have enactments or systems dealing specifically with GIs, e.g. a registration system for GIs? If so, what are the criteria of registrability? To which national authority must an application for protection be made? Does the applicant have the right to appeal against the refusal of the national authority to register a GI? If so, to which entity?*

The Trade Marks Act provides a ground of opposition to registration as a trade mark, being that the mark contains or consists of a false GI. For the opposition to succeed, it must be demonstrated that the GI is incorrect. However, as noted above, a geographical name can be used as a trade mark without being a false GI¹. A recent example was an opposition to a mark for perfumes including the word "PARIS" as being a false GI. The opposition failed on the basis that the Registrar found that "PARIS" is not a GI as defined in the Trade Marks Act, it neither being a sign recognised as an indicator of perfumes originating in Paris, France nor as having a quality, reputation or other characteristic attributable to such geographical origin. See further the answer to Question 6) below.

As noted above, Australia has a specific enactment dealing with GIs for wines, being the AWBC Act. The AWBC Act establishes the Australia Wine and Brandy Corporation and grants it power to enter into agreements and make decisions relating to the production, sale, import and export of wine in Australia. It also establishes a register of protected names ("the Wine Register") and a procedure for the entry of GIs in the Wine Register:

- a) in the case of foreign GIs, as a result of agreement between Australia and a foreign state or community; and
- b) in the case of an Australian GI, by determination of the Geographical Indications Committee ("the GIC") established under the AWBC Act.

At the present time the only relevant agreements are the Wine Agreement and the FTA. Subject to our comments in answer to Question 3) below, GIs communicated to Australia under the Wine Agreement were entered in the register. Australian GIs are entered in the register following determination by the GIC. Applications for determination are made to the GIC by a winemaker or grape grower or an organisation representing winemakers or grape growers. A determination may be requested with respect to the region or a sub-region.

Criteria for determination of a GI in respect of wine include; the degree of homogeneity of the land with respect to its grape growing attributes, the history of the founding and development of the area, the existence of natural features such as rivers and other topographical features, constructed features such as roads, railways, towns and buildings, local government administrative areas, the history extent and reputation of the proposed name for the area, geological formations, climatic data, harvest dates, water supply, elevation, the history of grape and wine production and any other relevant factors.

¹ For the purpose of the Trade Marks Act, a GI in relation to goods originating in a particular country or a region or locality of that country, means a sign recognised in that country as a sign indicating that the goods:

- a) originated in that country, region or locality; and
- b) have a quality, reputation or other characteristic attributable to their geographical origin.

An application to review a determination of the GIC may be made to the Federal Administrative Appeals Tribunal, subject to an appeal from a decision of that Tribunal to the Federal Court of Australia. By way of example, wine corporation Beringer Blass appealed a determination of the GIC as to the specific boundaries of the GI "Coonawarra" – a well known and regarded wine making region in South Australia. The Court overturned the GIC's decision as to the original boundaries of the GI on the basis that the GIC failed to look matters other than proximity and place names, such elements as soil consistency also being relevant.

- 2) *What is the status of a GI in your country? Does the registration of a GI confer a property right? Who would be the rightholder of a GI? Can GIs be the subject of dealings such as assignment, mortgage and licensing?*

Subject to some particular rules and exceptions, the AWBC Act provides that GIs may only be used on wine made from grapes grown in the area named by the GI. Any false or misleading use of a GI entered in the Wine Register in the description or presentation of wine constitutes an offence under the AWBC Act then, the penalty for which is imprisonment for 1–2 years and/or a fine.

However, registration of a GI does not confer a property right. GIs cannot be the subject of dealings such as assignment, mortgage or licensing.

- 3) *Is the application for or registration of a GI made public in your country? Is it possible to oppose such application or registration or cancel such registration of a GI? If so, by whom and on what (absolute or relative) grounds (e.g. generic or descriptive term or prior trademark)?*

An application for the determination of a GI must be advertised and the determination may be opposed on the ground that the GI is identical with, or likely to be confused with a registered trade mark, a trade mark which is the subject of an application for registration in good faith, or a mark which is not registered but in respect of which the objector claims rights acquired through use in good faith. The objection is made to the Registrar of Trade Marks who must decide whether the grounds of objection are made out, and if so, whether it may be reasonable nevertheless for the Registrar to recommend determination of the GI on the ground that (for example) the GI was in use before the trade mark rights arose. An appeal lies to the Federal Court from a decision of the Registrar of Trade Marks.

- 4) *Must use requirements be satisfied in order to maintain GI protection? If so, is there any definition of what constitutes use? Are the legal rules established for appraising the maintenance of a trademark registration applicable to the appraising of the maintenance of GI protection?*

There are no specific use requirements for the maintenance of the registration of a GI in respect of wine. However, the registration may be removed from the Wine Register on the ground that the GI is no longer in use or has ceased to be necessary.

In the case of GIs for goods other than wine, protection for the GI is dependent upon the reputation and the likelihood of misrepresentation or confusion. It follows that if, through non use or other circumstances, that reputation or likelihood of confusion no longer exists, the GI will not be protected.

- 5) *What is the scope of protection of a GI? Is it only protected against use of the name or also against use of elements of the specification of the GI (e.g. slicing, grating) or any other practice liable to mislead the public as to the origin of the product (e.g. use of same trade dress)? Are the legal rules established for determining the scope of trademark protection applicable to determining the scope of GI protection (e.g. in relation to reputed or*

well-known GIs, likelihood of confusion, infringing and non-infringing acts)? May rights in a GI be enforced even where a product which allegedly infringes those rights has been made purely for export?

Except in the case of GIs for wine, a GI will be protected only against use which is likely to mislead or deceive in relation to the origin or any other characteristics of the goods to which the GI relates.

In the case of GIs for wine entered on the Wine Register, the protection extends to any use in the description and presentation of the wine if the wine does not originate in the place indicated by the GI. It is not a defence to show that the product bearing the description and presentation is purely for export.

- 6) *Can a GI be registered as individual trademark? If so, under what conditions?*

Subject to the answer to Question 7) below, a geographical name may be registered as a trade mark only if the mark is shown to be distinctive of the person or organisation seeking the registration, ie that in relation to the goods or services concerned, the primary geographic significance of the name has been displaced by a secondary significance which the name has acquired as indicating exclusively the goods or services of the trade mark applicant. Where the geographic name is a GI it will ordinarily be very difficult to establish distinctiveness unless the GI is a "monopole".

As noted in the answer to Question 1) above, the Trade Marks Act provides for registration of a trade mark to be opposed on the ground that the mark consists of, or contains a GI in respect of the goods originating in a place other than that in which the specified goods originated. As the "PARIS" case demonstrates, this provision is only triggered if the mark in question is or incorporates a geographical name which fulfils the GI definition under the Trade Marks Act. Once that is established, in addition to the defence that the GI sought to be registered as or as part of a trade mark is not 'false', prior good faith use or application will overcome an opposition. This applies even in the case of wines and spirits, if the mark sought to be registered is identical to a name which, on 1 January 1995, was the customary name of the variety or grape used in the production of the particular wine or spirit in its country of origin.

Further, it is a defence that, although the sign is a GI for the designated goods, it also functions in that way for the goods sought to be registered, and the applicant has not used and does not intend to use the trade mark in relation to the goods sought to be registered in a way likely to deceive or confuse members of the public as to the origin of the goods.

- 7) *Do your country's laws provide for collective or certification marks? If so, under what conditions can a GI be registered as a collective mark or a certification mark?*

Australian law provides for the protection of both collective and certification marks. A GI may be registered as a collective or certification mark only if it meets the criteria discussed above in answer to Question 6).

- 8) *Does inclusion of a protected GI as part of a trademark qualify as legal bar to the registration of such trademark?*

Yes, subject to the qualifications discussed above in answer to Question 6).

- 9) *Do your country's laws, e.g. trade or merchandise legislation, require the application of correct designations of origin/source on agricultural products and food-stuffs?*

The Federal Trade Practices Act, Section 53(eb), and corresponding state legislation, makes it an offence to make a false or misleading representation concerning the place of origin of goods. The Commerce (Imports) Regulations provide that certain imported goods, including agricultural products and foodstuffs, must indicate the name of the country of origin.

- 10) *How are conflicts between trademarks and GIs resolved under your country's laws? Do they co-exist or does either the trademark or GI prevail? Is there a rule for determining whether the trademark or GI should prevail, and what are the criteria to take into account (e.g. the "first in time, first in right"-rule, the reputation of the geographic region or the reputation of the trademark, the length of time that the name has been used to indicate the geographic region and the extent of such usage, the length of time that the trademark has been used and the extent of such usage)?*

In the case of GIs other than registered indications for wine, the general rule of first in time, first in right will apply. However, in the case of competing equal or near equal interests, the likely outcome will be one of co-existence possibly subject to conditions or limitations affecting the respective rights of the parties.

In the case of a conflict between an unregistered GI and a registered trade mark, in relation to identical goods, the trade mark registration will prevail. In the case of non-identical goods, infringement will be subject to the test of likelihood of deception or confusion.

Where the GI has a reputation preceding the use or registration of the trade mark, the trade mark registration may be subject to attack on the ground that it is not distinctive. The winemakers from the Victorian High Country region had their application for the GI "High Country" refused by the GIC on the basis that an individual wine company had earlier obtained registration of the trade mark "High Country". This was notwithstanding that "High Country" had been recognised as a GI for wines before this time.

In the case of a conflict between an unregistered trade mark and a registered GI for wine, it has been held that the GI will prevail notwithstanding that the use and reputation of the trade mark precedes the registration of the GI. However, the Registrar of Trade Marks recently allowed an application for "FEET FIRST" for wine to proceed despite opposition on the basis that the word "FIRST" appeared on the Wine Register, being a sub-region of a wine growing area in Germany. The Registrar held that "FEET FIRST" was used in the context of its "ordinary English signification". That is, the intention was to use the ordinary (or idiosyncratic) English meaning of the words, not to denote country, region or locality of the wine.

There is no decided case in Australia dealing with the conflict between a registered GI and a *prior* registered trade mark. The provisions of the AWBC Act appear to constitute an absolute prohibition against the use of a registered GI otherwise than in respect of goods originating in the place designated by the GI, so it would follow that the provisions of the AWBC Act should prevail. The recent "FEET FIRST" decision casts some doubt on whether the prohibition will be interpreted as absolute, albeit perhaps only in the limited circumstances of that case. More fundamentally, questions have been raised as to the constitutional validity of these provisions of the AWBC Act in circumstances of such conflict, so the matter cannot be free of doubt.

II) Proposals for adoption of uniform rules

The Groups are invited to put forward any proposals for adoption of uniform rules regarding the relationship between trademarks and GIs. More specifically, the Groups are invited to respond to the following questions:

- 11) *Should countries provide for registration systems dealing specifically with GIs? If so, what should the key features of such system be? Should a multilateral system of registration of GIs be established? If so, what should the key features of such multilateral system be? Specifically,*

which international body should be tasked with establishing such system? How should the application for or registration of a GI be notified/made public (either in your country or at a multilateral level) in order to avoid that a trademark may conflict with a GI previously unknown to the trademark owner?

Further to the above, the AWBC Act provides for a registration system specifically to protect wine and spirit GIs. Other GIs are protected in Australia through a matrix of other legislation and the common law.

Australia, along with other WTO Members, opposes an EU package of proposals to strengthen rights in relation to GIs, one of which is to create a legally binding multilateral register for GIs. The other aspects include extending the particular protection already afforded to wines and spirits in Article 23 of the TRIPS agreement to all products, and the proposed 'claw-back' of a number of product terms for exclusive use by EU producers.

The sentiment in the Australian legal community generally supports the "new world" view of GIs. The majority view is that a system of compulsory implementation places an unnecessary burden on non-EU countries. The rationale is that Australia's current legislation provides satisfactory protection for GIs and trade marks, while complying with the requirements of TRIPS. The EU proposals are opposed on grounds which include the following.

- They would impose an unfair burden for implementation on non-EU countries that currently have little or no protective legislation for GIs. The costs are likely to fall disproportionately on these Members.
- They would impose a particularly unfair burden for producers of cheeses and meats (amongst others) in non EU countries due to the large number of GIs in these areas existing in the EU².
- They could give rise to consumer confusion caused by change of names on products whose names are found to have a prior GI.
- A compulsory system may increase the risk of disputes over GIs and trade marks (ie as to who was first in time) both between Member countries and between producers in their countries.
- It could cause a reduction in future markets and a reduction in the scope of producers to maximise production in their countries.
- Such a system would administer a shift in Australia's agricultural policy to instead mimic the agricultural policy of EU Member Countries. Australia's current agricultural production is largely privately controlled. The industry focus is on 'greater competition, innovation and efficiency in farming practices'³ rather than rewarding traditional producers.
- Australia, like a number of non-EU Member countries, has a history of significant immigration from EU countries. People from these countries or regions of these countries brought their recipes to Australia and began producing versions of them. This contribution to the marketing and production of these products in other countries should be recognised and rewarded⁴.

² In this regard, note that in the Global Dairy Alliance ("the GDA") Doha Policy Paper, 'Geographical Indications', March 2006, the GDA opposes any moves to increase protection for GIs, on the basis that the current rules for the protection of agriculture GIs are sufficient and work effectively and that claims for increased GI protection go beyond the Doha Round mandate. The GDA position is that efforts to increase GI protection confuse intellectual property rules with market access for agricultural products. The GDA points out that its members are amongst those who have created the brand value and reputation of potential GIs, but further GI protection could restrict trade in cheeses long considered to be generic.

³ M Handler, 'The EU's GIs and its potential impact on Australia', Australian Intellectual Property Journal, August 2004, 15 (3), p179.

⁴ GDA Doha Policy Paper, op cit.

Australia is a co-sponsor of a Joint Proposal for a Multilateral System of Notification and Registration of Geographical Indications for Wine and Spirits⁵ which proposes the establishment of a *voluntary* multilateral system of notification and registration of GIs for wines and spirits, the key features of which are as follows.

- No Member shall be required to participate, but in order to participate, the Member shall notify the WTO secretariat of its intention to do so.
- Each Participating Member may notify to the WTO GIs that identify a wine or spirit originating in that Member's territory, on the basis of a standard form to be adopted by the TRIPS Council.
- The WTO Secretariat shall register the notified GI on a database which is searchable online, free of charge and accessible to all WTO Members and the public.
- Each Participating Member commits to ensure that its procedures include the provision to consult the database when making decisions regarding registration and protection of trade marks and GIs for wines and spirits in accordance with its domestic law. Members who choose not to participate are encouraged, but not obliged, to consult the database in that context.
- Participating Members may at any time submit amended notifications of GIs or withdraw GIs.
- A Member may at any time terminate its participation in the system, in which case all GIs previously notified by that Member will be removed from the database.

The Australian Group notes that negotiations on the wines and spirits register were continuing in the lead up to the Sixth Ministerial meeting in Hong Kong in December 2005, but little progress was made other than agreement to intensify those negotiations.

- 12) *Do you have any suggestions as to the acquisition, maintenance, scope and enforcement of GI protection? What should the scope of protection of a GI be? Should the legal rules established for appraising the acquisition, maintenance, scope and enforcement of trademark protection apply to the appraising of the acquisition, maintenance, scope and enforcement of GI protection?*

Based on the policy considerations set out in the answer to Question 11) above, the Australian Group does not consider that any measures beyond those described above are necessary or desirable for the acquisition, maintenance, scope and enforcement of GI protection.

Within the context of GIs for wines, the Australian Group considers the criteria for determination of a GI for entry on the Wine Register (described in the answer to Question 1) above) to be adequate, and that the scope of protection is sufficient. For geographical names in relation to other goods, whether such a name qualifies as a GI will be a matter of fact, ie is the name in question recognised in the country from which the goods originate as a sign indicating that the goods originate in that country, or region or locality of that country, *and* as having a quality, reputation or other characteristic attributable to their geographical origin?⁶ The Australian Group considers that the grounds of opposition for registration of a trade mark that consists of a GI as defined under the Trade Marks Act (together with the available defences) as described in the answer to Question 6) above strike an appropriate balance in relation to the scope and enforcement of GI protection generally.

⁵ Proposed draft TRIPS Council Decision on the Establishment of a Multilateral System of Notification and Registration of GIs for Wine and Spirits, Submission by Argentina, Australia, Canada, Chile, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Chinese Taipei and the United States dated 1 April 2005.

⁶ Trade Marks Act 1995, section 6.

13) *Should a protection of GIs by individual and/or collective or certification marks be possible?*

Yes, if the GI meets the criteria referred to in the answers to Questions 6) and 7) above.

14) *How should conflicts between trademarks and GIs be resolved? Please propose a specific rule for determining whether trademark or GI should prevail, which is likely to be broadly accepted. If co-existence is contemplated, should such co-existence be limited to the country of origin or relate to the relevant markets?*

Leaving aside the specific regime applicable to wine GIs in Australia, the Australian Group supports the first in time rule, to be determined with reference to the facts of the subject jurisdiction. This is essentially what occurs in Australia at present, ie registration of a trade mark will generally not be permitted if there is a registered GI for wine or the mark contains or consists of an incorrect GI (see further the answer to Question 6) above). The Australian Group considers that GI protection is generally not warranted unless an element of confusion can be shown. This can and should only arise in circumstances of a geographical name of significance, as determined in the jurisdiction where the GI is judicially or administratively recognised, or has otherwise acquired a reputation.

Summary

Australian law protects trade marks and GIs through a matrix of legislation and the common law covering the prohibition against misrepresentation and the grant of proprietary rights under the Trade Marks Act. Where a mark is a geographical name, it may be registered only if it can be shown to be distinctive or capable of becoming distinctive in the market, such that its use by another could be misunderstood as indicating a connection with the trade mark owner. The trade mark rights of the first user or registrant will generally take precedence but co-existence is likely in the case of competing equal or near equal interests, possibly subject to some conditions or limitations. If the trade mark is a geographic name, the rights of others to the bona fide use of the name to indicate the origin of goods is preserved.

In 1993, the position changed in relation to wines, when legislation was enacted to give effect to the EU/Australia Wine Agreement which established a register of protected names upon which both foreign and Australian geographical indications ("GIs") may be entered. In the case of a registered GI for wine, protection extends to any use in a description and presentation of the wines if the wine does not originate in the place indicated by the GI. Other GIs will only be protected against use which is likely to mislead or deceive in relation to the origin or any other characteristics of the goods to which the GI relates.

Australia is aligned with the "new world" view of GIs, opposing a legally binding multilateral register for GIs, but supporting a voluntary multilateral system. Australia also opposes extending protection already afforded to wines and spirits to all products and to proposed 'claw-back' of product terms exclusive to EU producers.

In resolving conflicts between trade marks and GIs, the Australian Group supports the first in time rule, to be determined with reference to the facts of the subject jurisdiction.

Résumé

Le droit australien protège les marques déposées et les indications géographiques [GIs] de par une matrice de codes et la common law couvrant l'interdiction de faire de fausses déclarations et de l'octroi des droits de propriété en vertu du code sur les marques déposées. Dans l'hypothèse où une marque est un nom géographique, l'inscription n'est permise que lorsqu'elle est démontrée distinctive ou capable de l'être dans le marché, de sorte que son usage par une tierce personne pourrait tromper tout en établissant un lien avec le propriétaire de la marque déposée. Les droits de propriété en marque déposée du premier utilisateur ou requérant auront – à titre général – précedence, toutefois la coexistence est vraisemblable dans le cas des intérêts égaux ou quasi-égaux concurrentiels, éventuellement sous réserve de certaines conditions ou restrictions. Si la marque déposée est un nom géographique, les droits des tierces personnes à l'usage en bonne foi du nom pour indiquer l'origine des biens – sont conservés.

En 1993, la situation a changé vis-à-vis des vins, lorsque la législation a été promulguée afin de faire entrer en vigueur la convention UE/Australie sur les vins – qui a établi un registre de noms protégés où à la fois pourraient être inscrites les indications géographiques étrangers et australiens [GI]. Dans le cas d'un GI inscrit pour le vin, la protection s'étend à tout usage concernant la description et la présentation des vins, si le vin n'est pas originaire du lieu indiqué par le GI. D'autres GIs ne sont protégés que lorsque l'usage pourrait vraisemblablement induire en erreur ou tromper vis-à-vis de l'origine ou d'autres caractéristiques des biens visés par le GI.

L'Australie est alignée à l'avis du " nouveau monde " sur les GIs, et s'oppose à un registre multilatéral obligatoire pour les GIs, et soutient un système multilatéral volontaire. L'Australie s'oppose à l'extension de la protection déjà octroyée vis-à-vis des vins et alcools à tous les produits et à la récupération proposée des termes des produits dans le domaine exclusif des producteurs de l'UE.

Dans la résolution des litiges entre les marques déposées et les GIs, le Groupe Australien soutient la règle du premier requérant, à déterminer en fonction des faits occasionnés dans la juridiction en question.

Zusammenfassung

Das australische Recht schützt Handelsmarken und GI durch eine Matrix von Gesetzgebung und Common Law, um das Verbot der Erweckung falscher Vorstellungen und die Gewährung gesetzlich geschützter Rechte laut dem Gesetz über die Handelsmarken abzudecken. Ist ein Kennzeichen ein geografischer Name, so kann er nur registriert werden, wenn es erwiesen ist, dass er unterscheidungskräftig ist oder im Markt unterscheidungskräftig werden kann, so dass seine Verwendung durch einen anderen als Indiz für eine Beziehung mit dem Eigentümer der Handelsmarke missverstanden werden könnte. Die Rechte an der Handelsmarke des ersten Nutzers oder Eintragenden haben im Allgemeinen Vorrang, aber im Falle konkurrierender gleicher oder fast gleicher Rechte entsteht wahrscheinlich Koexistenz, die evtl. Bedingungen oder Beschränkungen unterliegt. Ist die Handelsmarke ein geografischer Name, so bleibt das Recht anderer auf gutgläubigen Gebrauch des Namens gewahrt, um den Ursprung der Güter anzugeben.

Im Jahre 1993 änderte sich die Lage in Bezug auf Weine mit der Ausführungsgesetzgebung zum Weinabkommen zwischen der EU und Australien, wonach ein Register geschützter Namen errichtet wurde, wo sowohl ausländische als auch australische geografische Angaben (GI) eingetragen werden können. Im Falle registrierter GI für Wein erstreckt sich der Schutz auf jeden Gebrauch in einer Beschreibung und Präsentation der Weine, wenn der Wein nicht aus dem Bereich stammt, der durch die GI bezeichnet wird. Andere GI werden nur gegen einen Gebrauch geschützt, der wahrscheinlich irreführend oder täuschend in Bezug auf den Ursprung oder ein anderes Charakteristikum der Güter ist, worauf sich die GI beziehen.

Australien ist auf die "New World" Sicht der GI ausgerichtet und widersetzt sich einem rechtlich bindenden multilateralen Register für GI, unterstützt aber ein freiwilliges multilaterales System. Australien wehrt sich auch dagegen, dass der schon bei Wein und Schnaps geltende Schutz auf alle Produkte ausgedehnt wird und gegen den Vorschlag des "claw-back" von Produktbezeichnungen ausschliesslich für EU Produzenten. (Anm. d. Ue.: claw-back bedeutet, dass der Gebrauch von Produktebezeichnungen, die ursprünglich aus dem EU-Raum stammen, aber heute weltweit in Gebrauch stehen, wie Feta oder Parmesan, erneut auf EU-Produzenten beschränkt wird).

Zur Lösung von Konflikten zwischen Handelsmarken und GI unterstützt die australische Gruppe die Regel der zeitlichen Priorität, die nach den Tatsachen zu bestimmen ist, welche in der entsprechenden Rechtsprechung genannt werden.