

Symposium:
“Intellectual Property and
Identity in Post Pandemic”
IU Robert H. McKinney
School of Law
April 2021

*The Right of Publicity &
Cultural/Commercial
Identity Conundrum.*

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International protection for
Geographical indications for
food and drink.

- Food and drink are an
important part of any
culture.



So is our clothing.



GI as a cultural protection in IP Law

- TRIPS Art 22/23 Geographical indications – even where no confusion (wine GI's)
 - indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given *quality, reputation* or other *characteristic* of the good is essentially attributable to its *geographical origin*.



GI's and Culture

- What is a Geographical indication?
- WTO, Agreement on Trade-related Intellectual Property Rights (TRIPS), Art. 22.1
 - Geographical indications are, for the purposes of this Agreement, indications which *identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.*

Prevent misuse of GI

- 22.2. "In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) the use of any means in the designation or presentation of a good that *indicates or suggests that the good in question originates in a geographical area other than the true place of origin* in a manner which misleads the public as to the geographical origin of the good..."

TRIPS Art. 23

–Additional Protection for Wines and Spirits

“Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.”

Culture protected by GI



- Benefits

- Some control over uses, particularly for wine.
- Underscores connection between the product and cultural identity
- Premium prices in marketplace.
- Cultural export and exchange through trade.

GI



Fashion as Culture – Quality,
reputation, identity?

Traditional Cultural Expressions?

- World Intellectual Property Organization:
 - “Traditional cultural expressions (TCEs), also called ‘expressions of folklore’, may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.”
 - Not protected under classic IP law.
 - Limitations: time, first to use, first to create, use in commerce.



Apropiación cultural (plagio)
Isabel Marant Etoile 2020
Gabin Cape costo 520 libras
equivalen a 14,251 pesos

Gabán tradicional de
Santa Clara del Cobre,
Michoacán

Quality,
reputation?



Traditional Cultural Expressions as GI?

- Handicrafts that are made using natural resources and have some quality that can be attributed to geographic origin can be protected by GI.
- What if the link is *reputational* without a *quality connection* to the land?

Challenges

- Reputation where?
- Inspiration rather than direct copying. Can only be captured by a wine & spirit level (no confusion required) protection of GI.
- We need cultural mixing and exchange.

Clothing, like food, can have a reputation that is geographically related.

- Inspiration not unique to fashion. Inspiration common in food industry as well: consider “fusion.”
- Clothing is closely connected to our identity, personal and cultural.
- Consider: LV Masai line – Masai inspired designs. Arguably, value based on Masai reputation.
- Expression?

Ghana's Kente

- Protected under Ghana's law as folklore. No protection in U.S.
- Kente cloth – well recognize symbol of Ghanaian culture, and for those outside, of African pride.
- *Reputation* as a basis for GI protection to recognize and protect fashion –related cultural items.



Personality & Identity?

- “Identity holders”
- The tendency in IP law is to recognize the individual dignity interest, but not cultural group identities. But cultural groups can, and do, have identities.
- Individuals comprise these cultural groups – *their individual identity and their group identity may be strongly connected.*

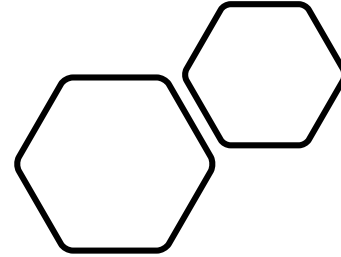
Quality, Reputation, or Identity?



Identity? *White v. Samsung*



Thank you



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