

IN DEFENCE OF CHAMPAGNE

Recognising geographic indications of products is an important strand in the strengthening of IP rights in Brazil, as Luiz Leonardos and Ricardo Dutra Nunes report.



“EVERY PRODUCER OR SERVICE PROVIDER FROM THE LOCALITY CAN MAKE USE OF A GEOGRAPHIC INDICATION, PROVIDED THAT, WITH REGARD TO DESIGNATIONS OF ORIGIN, QUALITY REQUIREMENTS ARE MET.”

and appellations of origin, considered by the law as two species of the broader genre of geographic indications.

According to the current IP statute: “An indication of source is the geographic name of a country, city, region or locality of its territory, which has become known as a center of extraction, production or manufacture of a product or for providing a service” (Section 177).

“A designation of origin is the geographic name of a country, city, region or locality of its territory, which designates a product or a service, the qualities or characteristics of which are exclusively or essentially due to the geographic environment, including human and natural factors” (Section 178).

Every producer or service provider from the locality can make use of a geographic indication, provided that, with regard to designations of origin, quality requirements are met (Section 182). The statute also excludes from protection those geographic indications used as a generic term to designate a product or a service (Section 180), and establishes that the INPI shall set forth the conditions for obtaining registration for geographic indications (Section 182). Finally, geographic indication infringement is considered both as a tort and a crime by the statute (Sections 192, 193 and 207).

Brazil is also a signatory of the World Trade Organization (WTO) Trade-Related Aspects of IP Rights (TRIPS) agreement, fully enforceable

In December, 2012, after a request from the *Comité Interprofessionnel du Vin de Champagne* (CIVC), which was represented by our firm, the Brazilian Patent and Trademark Office (INPI) recognised champagne as a geographical indication. From now on, the term ‘champagne’ can only identify certain sparkling wines from the famous French region. This decision brings an end to a long-standing trade dispute between Brazil and France. In fact, the certificate of registration was signed at a meeting between the Brazilian president, Dilma Rousseff, and the French president, François Hollande, who said such recognition was “an honour to the French”.

In France, since the beginning of the last century, statutes have regulated geographic indications, preventing fraud regarding the origin of products. Regulation specifically governing wines produced in the region of Champagne is more than 100 years old, while in Brazil the term champagne was used not to identify specific wines produced in the north east of France, but as a term for any sparkling wine.

For that reason, and despite the fact that Brazil is a signatory of the Madrid Agreement of 1891,

the Brazilian Supreme Court decided in 1975 that several local wineries should be allowed to use the term champagne to identify their products. The court argued that the IP statute in force at that time provided protection for indications of source, but not for appellations of origin (*appellations d'origine*, which include some quality requirements as well). Also, the court emphasised that local wine producers and Brazilian consumers used the term champagne to refer to any sparkling wine, and not specifically the ones produced in the French region.

Currently, the factual circumstances and the current legal framework are both completely different. Wine consumption has grown considerably in the country, and Brazilian society has become gradually more sophisticated regarding wine quality. For that reason, since the 1990s local producers exclusively use the term ‘*espumante*’ (in English, ‘sparkling’) to identify wines produced using the *champenoise* method. This is also how sommeliers and consumers refer to generic sparkling wine. Furthermore, since 1996 there is a new IP statute in force—Statute no 9,279—protecting both indications of source

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in the country as per Decree no 1,355 of 1994. With regard to geographic indications, Article 22 of the agreement establishes a standard level of protection for all products, in order to prevent unfair competition and misleading behaviour.

Article 23 provides a stronger level of protection for geographic indications related to wines and spirits, protected even if the infringement does not mislead the public: "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."

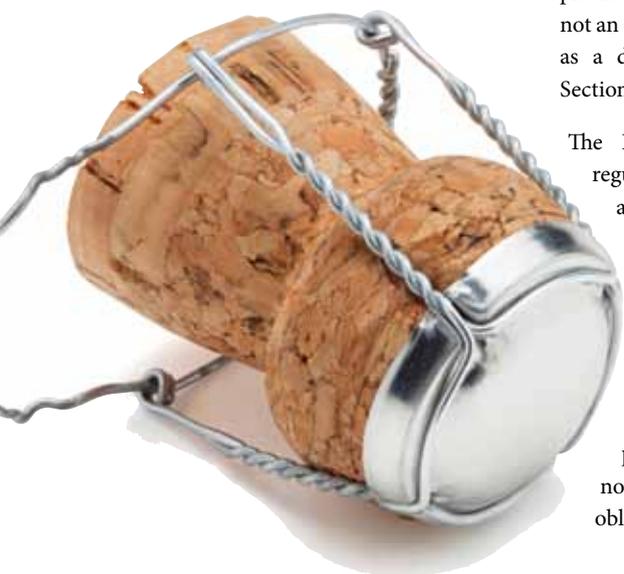
In addition to that, in order to facilitate the protection of indications regarding wines, the agreement establishes that "negotiations shall be undertaken in the council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines". The negotiations towards such multilateral system are far from finished. Finally, Article 24 of the TRIPS agreement provides for several exceptions.

Article 24.4

Nothing in this section shall require a member to prevent continued and similar use of a particular geographical indication of another member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that member either (a) for at least 10 years preceding April 15, 1994, or (b) in good faith preceding that date.

Article 24.6

Nothing in this section shall require a member to apply its provisions in respect of a geographical indication of any other member with respect



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to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that member. Nothing in this section shall require a member to apply its provisions in respect of a geographical indication of any other member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that member as of the date of entry into force of the WTO Agreement.

In light of the present factual circumstances and the current legal framework in Brazil, in 2011 our firm filed on behalf of the CIVC a request before the INPI to have champagne recognised as a geographical indication in the country. Even though a local winery—the only one that insisted on using the term champagne as a synonym of sparkling wine—filed in opposition, the INPI decided to grant our request, arguing that the 1975 Supreme Court decision, issued in light of previous legislation that is no longer in force, is not an obstacle for the recognition of champagne as a designation of origin, as supported by Section 4 of the Madrid Agreement.

The INPI also established that the local regulation creating technical standards to allow a wine producer to call its products champagne are simply minimum standards and not a free pass allowing every producer that complies with such conditions to use the term champagne.

This important decision shows how seriously the country is taking the protection of geographic indications, not only to comply with international obligations, but also in view of the national

interest. The agricultural business is absolutely essential for the Brazilian economy, and the country has huge potential to develop and profit from national geographic indications.

The INPI has already granted registration for several local geographic indications, such as Região do Cerrado Mineiro, in the state of Minas Gerais, where coffee is produced; Vale dos Vinhedos and Pampa Gaúcho, both in the south, respectively famous for their wine and beef; Paraty and Salinas, in the states of Rio de Janeiro and Minas Gerais, where cachaça, the national drink, is produced; Porto Digital, in the north east, where IT services are provided; and many others, where products such as rice, fruits, leather, shrimp, candy, handmade art products, pottery, cheese, shoes, jewellery, marble, and biscuits are made.

The recent decision recognising champagne as a geographical indication is another sign that the Brazilian government will continue its efforts to improve the protection of IP rights in the country. ■

Luiz Leonardos is chairman of Luiz Leonardos & Cia. He can be contacted at: leonardos@llip.com

Ricardo Dutra Nunes is a partner at Luiz Leonardos & Cia. He can be contacted at: rnunes@llip.com



Since the late 1950s, **Luiz Leonardos** has helped shape Brazil's IP scenario. He founded Luiz Leonardos Advogados after Morsen Leonardos & Cia ceased its activities in April 2012. His notable career in IP is widely recognised in Brazil and abroad. Legal excellence makes him one of the most respected IP practitioners of his generation.



Ricardo Dutra Nunes has an LLM degree in IP Law, *summa cum laude*, from The George Washington University Law School. He is admitted to practise law in Brazil and passed the NY State Bar examination in July 2012 (awaiting admission).