

Title and Abstract:

Geographical Indications: Between Two Paradigms

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Geographical Indications (GIs) are a relatively obscure, yet increasingly important, form of intellectual property (IP) protection for regional foodstuffs, recipe based products and beverages. Against the backdrop of an industrialised and increasingly liberalised agricultural production paradigm, designations such as *Darjeeling*, *Champagne* and *Prosciutto di Parma* have the potential to create distinctive niches for traditional regional products; to value the local in the face of the global. Legal regimes which recognise and protect such designations also facilitate a number of related policy agendas, ranging from rural development to cultural heritage preservation. The protection of these regional 'brands' is recognised in the WTO's TRIPs Agreement, where a discrete set of rules applies to the signs representing those products possessing a link to their regions of origin. According to Art 22.1 of TRIPs, this link is satisfied 'where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'. Put simply, the link is what makes GIs ontologically distinct or 'special'.

In keeping with the theme of this conference, this historical paper retraces the emergence of this link in the legal discourse, by revisiting a series of conceptual and doctrinal legal innovations over the 19th and 20th century in France. (i) To begin with, it was necessary to justify the creation of a separate category of protected geographical signs, distinct from the general rules of unfair competition prevention which proscribed the misuse of all commercial signs. (ii) If special status rested upon the link between product and place, the nature of the link would also require further elaboration. Here a central puzzle was the relative importance of natural (biophysical) or human (cultural and socio-economic) influences. (iii) Finally, there was uncertainty about the extent to which this model could extend beyond the paradigmatic case of wines. These developments, situated within the context of the French wine industry during this period, may be conveniently consolidated within the *terroir* paradigm. They would operate to *reserve the use of the sign* for producers from the eponymous region, since products from elsewhere would – by definition – not share this link. By contrast, other neighbouring jurisdictions such as Germany and Britain would protect such geographical designations as part of a more general framework of sign protection, based on *preserving the communicative content* of the sign for a particular audience in cases where harm would arise from third party use (e.g. preventing lying to consumers). Today's major GI laws, such as the TRIPs Agreement and the EU's Regulation 510/2006, are the result of a further set of legal innovations – an incompletely worked out compromise between the *terroir* and *communicative* paradigms. The price of these legal innovations may therefore be incoherence in the law and – through a warped understanding of authenticity – restrictions on innovations in production practices.

Bio: Ten Lines

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Dev is presently a Lecturer in Intellectual Property Law at the London School of Economics. His research interests traverse Intellectual Property, Legal History and Private Law. His current research focuses on the protection of signs and the legal regulation of communication, which includes Trade Marks, Domain Names and Geographical Indications (GIs). He has published extensively on GIs, recently completing a monograph on the historical emergence of international GI protection (*Relocating the Law of Geographical Indications*, Cambridge 2012) while also editing a compilation of the most advanced scholarship in this area (*Research Handbook on Geographical Indications*, Edward Elgar 2012). He is a Research Fellow of the Oxford IP Research Centre and a Research Affiliate of IPOsgoode, Canada.