

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK OF WINE BRANDS

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ABSTRACT

Nowadays the brands played a crucial role in commercial activities being one of the most significant part of an economic item or product, regardless the field in general. Moreover these marks or symbols have become indispensable in any sector of economic and social life due to make the product differentiable.

To understand the role of the brands this article provides a number of necessary information relating with this aspect and emphasis on international regulation of wine brands.

All things considered, this essay will first focus on terminology of brands in general and will then show to international regulation in this area .Next ,it closely examines the procedural issues involving in the registration process .Finally, it focusses on discussion and points of view in order to clarify how this commercial symbol could affects the economic activity and the social life.

INTRODUCTION

In these days, as I mentioned above ,the brand has become a powerful tools in the trade market and despite of fact that the regulations does not impose trademark registration, both manufactures and service providers have a huge interest in protecting their businesses .Similarly ,through the interaction between production and consumption it could say that the brand is like an arbitrator on the free markets mean of correlating demand with offer.

The brands are everywhere i our lives ,on the street, in our own home, in supermarkets, in restaurants, in the media, hep us to identify the origin of the product or service in question, while providing important information about their quality.The main role of the marks is, obviously, to distinguish on the market the products and services of a person or a company from those of the competition.

Referring to the origin of the brands will be have a look in the oldies times ,thousands of years ago in history and researchers have come to light a large number of signs (sigillum) were used to identify the products. In Greece and ancient Rome used signs to differentiate products and earlier attestations show that these signs appeared on ceramic objects. Since the handicrafts development ,in the Middle Ages ,the functions of the marks(brands) and their legal regulation have become more visible in society and two

categories of brand were formed the corporate brand, called as *signum collegi* and the individual mark, called *signum privati*. Thus ,the corporate brand(collectively) was referring to the rules and activity for the craftspeople operating in a particular field, whilst the individual mark was used by a craftsman into a corporation in order to personalize the products he made. It is important to conclude that both the corporate or collective and individual brand did not fulfill a commercial role or a competition ones in the case of modern brand, but attest to compliance with the prescriptions of how to manufacture those products.

Regarding to law rules in this matter, in the same period of Middle Ages the first regulation appeared. In the modern age ,as a consequence of the Industrial Revolution ,but also due to the demographic growth, the brands appears as an element of advertising, offering the possibility for consumers to distinguish the products of a producer, trader or

distributor from similar products of competitors. The cities using mostly higher brands were generally ports, where the trade was in bloom, in countries such as Italy, Spain, Portugal, England.

In Romanian Countries, in 1879 was introduced a system of rules protecting trademarks in relation with foreign brands and the first mutual treaties was signed.

MATERIAL AND METHOD

It is true that this essay treats some of wine issues but, as we can see, this paper has a significant legal content. Thus, all the materials underlying this study are made up of regulation, especially international treaties and law rules in this field. Almost the whole essay is based on the problems regarding Intellectual Property Law with respect of brand in general and in the wine sector.

From the method point of view I will use the comparative and the logical-legal methods. Legal analysis of legal documents will be done referring to common European market and international law, the both public and private in the sector of wine brands.

RESULTS AND DISCUSSIONS

From the beginning it must be said that in terms of the Intellectual Property Law the rules or the treaties and international conventions have a general applicability, regardless of wine field. For this reason we will refer in the following to the international legal framework with respect of what brand means and which are the norms governing this legal instrument.

Thus, one of the most significant tools regarding to Intellectual Property is the Paris Convention elaborating in 1883. This convention referring to Protection of Industrial Property was adopted and signed by 11 states on July 6, 1884 and Romania joined in 1920. Later they formed the Union for the Protection of Industrial Property. The second step was the Madrid Arrangements establishing the methods for international registration of trademarks in 1891.

The international classification of products and services for the purpose of registering trademarks was made for the first time on 15.06.1957 by Nice Arrangement. After that, on 12.06.1973, the Vienna Arrangement established the international classification of the figurative elements of trademarks.

Finally, the Stockholm Convention (1979) provides the World Intellectual Property Organization (WIPO) and an international office based in Geneva.

These were the main conventions which have been founded the legal framework regarding brands. Nowadays, each company must decide whether or not to create a brand for its product.

Trying to provide a definition for brand it could claim that a brand is a distinctive sign, attached to a product, a symbol allowing the correct identification of the origin of any product and as well as the differentiation of identical or similar products of different manufactures.

The legal definition of the trademark is found in the legal doctrine and legislation. The Romanian legislature defined the mark, anticipating the desideratum expressed at the Congress of the International Association for the Protection of Industrial Property in Paris in 1900, recommending that the legislation of each country should include the definition of the brand. Under the Romanian law of April 15, 1879, the mark was an essential means of competition, a means for its owner to distinguish its goods from those of its competitors and to assert the value of its products to attract and develop customers. These definitions give the mark the guarantor function against dishonest acts, guarantee the free exercise of commercial activity and protect honest traders from acts of unfair competition. The brand, resulting from the freedom of human activity, provides a reputation for the one who has

been able to win it. Subsequently, the brand definition was based on the distinction function, then on the quality assurance. Thus, in all legislation the brand is defined as a sign that serves to differentiate the assets of an enterprise from the same or similar ones of other enterprises.

The explanatory dictionary of the Romanian language, edition 98, defines the term "mark" as having the following meanings:

"Distinct mark applied on an object, on a product, on an animal, etc. to distinguish it from others, to recognize it, etc. Type, pattern, inscription (which indicates the source) of manufacture. Coat; blazon, emblem.

§ the metal sheet with serial number, with which the workers prove their presence at work or which they leave in exchange for the tools received.

§ the stone or the track of the white-painted track, transversely placed between two intersecting railway lines, to indicate the railroad branch and the place where the vehicles can run without the risk of collision.

§ in figurative sense, distinctive sign, specific feature, characteristic attribute; particularity " (The Explanatory Dictionary of the Romanian Language, 1998)

According to Yolanda Eminescu, the mark "is a distinctive sign designed to differentiate the products, works and services of a natural or legal person, guaranteeing a defined and constant quality, a sign capable of forming the object of an exclusive right belonging to the category of industrial property rights." (Eminescu, Y. 1996)

Accepting in essence this definition, we emphasize that, in our opinion, the brand does not directly represent a guarantee of the quality of the products, services, but is an indirect means of determining the quality through the market relations and the consumption process.

In a study by AIPPI (International Association for the Protection of Industrial Property), it is shown that the brand has primarily an identifying function and only then a function of indicating the source of origin. The brand also possesses economic functions, including: quality function, advertising function, competition function

According to the study, the quality function has two components: communication (by brand, buyer receives product quality information) and reputation: the brand, associated with products whose quality is preserved or improved over time, becomes widely known to the audience targeted for the products to which that mark applies or, in other words, become notorious.

Such Luminita Serbulescu claims, " *the brand fulfills the following functions: differentiation function, competition function, quality guarantee function, market organization function, monopoly function, promotion function, consumer protection function, producer's protection function* " (Serbulescu L. 2007)

The legal and institutional framework of trademark protection in Romania

The first Romanian law on trademark protection was adopted in 1879, it is about the Factory and Trade Marks Act and the Regulation for the Application of this Law.

In 1998, Law no. 84 regarding the trademarks and geographical indications, which represents the current law that applies in Romania in the field of trademark protection and geographical indications, with the subsequent modifications.

This law returns to the voluntary character of the trademarks and is regulated for the first time in Romania the protection of geographical indications. It should also be noted that Law 84 on Marks and Geographical Indications is correlated with the International Treaty for Harmonization of National Legislation elaborated by the World Industrial Property Organization (WIPO) and with the EU Directive adopted for this purpose.

As regards the institutional framework for trademark protection, the State Office for Inventions and

Trademarks (OSIM) represents the specialized body of the central public administration, subordinated to the Government having sole authority on the territory of Romania in the protection of industrial property.

At the same time, it should be made clear that any natural or legal person may register a trademark.

The registration of a trademark can be requested directly or through a trustee. In the case of a co-ownership deposit, it is recommended that applicants make a contract regarding their relationship.

Given that a person wishes to register a brand only nationwide, he only obtains protection for his mark in Romania. Prior to the date of Romania's accession to the European Union, it was impossible for Romanian citizens and Romanian legal persons to register a mark at European level by resorting to a single procedure because Romania had not yet become a member of the EU. Also, Romanian citizens had to meet several conditions to obtain protection and to register a mark in several European states. Such an applicant was required to register his mark in each state in which he wished to obtain protection.

All this has changed since the Romanian state became an EU member state. Thus, any Romanian citizen can register his trademark at the community level. This implies that a mark owned by a Romanian natural or legal person can be registered at Community level, without having to register it in every EU Member State.

As a consequence of the accession of the Romanian State to the EU, in general, all trademarks registered prior to accession at the community level are recognized and protected on the territory of the Romanian State, but the marks registered before accession only at national level in Romania are not recognized and protected in the territory to the other EU Member States if not registered in each of these countries or at European level.

The following can be registered as trademarks: words, including names of people, drawings, letters, figures, figurative elements, three-dimensional shapes, the shape of the product or the packaging or combinations of colors, and any combination of these signs.

Under Law 84 /1998 on Marks and Geographical Indications, trademarks may be individual, collective or certification:

- a) the individual mark is used by a single organization;
- b) the collective mark serves to distinguish the products or services of members of an association of products or services belonging to others;
- c) the certification mark indicates that the products or services for which it is used are certified by the trademark owner in terms of quality, material, product manufacturing or service performance, precision and other features.

The trademark registration procedure comprises the following phases:

- a) Establishment of the regular national filing of trademarks.
- b) Examination of the application for registration of the mark in terms of fulfillment conditions for the constitution of the regulatory deposit.
- c) Substantive examination of the trademark application, within 6 months of the date of constitution of the regular national filing.
- d) Registration of the trademark and its publication, if, after examination of the application, it is found that the conditions provided by the law are met.

According to the regulations in our country the right to the trademark is acquired and protected by registering it with OSIM, for a period of 10 years from the date of the regular national filing. The rights of the trademark owner are confirmed by the trademark registration certificate, which confers an exclusive right on the trademark for the products or services for which the registration was made. The trademark registration can be

renewed after the expiration of this period, without making changes to the mark and without extending the list of products and services. The renewal of the trademark registration is registered in the National Register of Marks and is published in the Official Industrial Property Bulletin (BOPI).

The exercise of ownership of a trademark or a trade name allows the holder to oppose any competitor who illegally uses it for a similar product (art. 35 pt. A, b, c of Law No. 84/1998). Trade mark rights may be transferred by assignment or license, at any time during the trademark protection. Under Law 84/1998 on Marks and Geographical Indications, trademark rights fall into the following situations:

a) the expiration of the trademark's term of protection and the non-completion of the renewal formalities;

b) the renunciation by the holder of his / her rights, through an application filed with OSIM;

c) the loss of trademark rights for its non-use, without due cause, within five years of registration;

d) cessation of business and non-transfer of trademark rights to another enterprise;

e) cancellation of trademark registration.

During the 10 years of protection, the trademark owner may request non-essential changes to some brand elements, provided these changes do not affect the overall image of the trademark.

In our country the geographical indications of the products can also be registered and protected.

Geographical indication is a name that serves to identify a product originating in a country, region or locality of a state where a quality, reputation or other determinant characteristics can essentially be attributed to that geographic region. One of the most applicable fields in this regard is, obviously, in the wine industry where the Geographical Indication played a crucial role. Geographical indications of products are protected in Romania by registration with OSIM, according to Law no. 84/1998 or the international conventions to which Romania is a party. They can only be used by people who produce or market the products for which these indications have been recorded.

OSIM registers the geographical indications and grants the applicant the right to use them after the

Ministry of Agriculture and Food or, as the case may be, the competent authority of the applicant's country of origin certifies:

- the geographical indication of the product to be registered;

- products that can be marketed under this indication;

- the geographical area of production;

- the characteristics and conditions of obtaining that products must meet to be marketed under that indication.

If the application fulfills the conditions stipulated by the law, OSIM decides to register the geographical indication in the National Register of Geographical Indications and it is published in the Official Industrial Property Bulletin (BOPI).

The holder of a geographical indication for certain products has the right to use it in the commercial circuit, applied only to these products, in the accompanying documents, advertisements, prospectuses and may refer to the "registered geographical indication". It has the obligation to ensure the observance of the quality conditions and the specific characteristics, registered at the registration of the geographical indication, in order to protect the consumers. It is forbidden to use a geographical indication or its imitation by unauthorized persons, even if the real origin of the products is indicated.

After the ROMANIA joined European Union, in 2007, the main Law in the wine sector has remained Law No 244/2002 regulating all the issues concerning wine and

viticulture. In the system of Common Market, in 2015 was adopted Law No 164/2015 containing principles and rules in the context of the Common European Market reorganization.

Regarding to the principal institutions, in Romania the government approved in 2009 the establishment of the National Office of Vine and Wine Products (ONVPV) by merging the National Office of Wine Designations (ONDOV) with the National Vine and Wine Office (ONVV). ONVPV is a public institution with a legal personality, financed from its own revenues and subsidies from the state budget, through the budget of the Ministry of Agriculture, Forests and Rural Development. The ONVPV mainly manages the production potential, name of origin, geographic and traditional varieties for wine products. The ONVPV takes over from the ONVV and ONDOV the personnel structures, the related patrimony, as well as the other rights and obligations resulting from them, budgetary credits left unused at the date of entry into force of Law no. 329/2009 on the reorganization of certain public authorities and institutions. The merged measure of the two institutions was achieved as a result of the reorganization of the governmental authorities.

CONCLUSIONS

All things considered, one of the most important points with respect to international and national legal framework of wine brands is that this issue is based on the general principles of Intellectual Property Regulation, both national and international. As I claimed above, the brand is not a quality guarantee regarding to wine values. The brand is a distinctive element made in order to protect the final consumer and distinguish those of important elements referring to a product.

Furthermore it is crucial to remind that the legal protection in terms of the wine brand is an aspect treated on international level by a multitude of conventions, treaties, arrangements and many laws.

BIBLIOGRAPHY

1. **Eminescu Yolanda**, 1996 - Legal Regime of Marks, Lex Light Edition, Bucharest, pag. 12.
2. **Serbulescu Luminita, Bondrea A. Aurelian, Gardan Daniel Adrian, Geangu Iuliana Petronela**, 2007 - Brand Management and Image Management, Publishing House "Romania de Main", Bucharest.
3. *******, 1998 - The Explanatory Dictionary of the Romanian Language, Academia Publishing House, Bucharest, Tom X, Part 3, pp. 713-714.