Further Improving GI systems in the EU: the Scotch Whisky Perspective

Scotch Whisky Association www.scotch-whisky.org.uk



Scotch Whisky in Numbers

Annual exports of

£4 billion

10,800 Scottish Jobs

>7,000 in Rural Communities

Direct exports to

175 countries

40,000 in UK

23%
of UK Food and
Drink
Exports



The Scotch Whisky Association: Legal Affairs Department

- 5 full time lawyers
- Around 60 legal actions at any one time
- 100s of investigations and administrative complaints
- Over 300 current trade mark oppositions
- Zero tolerance



UK: The Scotch Whisky Regulations 2009

The most comprehensive law ever to protect Scotch Whisky:

- Defines Scotch Whisky
- Protects Distillery Names
- Protects Regional Geographic Indications: Speyside, Highland, Lowland, Islay and Campbeltown
- Gives the Scotch Whisky Association power to bring proceedings for infringement.

STATUTORY INSTRUMENTS

2009 No. 2890

FOOD

The Scotch Whisky Regulations 2009

 Made
 - - - 26th October 2009

 Laid before Parliament
 30th October 2009

 Coming into force
 23rd November 2009

CONTENTS

- Title, commencement and application
- 2. Repeal and revocation
- Definition of "Scotch Whisky" and categories of Scotch Whisky
- General interpretati
- Manufacture
- Marketing
- 7. Movement from Scotland to another country
- Compulsory sales descriptions
- 9. Names of distilleries and distillers etc
- Locality and region geographical indications
- 12. Maturation, age and distillation statements
- Transitional provisions relating to labelling and packaging
 Transitional provisions relating to advertising and promotion
- Designation
- Enforcement
- Appointment of officers
 Duty to give assistance and provide information
- 19. Powers of entry
- 20. Powers of an authorised officer
- 21. Procedure on seizure
- Improvement notices
 Appeals against improvement notices
- Appears against improved
 Powers relating to appeals
- 25 Publication of notice
- 27 Offences
- 27. Ottences
- 29. Offences by bodies corporate etc
- 30. Default of third person



Legal Protection: Europe

- Scotch Whisky is protected as a Geographical Indication under Regulation (EC) 110/2008
- Technical File filed with EU Commission
- Verification regime operated by Her Majesty's Revenue & Customs



Legal Protection: Rest of the World

- Specifically defined in the laws of over 30 markets outside Europe
 - e.g. In the USA: "a distinctive product of Scotland manufactured in Scotland in compliance with the laws of the United Kingdom"
- Registered as a Geographical Indication/Certification or Collective Trade Mark in 60 markets
- Recognised in bilateral agreements between the EU and other countries in 19 markets
- Protected under the laws of passing off and unfair competition
- No court has refused to recognise "Scotch Whisky" as meaning "whisky from Scotland"







Brexit implications

Changing priorities

New challenges

- EU GI to non-EU GI
- Gls in the UK post Brexit
- Agreements between the EU and others
- Frictionless access to the EU market
- Consistency and certainty of regulation



The Spirit Drinks Regulation

- The key legislative framework
- Unfair competition v passing off
- Level of protection article 16
- Spreading the GI message

But.....



The Spirit Drinks Regulation

Enforcement issues

- Large quantities of Indian whisky came into EU
- Did not comply with EU 'whisky' definition
- Unfair competition
- Damage to whisky category
- Deceives consumers similar to the horsemeat scandal



BLENDED WHISKY THIS WHISKY IS A BLEND OF INDIAN & AMERICAN WHISKIES



Enforcement

Where?

Large quantities of bulk to France, Spain, Netherlands and Belgium

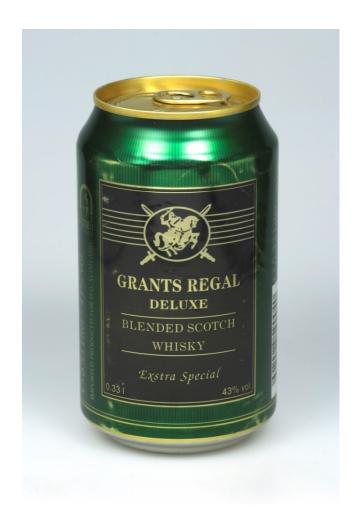
How much?

- 4.5 million litres high strength bulk spirit
- 66,000 cases bottled product
- If bulk formed 50% of 'Blended Whiskies' 25 million bottles

Lack of interest



Enforcement







Evocation of GIs

Spirit drinks are currently protected from:

- Any direct or indirect commercial use in respect of other products
- Any misuse, imitation or evocation
- Any other false or misleading indication as to provenance, origin, nature or essential qualities
- Any other practice liable to mislead the consumer



Recent EU case law

- Colombueno/Café de Colombia OHIM Opposition Division
- Basmali/Basmati T-136/14
- Darjeeling T-627/13
- Verlados/Calvados C-75/15

But the concept is wider than names which are similar to the GI

Other challenges

- Place of manufacture
- GIs and trade marks
- Gls in transit through the EU
- Third country GIs in the EU
- Injunctions but no damages or illegal profit
- Consultation



The Scotch Whisky Association: Protecting Scotch Whisky

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