

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

1. Title, commencement and application
2. Repeal and revocation
3. Definition of "Scotch Whisky" and categories of Scotch Whisky
4. General interpretation
5. Manufacture
6. Marketing
7. Movement from Scotland to another country
8. Compulsory sales descriptions
9. Names of distilleries and distillers etc.
10. Locality and region geographical indications
11. Use of the words 'pure' and 'malt' and derivations
12. Maturation, age and distillation statements
13. Transitional provisions relating to labelling and packaging
14. Transitional provisions relating to advertising and promotion
15. Designation
16. Enforcement
17. Appointment of officers
18. Duty to give assistance and provide information
19. Powers of entry
20. Powers of an authorised officer
21. Procedure on seizure
22. Improvement notices
23. Appeals against improvement notices
24. Powers relating to appeals
25. Publication of notices
26. Obstruction
27. Offences
28. Fines
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”



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DAILY
Mirror

NEWSPAPER OF THE YEAR
Friday, June 24, 2016
65P

HISTORIC 5AM EDITION
Referendum shock as
Leave head for victory



WE'RE OUT

» Britain votes to quit the EU » Pound goes into freefall



Brexit implications

Changing priorities

New challenges

- EU GI to non-EU GI
- GIs 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





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
- Basmati/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
- GIs 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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