What every agri-food company must know about the new geographical indications which will come into force on September 21st

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Author

Isabelle Jomphe

Partner, Lawyer Partner, and Trademark Agent

While negotiating the *Comprehensive Economic and Trade Agreement between the EU and Canada (CETA)* with the European Union, Canada has agreed to modify its legislative scheme governing Geographical Indications («GIs»). In this context, Canada has recognized protection for 179 new GIs.

The new provisions relating to GI descriptions will come into force on September 21st, 2017. What do these provisions mean for agri-food companies? Will these companies have to modify their labelling information, packaging or promotional material? For a better understanding of what lies ahead, here is a summary of the new legislative scheme and its exceptions, along with a set of recommendations.

THE NEW LEGISLATIVE SCHEME

1. Updated definition: Previously limited to wines and spirits, the new GI regime will soon be broaden to include agricultural foods and products. Regions renowned for products such as cheeses, meats, fruits and vegetables, as well as other food products, will have the right to request that their name be recognized as a GI.

2. New GIs: The complete list of the new GIs can be found here. The most well-known GIs among the following categories are:

Cheeses: Feta, Gorgonzola, Parmagiano Reggiano, Pecorino Romano, Comté, Roquefort, Brie de Meaux, Morbier, Epoisses, Beaufort, Bleu d'Auvergne, Mozzarella di bufala Campana, Gouda Holland;
Meats: Jambon de Bayonne, Prosciutto di Parma, Proscuitto di S. Daniele, Prosciutto Toscano, Prosciutto di Modena, Mortadella Bologna;
Oils, nuts and olives: Huile d'olive Kalamata, Huile d'olive de Haute-Provence, Huile essentielle de Haute-Provence.

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3. Restrictions: Unless a specific exception applies, it will be prohibited to use a GI (or a translation thereof) if:

the product does not originate from the region indicated by the GI;
the product originates from the region indicated by the GI but was not produced or manufactured in accordance with the laws and regulations governing this region.

To be noted: these restrictions apply only to the GIs indicated in the GIs list. Accordingly, the use of terms such as « parmesan », « pecorino », « mozzarella », « brie », « gouda », « mortadelle » and « prosciutto » will remain legal.

4. Other prohibitions: By no means will a company be allowed to designate or present a product in a manner that is misleading as to its geographical origin.

When deciding whether the public could possibly be misled as to the place of origin of a product, one can consider the visual aspect of the product's presentation. For example, flag illustrations and emblematic colors that evoke a certain region may create a false impression as to the origin of a product.

It should be noted that these prohibitions apply even if the true place of origin of a product is indicated on the packaging.

Moreover, the addition of expressions such as "kind", "type", "style" or "imitation" will not constitute an acceptable defense, unless a specific exception to that effect has been stipulated by law.

5. Prohibited actions: the new legislation not only prohibits promoting and selling goods likely to mislead customers as to their origin, but also prohibits manufacturing, preparing, packaging, labelling, importing and advertising such goods.

EXCEPTIONS

Many exceptions are provided by law and are worthy of consideration:

1. Trademarks: trademarks that have been registered, applied for or used in good faith as of September 21st, 2017 will not be affected by the new legislative scheme. This exception can also be invoked in regard to any new GI added to the GIs list in the future.

2. Prior use of the terms Feta, Gorgonzola, Asagio, Fontina and Munster: Any persons, including their successors and assignees, who made commercial use of the above-mentioned indications prior to October 18th, 2013 can continue to use them.

These terms may also be used in combination with expressions such as "kind", "type", "style" or "imitation", as long as the place of origin is legible and visible on the product.

3. Prior use of terms Jambon de Bayonne and Beaufort: Any persons, including their successors and assignees, who made commercial use of these indications for at least 10 years prior to October 18th, 2013 may continue to use them.

It is to be noted that a business having used these terms for less than 10 years prior to October 18th, 2013 will benefit from a transitional period of 5 years to modify its usage.

4. Use of terms Jambon Forêt-Noire, parmesan, orange Valencia, bacon tyrolien, bière bavaroise, bière Munich and fromage St-George: These terms may be used under the new legislative scheme, so long as their usage does not mislead the public regarding the origin of the product they are associated with.

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5. Translations: the new provisions do not prohibit the use of a translation of a GI that is identical to a term commonly used as the name of a product in Canada.

RECOMMENDATIONS

In order to face the new GIs and the upcoming competition in the agri-food industry, companies should consider the following recommendations:

going through the GIs list and identifying which ones are currently used by the company;
taking an inventory of labels, packaging and promotional materials featuring GIs;
analyzing the CETA's provisions to determine if the company can benefit from any exceptions;
documenting prior use of GIs for the purpose of invoking prior use exceptions;
reviewing the chains of title relating to GIs to confirm ownership and making sure to have written assignments;
evaluating the benefits of filing an application for the registration of all marks containing geographic references (including logos or images evoking a specific region);
implementing a monitoring system to identify an potentially oppose to new GI requests;
protecting the company's geographic designations through (i) certification marks under The
the *Act respecting reserved designations and added-value claims* in force in the province of Québec, and (iii) the new legal protection system offered to GIs, once these provisions come into force.

Do not hesitate to contact our team for all inquiries related to GIs and the protection or defense of your trademarks.

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