

LEGAL ASPECTS OF PROTECTING THE NAMES OF TRADITIONAL FOOD PRODUCTS IN THE EU*

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Review article

Abstract

In recent decades, consumers in the European Union have increasingly demanded high-quality food products. Over time, consumers have also shown growing interest in health aspects, as well as the environmental impact of production and animal welfare. For producers, labeling products is the only way to convey information about their characteristics in order to attract consumer attention. To effectively communicate such information, especially in the case of traditional products that meet consumer demands, the legal framework of the European Union provides two labeling instruments: trademark registration and the registration of a geographical indication. A large number of studies have focused on consumer preferences and consumption habits. This paper is motivated by the position of producers who need guidance on product labeling to achieve better market position. The paper focuses on the legal context through an analysis of the requirements for trademark and geographical indication registration, as well as an examination of the legal position of producers after registration. The goal is to determine, through a comparison of the two options, which one offers producers a better legal position, as a broader scope of exclusive rights ensures a better economic position as well. The paper uses legal, analytical, and comparative methods to compare the legal instruments, and it also examines producer preferences through official data on the number of trademark and geographical indication registrations. The results show that the conditions for trademark registration are more liberal, which explains the higher number of trademark registrations. On the other hand, the conditions for registering a geographical indication are stricter, but they provide producers with a broader scope of guaranteed rights compared to a trademark, as well as better implementation of those rights in practice.

Keywords: *traditional food products, legal protection, trademarks, geographical indications*

INTRODUCTION

It is a well-known fact that the choice of food affects physical health. However, food choices are also directly related to mental health, as some studies show that consuming fast food is associated with increased risk of depression in a way that higher

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consumption of fast food may contribute to the development and exacerbation of depression (Rahman *et al.*, 2024). Therefore, consumer demands are increasingly moving in the direction of choosing food products that do not cause harm to the environment, health of people, animals, plants and their welfare (European Union, 2018). Labelling of food products plays a key role in this regard, since labelling is the only way for consumers to verify, during the purchase process or after the consumption, whether a product has been produced according to some specific requirements. (Janssen and Hamm, 2012). Traditional food products often resemble old, well-established production methods in which ingredients and specific *know-how* of producing and processing of final products satisfy such consumer demands. This puts manufacturers in front of a challenge: how to achieve adequate communication with customers and show them that the product contains those elements so that customers are deprived of any worry or discomfort. Also, success in sales results will directly depend on that. The first question to be considered is the definition of tradition and traditional food product. In the Regulation (EC) No 178/2002, as a part of the general legal framework of the European Union regarding food law and procedures in matters of food safety, term “traditional product” is mentioned only as one of the subject matters of its provisions, without specifying broad definition (European Union, 2002). While traditional product is not defined, Article 2. defines “food” as any substance or product, whether processed or not, intended to be ingested by humans (European Union, 2002). At the same time, another EU regulation, namely Regulation No 1169/2011, establishes the assurance of a high level of consumer protection in relation to food information, taking into account the differences in the perception of consumers and their information needs (European Union, 2011). Although general rules in this regard were given, the notion of tradition and traditional food product was still not defined. This finally happened with the adoption of the Regulation No 2024/1143 which refers to the protection of geographical indications for wine, spirit drinks and agricultural products and where tradition is in the Article 2 defined as proven historical usage of the name of product by producer for a period that allows transmission between generations. This period is to be at least 30 years (European Union, 2024). It follows that, from a legal point of view, labels of food products should contain accurate and objective descriptions whilst only a product whose production has been passed down from generation to generation can be considered traditional. Outside the sphere of legislative definitions, in some studies the definition of tradition and traditional food product was examined from the consumer’s point of view, so while the key role in the legal definition is conferred to the time factor and transmission from generation to generation, it was concluded that consumers perceive traditional product from four aspects, as (1) products that are eaten frequently or every day, and are related to health, nature, made on farms without additives, (2) products that have origin from certain locality as tradition can not be exported, (3) products that are part of long-standing cuisines, and (4) products that have distinct taste because “tradition is tasteful” (Guerrero *et al.*, 2009). It is evident that consumers perceive tradition somewhat broader than what is legally defined. Although globalization implies trade without borders, consumers have been paying great attention to the origin of food

products for the past several decades. For example, in Switzerland it was determined that even for 82% of consumers the question of product origin is one of the key elements while making a purchase decision (Luykx and Van Ruth, 2008). In such a situation, a large number of studies have been conducted with the aim of determining the preferences and behaviour of consumers. More precisely, there are about 800 academic publications related to the issue of branding and the place of origin of products, the vast majority of which deal with examining consumer behavior and their willingness to pay more for products with proven origin (Florek and Gazda, 2021). This kind of data can make producers anxious as they may find themselves unfamiliar with the paths they need to take in order to properly protect the names of their products and achieve full communication with consumers by conveying the right information about the origin, quality, characteristics or reputation of the products. The aim of this paper is to determine the most effective and optimal modalities of products name protection through the analysis of the applicable legislative in the European Union, which the countries of the Balkan region are trying to harmonize their national legislations for.

MATERIALS AND METHODS

For the purposes of this research, the following legal regulations and databses were used:

- Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark,
- Regulation (EU) 2024/1143 of the European Parliament and of the council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products,
- eSearch plus – EUIPO’s trade mark database,
- eAmbrosia – European Union geographical indications register.

Through the aforementioned materials, an analysis of legal texts on the modalities of protection of product names was carried out, highlighting the advantages and disadvantages for producers of each of them, and special emphasis on the legal consequences and effects of registration. In addition, through the analysis of the number of registrations in databases, general preferences of producers’ protection modality choice were determined. An analytical as well as comparative methods were being used since each modality of protection was analyzed from a legal point of view and different modalities were compared to each other so as to be able to find the best recommendation for producers.

RESULTS AND DISCUSSION

The producer always has a simple option at disposal: not to protect the name of product and leave it to consumers to recognize its qualities or characteristics themselves. But, that would be rather bad choice when the product has some peculiarities and consumers

are not aware of them. In the literature this is referred as “asymmetric information”, i.e. while producers know whether they have used appropriate ingredients or production methods to achieve the desired level of quality, consumers are deprived of such knowledge because they cannot make any conclusion based on the mere naming of product, or labelling on its packages (McCluskey, 2000). In order to overcome such a gap, in the case of production of a traditional, quality product, it is necessary to enrich its packaging with information and content on the basis of which the average consumer will decide to purchase that product. Each producer is faced mainly with two options: register a trademark or geographical indication. So, what does these options mean, and how do they work in practice?

1. Names protected as trade marks

Most commonly used option is trademark registration. According to the Regulation No. 2017/1001, trade mark is a registered sign that may consist of words, names, designs, letters, numerals, colors, the shape of goods or of the packaging or sounds, if these signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. (European Union, 2017) Generally speaking, trade marks can be classified into three groups: individual, collective and certification trade marks. (Kur, Dreier, Luginbuehl, 2019)

1.1. Individual trade marks

The first option, i.e. individual trade marks are signs of distinguishing the products or services of one, individual entity or producer. The problem with this option is that, in order to be recognized amongst consumers, producer should gain a huge reputation as being well known for producing high quality food products. This means that there should be a brand established behind the product, for which there are different definitions, but most appropriate one is that a brand represents the totality of the value of a product that includes its name, logo, design, packaging, advertising activities, image or name recognition (Mindrut *et al.*, 2015). In order to achieve that, producer would have to put in a lot of effort, investment, time and consistent practice. Actually, protecting the products name as an individual trade mark in this case seems to be only final step on the road to success. Another shortcoming of this route is the fact that producers would have to be very creative in forming protected signs. In order to convey information to consumers about the product, protected sign should include a description of the product itself, its qualities, origin and the like. According to the Article 7.1. of the Regulation No. 2017/1001, one of the absolute grounds for refusal of trade mark registration is trade mark which consists exclusively of signs or indications which serve to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production, or other characteristics of products (European Union, 2017). Rationale of this exception is prohibition of registering of signs, symbols or words that serve to everyone in trade for description of products, as these cannot be monopolized, or reserved for only one producer which would impair or totally disable fair competition on market. Together with other two absolute grounds for refusal of trade mark

registration, this means that one of the basic requirements is that the sign should be distinctive, that is, it should not consist of elements that have become customary in the current language or trade (Kur *et al.*, 2019). Conveying a message to consumers about the qualities of a traditional food product would require the use of signs that describe the product's characteristics, so these absolute grounds for refusal are the reason why producers have to look for another solution, which is also justified by another reason; according to many surveys, consumers are willing to pay a higher price for traditional and regional products since they associate them with better quality (Angowski *et al.*, 2020). In fact, there is a direct link between consumer perception and geographical origin of food product, as consumers evaluate the quality of a product based on its place of origin, transferring opinions about the place onto specific goods that originate therein (Florek and Gazda, 2021). This is the reason why producers need to find solution to register the name of a traditional food product in a way to convey to consumers a message about the qualities, characteristics or geographical origin of the product, and this can definitely not be successfully achieved through individual trademarks. A potential solution is in certification marks.

1.2. Certification trade marks

In contrast to the individual trade mark, in the case of certification mark, according to the Article 83 of Regulation No 2017/1001, a sign can be used to distinguish products which are certified by the proprietor of the mark regarding some peculiarities of product which are certified by the proprietor of the mark in respect of material, mode of manufacture of product, quality, accuracy or other characteristics, with the exception of geographical origin, from products which are not so certified (European Union, 2017). This implies the existence of a separate entity as the trade mark owner that verifies that certain product is made of precisely defined ingredients or that product is produced according to precisely prescribed criteria. One example of this type of trademark is "Halal" certificate owned by the Agency for Halal Quality Certification of Bosnia and Herzegovina.¹ This body, as a non-governmental organization, defines the criteria and rules of production that every producer should meet in order to be able to use the protected trade mark. The main specificity of the certification trade mark registration system is that this type of bodies, i.e. owners of the trade mark, do not carry on a business involving the supply of products of the kind certified (European Union, 2017). Simplified, the task of the owner of a trade mark in this case is to define the criteria that the product should meet and to control those properties without being involved in the process of its production or putting it on the market. As for the required criteria of a product, the rules that define them should be submitted to the authority responsible for registration. It can be said that applicants in the process of registration are mostly free to define the criteria of respective products because after the submission of those rules, responsible authorities check only two conditions of general nature, (1) whether rules are contrary to public policy or accepted principles of morality, and (2) whether the

¹ <https://halal.ba/znak-halal-kvalitete/> (8.10.2024.)

public is liable to be misled as regards the character or the significance of the mark in a way that it is likely to be taken to be something other than a certification mark (European Union, 2017). However, it is important to emphasize that involvement of public authorities is limited in general because, in addition to the lack of checking the authenticity of the criteria of product, the implementation of prescribed criteria is also not a subject of controls of public authorities. This area of responsibility is again on the side of the owner of the certification trade mark, that is the only one empowered to bring an action for infringement, as any other person can do it only with specific authorization from the owner (European Union, 2017). Not only the owner of the certification trade mark, but also all its potential and actual users, this, similar to the case of an individual trade mark, puts in the position that, through their private initiative, long-term and consistent work and investing a lot of efforts and costs, they have to build recognition amongst consumers. Also, according to surveys, there is clear tendency that consumers show more trust for food information when such information are provided by public authorities or entities that are closer to the public sector (Nocella *et al.*, 2014). Similarly, consumers also trust labels on food products whose authenticity is guaranteed by scientific experts more than labels backed by producers themselves (Wu *et al.*, 2021). There are other criteria on the basis of which consumers show trust in labels, e.g. the large number of different labels or quality schemes on food products on the market leads to consumers simply having less trust (Sayogo *et al.*, 2016).

For producers, understanding which type of labels consumers trust most is crucial. Key insights on this matter are highlighted in the consumer awareness survey conducted by the European Union/Eurobarometer in 2022, which included respondents from all member states totaling 26.509 participants (European Food Safety Authority, 2022). The highest level of trust, at 89%, is placed in general practitioners and specialist doctors. As for the relationship of trust towards public authorities and the food industry, European Union institutions and national authorities are trusted by 66% of respondents, while the food industry receives the trust of only 45% of consumers. This clearly shows that in order to convey a message about the values and qualities of food products, producers should focus on providing information through channels associated with public authorities.

However, there is no prohibition for the certification mark to be registered by a public body, but in practice, according to the data from the Registry of the European Union Intellectual Property Office (hereinafter: EUIPO), this is extremely rare.² Similar to the case of individual trade mark, element that is unfavorable for producers is prohibition on registering the names of the certain geographical area as certification trade mark which prevents consumers from creating an image about the total quality and uniqueness of a certain geographical area and the product that originates therein. Another unfavorable element for producers is still applicable prohibition of registering descriptive signs that describe the product and its characteristics, so the certification

² On October 8, 2024, 654 certification marks were registered in the EUIPO database <https://euiipo.europa.eu/eSearch/#advanced/trademarks/1/100/n1=KindMark&v1=%22EU%20Certificate%22&o1=AND&sf=ApplicationNumber&so=asc>

trade mark should include a sign that is distinctive and unique. Taking into account all the results of the analysis of legislative rules, the certification mark is suitable for registration when there is already an established quality standard from the third party, so producers decide to join that quality scheme and thus convey to consumers the message that their traditional product is enriched with what the certification mark criteria require. Registering a new certification mark containing a unique sign would require a long time for convincing consumers of the quality of their product, because such a sign would be unknown to consumers until then. Shortcomings of the certification mark system, which do not allow the registration of names of geographical locations, have been corrected to some extent by another specific type of mark, which is a collective trade mark.

1.3. Collective trade marks

As another specific type of trademark, collective trade mark shares more similarities with the individual than with the certification trade mark. According to the legal definition in the Article 74.1. Regulation No. 2017/1001, collective trade mark consists of a sign that is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings (European Union, 2017). In this case there is an association as a legal form consisting of several individual entities or producers of traditional food products. Association itself should be organized in such a way that is capable to have rights and obligations of all kinds, e.g. to make contracts, accomplish other legal acts, to sue and be sued (European Union, 2017). Therefore, by registering a collective trade mark, several producers of traditional food products join forces to convey the message that it is a product of their group, with some characteristics or qualities that are specific only to that group of producers. The similarity of this type of mark with the certification mark is that the group of producers defines rules by which it determines the conditions of who can be their member. As a part of these rules, group of producers can also prescribe criteria that the product has to meet in order for the producer to become a member of the group and use the collective trade mark. But, in contrast to the certification mark where the holder of the mark may not engage in the activity to which the mark refers, here the members of the association, that is the holder of the trade mark, are also producers of products to which the mark refers. If we take into account the lack of trust of consumers towards information on labels provided by private entities compared to public bodies as previously pointed out in the paper, this can be problematic for conveying the message to consumers about the characteristics of a traditional product. With the certification trade mark, there is an independent certification body whose only task is to check whether the product complies with the given criteria. With a collective trade mark, there is no such intermediary. For this reason, the risk of lack of consumer confidence with collective marks is greater than with certification marks, because producers themselves define the criteria and check their compliance. Unlike the certification trade mark, with the collective trade mark a sign that indicates the geographical origin of a product can be registered, which is one of the most significant feature of this type of trade mark

(European Union, 2017). However, this possibility is not without limitations as the registration of a geographical name cannot prohibit third party from using in the course of trade such names or indications if the usage is in accordance with honest practices (European Union, 2017). This can in a certain way overcome the potential risk of lack of consumer confidence in conveying a message about a traditional product through a collective trade mark, as it gives consumers the opportunity to link the perception of a certain geographical location to the qualities or characteristics of a traditional food product that originate from there. Even in this case, producers will define criteria, i.e. ingredients and production methods, so consumers can rely on the quality and special characteristics by trusting producers, who, if they do not act according to honest practices, can abuse their position. In addition, the literature highlights the viewpoints that are supported by the explanations of the judgments of the Court of Justice of the European Union that the main purpose of using geographical indications in the collective trade mark is to mark the commercial and not the actual, geographical origin of the product (Pila, 2022). In relation to general rules above mentioned according to which producers determine *code of practice*, collective trade mark system has rather limited range in authentically conveying information to consumers about traditional product and its peculiarities which could lead them further to make better purchase decisions.

Considering these two modalities, a need for objective, impartial and authentic way of conveying information about products clearly emerges. This channel of communication should be realized through the structure of public bodies or entities whom consumers trust the most. Environment of liberal economy may not be the best place to expect private initiatives to be fully driven by public policy. But there is one exception that can be said to be a part of the identity that the European Union jealously guards, and that is geographical indications.

2. *Names protected as geographical indications*

At the level of the European Union, legal framework for the protection of geographical indications for foodstuff and agricultural products was established for the first time in 1992 adopting Regulation No 2081/92. In the preamble of this regulation it is clearly stated that even at that time consumers were paying more attention to the quality of food products rather than quantity, which is why the demand for products with proven geographical origin was growing. For that reason, one of the goals of policy was to give consumers clear and succinct information regarding the origin of the product (European Economic Community, 1992). It is clear that conveying information about the qualities of the product is closely related to the geographical location, so instead of presenting a lot of confusing information, it is enough to indicate that the product originates from a certain place, which will be enough information for consumers. For example, it is enough to say “Parmigiano Reggiano” and everything is clear even for less informed consumers. In addition to conveying information to consumers about product qualities, this legal framework also had the task of promoting agricultural production and rural development (European Economic Community, 1992). In the recently adopted

Regulation No 2024/1143, these goals remained almost the same. As emphasized in paragraph 7 of the Preamble, consumers still demand quality products with specific characteristics which are attributable to their origin (European Union, 2024). Besides the aim of supporting policies of the Common Agricultural Policy, there are also goals related to sustainability, European Green Deal and circular economy, but elaborating these issues would go beyond the scope of this paper. It is important to keep in mind that conveying information to consumers about product qualities is one of the main objectives of the legal framework for the protection of geographical indications, which is actually a question which an answer is sought for in the context of producer and their position. As it is not possible to use any descriptive terms while registering trade mark, and with the registration of the name of geographical location, with which consumers associate quality and characteristics of a product, this limitation is not present, it is necessary to carry out an analysis of the definition and concepts of geographical indications. In the legal framework of the European Union, legal protection is ensured through two modalities: protected designation of origin (hereinafter: PDO) and protected geographical indication (hereinafter: PGI).

2.1. PDO vs. PGI – is there any difference at all?

PDO is a name of an agricultural product which identifies a product originating in the specific place, whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production steps of which all take place in the defined geographical area (European Union, 2024). Precondition that a product derives its quality or characteristics *essentially or exclusively* from the geographical environment is based on the French concept of *terroir* (Kur *et al.*, 2019), which refers to interactions of a certain geographical area and its natural and biological factors such as climate, soil, endemic plant varieties or animal species together with production practices, which ultimately lead to an influence on the qualities or characteristics of the product (Ballantyne *et al.*, 2019; Clark and Kerr, 2017). On the other hand, the PGI contains somewhat looser requirements for registration as PGI is a name which identifies a product originating in a specific place, whose given quality, reputation or other characteristic is essentially attributable to its geographical origin and at least one of the production steps of which takes place in the defined geographical area (European Union, 2024). There are three main differences between PGI and PDO, (1) with PGI, the qualities and characteristics of the product can essentially be attributed to the geographical location, while with PDO this condition is stricter, as they should be a consequence of essential or exclusive impact, (2) besides quality and characteristic, reputation is standalone ground for registration, and regardless of whether it is about some qualities or characteristics, registration will be possible if the product has gained a reputation among consumers, (3) with PGI, it is sufficient that only one production step takes place in a certain geographical area, while with PDO, all production phases should take place in defined area. The right of geographical indication is specific in its nature, it is a collective right as referred in literature, because the request for registration of the name can only be

submitted, including some exceptions, by a group of producers, who defined the product specification, so all producers who respect the prescribed criteria are allowed to use the protected name, regardless of the number of producers. This is a bit reminiscent of the system that applies to the collective trade mark, because even in this case, producers are the ones who define the product criteria. But, as pointed out with the collective mark, the problem that exists is the lack of consumer trust, because consumers are less likely to trust information provided by private entities, they would rather be informed by information provided or verified by public authorities. And this is exactly where geographical indications come into play and satisfy both producers and consumers. The procedure for registration both PDO and PGI is conducted in two stages, first at the national level of the member state of the European Union or third country, and then at the level of the European Union. In the national phase of the procedure, according to Article 10.3. of Regulation No 2024/1143, it is examined by the competent public authorities whether the application for registration meets the prescribed conditions for registration (European Union, 2024). Also, the check by a public body, that is, by the European Commission, is also carried out in the phase of the procedure at the Union level, so the registration is to be checked and verified twice by public bodies, one of them being the European Commission itself. It finally may solve all consumer concerns, and at the same time serve as a very important guide for the producers themselves. As consumer trust is ensured in this way, the next question is how to convey the message to consumers about special qualities, characteristics or reputation of the product. It is necessary that consumers, by looking at the product label, can easily be informed that it is a protected product name whose peculiarities have been checked and verified by competent public authorities. In this regard, an effective solution has been reached in the Regulation No 2024/1143, which established special symbols designed to mark and publicize both PDO and PGI (Figure 1), and for the case of agricultural or food products originating in the Union, labelling products with these symbols is mandatory (European Union, 2024).



Figure 1. Symbols of PDO and PGI¹

Producers from third countries can also take advantage of this benefit because they can, albeit without obligation, label their products with these symbols if the names are

¹ https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en (10.10.2024.)

registered at the level of the European Union (European Union, 2024). Before the adoption of Regulation No 2024/1143, there was a process of evaluation and impact assessment in which numerous studies were conducted by the European Commission. One of them included the question of recognition of the symbol by consumers and it was determined that only 20% of consumers recognize the PGI symbol while about 14% of them recognize the PDO symbol (European Commission, 2021). Therefore, the European Commission, recognizing this as a problem, is determined to undertake a series of measures and activities to increase consumer awareness of the meaning of these symbols (European Commission, 2022). This is also one of the objectives of Regulation No 2024/1143, where in paragraph (20) of Preamble it is stated that system of the protection of geographical indications should, in general, significantly contribute to increased awareness, recognition and consumer understanding of the symbols (European Union, 2024). Despite the obvious lack, according to which the actual level of awareness among consumers is relatively low and not satisfactory, this registration option is still tempting for producers. The reason is simple – in the case of trademarks, they would have to make their own efforts so that the trademarks would be recognizable among consumers. However, in the case of geographical indications, the European Union with its administrative apparatus does this for them and will continue to do so in the future, which is expected to be bright because consumer awareness will be much higher in it. Involvement of competent public bodies in the registration process is not the only advantage of the system of protection of geographical indications over trade marks. Such advantages also exist in other segments, such as the scope of legal protection and the enforcement of rights in practice.

2.2. Broad protection and enforcement ex officio

Scope of protection by which producers are protected in case of registration of PDO or PGI is quite broad. For the purposes of this paper, it is sufficient to point out that protection includes the prohibition of any misuse, imitation or evocation even if the true origin is indicated, or if the protected name is translated, transcribed or is accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation”, “flavour”, “like” or similar (European Union, 2024). In fact, protection includes any form of abuse or use that endangers the registered name or damages its reputation or causes any damage to it, so only and exclusively manufacturers who produce in accordance with the product specification can use the protected name. This scope of protection is granted regardless of whether the misuse of the name misleads consumers, which makes this form of protection absolute in nature (Song and Wang, 2022). On the other hand, the scope of trade mark protection is narrower, so there is a prohibition to use a sign that is identical to registered sign in relation to identical products which the trade mark is registered for. Beyond this scope, i.e. when there is not identical but similar sign and similar products, protection would be available only if there exists a likelihood of confusion on the part of the public (European Union, 2017). This type of protection which is conditional on misleading consumers is referred as relative protection (Hasić and Rački Marinković, 2022). Another and perhaps the most

important segment that indicates the greater effectiveness of the system of geographical indications compared to trademarks is the enforcement of rights. According to the provision of the Regulation No 2024/1143, after the name is registered, the competent authorities of the member states are obliged to carry out controls and inspections on the market in order to suppress abuses and to exclude from sale all those products that are illegally labeled with the registered name (European Union, 2024). This method of *ex officio* controls and inspection is actually an additional tool, because right holders in member states can enforce their rights through regular civil proceedings. On the contrary, in order to enforce the right arising from the trademark, it is necessary for the holder of the right to submit an initiative, i.e. to request protection either through the court or any other available legal instrument (European Union, 2017). This further means that they need to actively monitor the market and establish some kind of “surveillance of competitors activities” in order to check if there is any potential violation of their rights, which means an additional burden for them, so they are in a much better position when, instead of a registering trade mark, they register a PDO or PGI. It seems that, from a legal point of view, it becomes quite clear which registration modality would be more effective for producers. However, in order to gain a complete perception, it is necessary to take into account the number of registrations of individual protection modalities in order to establish what the preferences of producers were in the past period.

3. Registration numbers

For the purposes of this paper, an analysis of the contents of the EUIPO database on registered trade marks¹ was performed. The search was carried out according to the Nice Classification² of products, with regard to three classes, class number 29 (meat, fish, poultry and game)³, number 30 (coffee, tea, cocoa and artificial coffee)⁴, and number 31 (raw and unprocessed agricultural, aquacultural, horticultural and forestry products)⁵, with results shown in the Table 1.⁶ Since a product class is chosen for each registration, some applicants choose only one, two, three or more classes. The first three columns represent the number of registrations where only one class was selected, while the fourth column represents the number of registrations where all three classes were selected cumulatively.

Table 1. Number of trademark registrations by product classes

<i>Class 29</i>	<i>Class 30</i>	<i>Class 31</i>	<i>Class 29, 30, 31</i>
15.054	183.092	85.652	24.816

¹ <https://euipo.europa.eu/eSearch/>

² The Nice Classification is an international classification of goods and services applied for the registration of marks. The whole system is classified into 34 categories of products, <https://www.wipo.int/classifications/nice/en/> (14.10.2024.)

³ Meat, fish, fruit, vegetable-based food, edible insects, milk beverages, milk substitutes, preserved mushrooms, pulses and nuts or seeds prepared for human consumption.

⁴ Beverages with coffee, cocoa, chocolate or tea base, cereals prepared for human consumption, pizza, pies, sandwiches, chocolate-coated nuts, flavourings, other than essential oils.

⁵ Unprocessed cereals, fresh fruits and vegetables, plant residue, unprocessed algae, unsawn timber, fertilized eggs for hatching, fresh mushrooms and truffles, litter for animals.

⁶ The results contain number of trade marks registered on 14th October 2024.

Class number 30 contains the largest number of registrations, while there are fewest in class 29, which actually contains the most types of products that could correspond to the description of traditional food products. When it comes to classification into three categories: individual, collective and certification trade marks, an analysis was performed for all three classes of products together, and the results are shown in the Table 2.

Table 2. Number of product registrations by classes and categories of trade marks

	<i>Individual TMs</i>	<i>Certification TMs</i>	<i>Collective TMs</i>
<i>Class 29</i>	149.309	154	570
<i>Class 30</i>	182.584	123	364
<i>Class 31</i>	85.107	140	387
<i>Class 29, 30, 31</i>	24.505	92	203

It is evident that the largest number of trademark registrations related to food products refer to the individual trade marks. The numbers are far lower in the category of certification or collective marks, which have a greater potential to convey a message to consumers about product qualities, characteristics or reputation.

When it comes to geographical indications, the situation is significantly different, so the analysis of the eAmbrosia database¹ of the European Commission determined the number of registrations² classified by PDO and PGI, shown in Table 3.

Table 3. Number of registered PDO and PGI in the European Union registry

PDO	PGI	Total
728	990	1.718

These results show that there is a far lower number of registrations of geographical indications compared to individual trade marks. However, another correlation is also interesting, namely between the certification and collective trade marks on the one hand and geographical indications at the other. The total sum of all certification and collective trade marks in all four options (when only class 29, 30 or 31 was selected and when all classes were selected together) is 2.033, while the total number of registered geographical indications is 1.718.

This shows a clear tendency: producers still prefer trade marks over geographical indications which refers mostly on individual trade marks. When it comes to certification or collective trade marks as special modalities of conveying a message to consumers, the figures are close to equal.

After the analysis of the relevant provisions from the legislation of the European Union, and also after the analysis of some data related to the number of registrations, several conclusions and recommendations for future research can be presented

¹ <https://ec.europa.eu/agriculture/eambrosia/geographical-indications-register/>

² The results contain number of GIs registered on 14th October 2024.

CONCLUSIONS

Once a particular food product has been determined to meet the criteria for “traditional product”, there are several routes to registering its name and informing consumers that it meets their specific requirements. The first and simplest of them is the registration of an individual trade mark, which is not recommended especially for small producers, since it will be difficult for any message to reach consumers. Also, it is possible to register a certification or collective trade mark, which is associated with certain disadvantages such as a lack of consumer confidence in the authenticity of information conveyed, the need for the producers themselves to take care of the enforcement of the right, and relative protection of the right conferred. Therefore, for any product that meets the criteria to be described as “traditional”, and whenever possible, registration of a geographical indication should be taken into consideration. This registration modality not only removes the problem of lack of confidence among consumers, but also enables producers to easily enforce their rights with the assistance of the administrative apparatus, with very broad scope of absolute protection. It seems that such recommendations were not followed by producers in practice. This is confirmed by the large number of individual trade marks in food sector, followed by certification and collective trade marks, and the lowest number in the category of geographical indications. Regardless of the number of registrations, it is evident that the registration of names of traditional food products as geographical indication (PDO or PGI) is the most effective route of protection. The limitation of this research is that due to the scope of the paper, it was not possible to perform an analysis of individual products for which certification or collective trade marks were registered, in order to determine which of them fulfills criteria of a traditional product. It is also a recommendation for future research with aim of proposing to shift a status of registration from trade mark to geographical indication for particular products, which would significantly improve the status of the product itself, as well as the legal and economic position of the producer.

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PRAVNI ASPEKTI ZAŠTITE NAZIVA TRADICIONALNIH PREHRAMBENIH PROIZVODA U EU

Sažetak

Među potrošačima u Evropskoj uniji su posljednjih nekoliko decenija prisutni zahtjevi za kvalitetnim prehrambenim proizvodima. Vremenom, potrošači sve više interesovanja pokazuju i za zdravstvene aspekte, te utjecaj proizvodnje na okoliš i dobrobit životinja. Proizvođačima je označavanje proizvoda jedini način da se prenesu informacije o njihovim karakteristikama, kako bi privukli pažnju potrošača. Da bi se uspješno

prenijele takve informacije, pogotovo kada su u pitanju tradicionalni proizvodi koji udovoljavaju zahtjevima potrošača, u pravnom okviru Evropske unije postoje dva pravna instrumenta označavanja i to registracija žiga i registracija oznake geografskog porijekla. Veliki broj provedenih istraživanja se odnosi na preferencije potrošača i potrošačke navike, pa je ovaj rad motivisan položajem proizvođača kojima je neophodno dati smjernice za označavanje proizvoda radi što boljeg tržišnog plasmana. Rad je usmjeren na pravni kontekst kroz analizu uslova za registraciju žiga i oznake geografskog porijekla, te analizu pravnog položaja proizvođača nakon registracije. Cilj je da se komparacijom jedne i druge opcije utvrdi koja od njih proizvođačima garantuje bolji pravni položaj jer je širi obim isključivih prava garant bolje i ekonomske pozicije. U radu se pravnim, analitičkim i komparativnim metodom vrši uporedba pravnih instituta, a uz to se ispituju i preferencije proizvođača u dosadašnjem periodu kroz zvanične podatke o brojevima registracija žiga i oznaka geografskog porijekla. Rezultati pokazuju da su uslovi za registraciju žiga liberalniji, zbog čega je evidentan i veći broj registracija žiga. Sa druge strane, uslovi za registraciju oznake geografskog porijekla su striktniji, ali proizvođačima garantuju veći obim zagarantovanih prava u odnosu na žig, te njihovu bolju provedbu i ostvarivanje u praksi.

Ključne riječi: *tradicionalni prehrambeni proizvodi, pravna zaštita, žigovi, oznake geografskog porijekla*