

PROTECTION OF GEOGRAPHICAL INDICATIONS IN PERU

In Peru, geographical indications (hereinafter referred to as GI) are recognized and protected as intellectual property rights, as established in the WTO Agreement, which, in Section 3, Geographical Indications, contains 3 articles that refer to the concept of geographical indication and to cases of protection against misleading uses in terms of geographical origin (Article 22), to the additional protection of geographical indications for wines and spirits (Article 23) and to international negotiations and exceptions (Article 24) .

The legislation in our country is constituted by the integration of a set of substantive rules and procedures that are applied to protect geographical indications, either as a denomination of origin or collective mark.

Peru has granted recognition to several foreign Appellations of Origin having subscribed on February 16, 2005, the Lisbon Agreement (in force here since May 16, 2005), regarding the Protection of Appellations of Origin and their International Registration of October 31, 1958, revised in Stockholm on July 14, 1967 and amended on September 28, 1979.

At the Andean level, Peru is a party to the Sub-Regional Agreement of the Cartagena Agreement with a common Industrial Property regime in Decision 486, which in Title XII of the Geographical Indications, Chapter I, contains rules on appellations of origin (Articles from 201 to 219) in chapter II indications of origin (Article 222) and in Title VIII, rules on collective trademarks (Articles 180-184), which grant an exclusive right and *ius prohibendi* (prevent the use by third parties without consent).

At the national level, Legislative Decree 1075, which complements the Andean Decision, contains provisions regarding collective trademarks and Appellations of Origin and Law No. 28331 contains regulations for the Regulatory Boards.

Peru has signed several free trade agreements: either multilateral, bilateral, which have included reciprocal recognition of geographical indications.




There are impediments to exclusive rights when it is intended to protect a geographical indication that is deceptive or descriptive or that imitates or copies an appellation of origin from another. Thus, Article 135 of Decision 486 contains absolute impediments to registration as a trademark for signs whose geographical indication is misleading, descriptive or causes confusion. Thus, in paragraph l) of article 135 of Decision 486 it is forbidden to register as a trademark a national or foreign geographical indication likely to cause confusion regarding the products or services to which are applied. Paragraph i) of the same article establishes that signs that may deceive the commercial media or the public in particular about the geographical origin of the products or services in question may not be registered as trademarks. In paragraph e), referring to the prohibition of registration of descriptive terms, the geographical indication has been included. This prohibition was applied in the case of Nicanor Revilla vs. Capital Management Ltd. (Resolution No. 0339-2003/TPI-INDECOPI, of March 23, 2003), by denying the application for registration because it was considered that in the mixed trademark the denomination PUERTO RICO is descriptive for directly informing the public of the place of origin of one of the products to be distinguished (rum).

Specific cases of protection of Geographical Indications:

In Peru to date there are ten declared and officially recognized appellations of origin, which are: Pisco (1991), Maíz Blanco Gigante Cusco (2005), Chulucanas (2006), Pallar from Ica (2007), Café Villa Rica (2010)), Loche from Lambayeque (2010), Café Machu Picchu-Huadquiña (2011), Maca Junín-Pasco (2011), Aceituna from Tacna (2014) and Cacao from Amazonas (2016).




With regard to registered collective marks, we have identified several that include geographical indications and refer to one or several agricultural products and/or handicraft products.

We cite some of the registered collective marks that distinguish several products:

Collective trademark	Certificate Nº	Class	Product	Registration Date	Owner
	42	31	Custard apple, avocados	24/03/1997	EL PUEBLO DE SANTO TORIBIO DE CUMBE (PERU)
	111	31	Agricultural, horticultural, forestry products and fruit grains and fresh legumes, seeds, natural plants and flowers	19/06/2009	Asociación de Productores y Transformadores de Maca, región Junín-nación Pumpush (Junín/Perú)
	114	30	Coffee, tea, cocoa, sugar, rice, cocoa-based products	31/07/2009	ASOCIACION DE PRODUCTORES DE SANTA ROSA DE CHIRIARI (Junín/Perú)

It is noted in the table that each mixed collective trademark includes a Geographical Indication. In the certificate N° 42 CUMBE, in the N° 111 PUMPUSH JUNIN and in the N° 114 MASAMARI SATIPO JUNÍN PERÚ.

Other registered collective trademarks distinguish a single product:

Collective trademark	Certificate Nº	Class	Product	Registration date	Owner
	99	31	Quince	14/12/2007	Asociación de Fruticultores del Distrito de Sinsicap (La Libertad/Perú)
	88	31	Silk and Island banana	14/09/2006 (renovada)	Asociación de productores de plátano del molino (La Libertad/Perú)
	150	31	Agricultural products	19/09/2013	Asociación de productores agropecuarios multi pacaje Huanutuyo (Puno/Perú)

It is noted in the table that each mixed collective trademark includes a Geographical Indication. In the certificate N° 99 SINSICAP LA LIBERTAD PERU, in the N° 88 CHOCOPE PERU and in the N° 150 MACUSANI.

The official trademark registration institution, together with other institutions, has been carrying out workshops and training on collective trademarks in different regions of Peru so that producers and companies have knowledge of the value that the collective trademark provides to the product that distinguishes, the benefits that brings the use, the registration and management of collective trademarks for their products linked to geographical origin. They are informed about national and international legislation regarding collective trademarks, and other experiences that have granted added value to national products are evaluated. Holders of collective trademarks acquire greater competitiveness and associativity to enter in the national and international market.

On August 28, 2017, Supreme Decree 086-2017-PCM was published, which establishes a temporary regime for simplifying procedures for the registration of collective trademarks and exemption of fees for the areas affected by weather phenomena in order to boost their economic development.

These public policies carried out by the competent institutions are strengthening the knowledge of the producers about the goodness of the registration of the collective trademark, its maintenance, use and recognition in the market. The collective trademark is acquiring economic and commercial value, and consumers acquire the products that contain the values of the collective trademark.

The success of the collective trademark depends on the activity of the members, their associativity, the distinctive strength of the collective trademark and the added value to the marked product. The members of the association owner of the collective trademark are acquiring positioning to improve the quality of the product of the group, maintain good cultivation and/or processing practices, share the collective strategy of the product trademark, linked to their geographical origin and knowledge of its artisanal production or elaboration, peculiarities and reputation. The positioning of a collective trademark increases and develops the commerce and the economic activity of the geographical place.

December 19, 2017