



125<sup>th</sup> Anniversary

Alan C. Drewsen  
Executive Director

June 2, 2004

Mr. An Qinghu  
Director General  
Trademark Office  
State Administration for Industry and Commerce  
People's Republic of China  
8 Sanlihe Donglu Xichengqu  
Beijing 100820, China

**RE: Comments from the International Trademark Association (INTA) on the protection of geographical indications in China**

Dear Mr. An:

The International Trademark Association (INTA) continues to follow your fine work in developing trademark law and the protection of geographical indications (GIs) in China at the China Trademark Office (CTMO).

On behalf of INTA, I would like to express the Association's views and suggestions on GI protection in China for your analysis and consideration. Incorporated in the following comments are recommendations by INTA's professional committees (the Geographical Indications Committee and the China Subcommittee).

We noted your remarks at a press conference held by the Press Office of China's State Council in Beijing on April 13, 2004. In response to a question on latest developments in GI protection within China, you stated that China is a large country rich in many products which deserve protection under GIs. You stated that GI protection in China might become broader in scope than that in other countries, and will be expanded to cover a gamut of products beyond wines and spirits, including teas, herbal products used in traditional Chinese medicine, fruits, plants, some animal byproducts, and certain industrial products.

The CTMO's current statutory and regulatory regime for expanding the protection of GIs beyond wines and spirits by treating them as certification or collective marks has been successful. For example, we understand that, from 1995 to 2003, about 300 GI applications were filed with the CTMO, and by the end of 2003, 106 of them had been allowed for registration. GIs currently protected as certification marks in China include KU ER LE fragrant pears and JING DE ZHEN

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International Trademark Association

Mr. An Qinghu  
June 2, 2004  
Page 2 of 3

porcelain. We understand that no changes in the law would be necessary in order to accommodate the expansion you have suggested.

As you may recall, INTA sent you a letter, dated July 15, 2003, setting forth the Association's views on GIs for your consideration. In that letter, we urged rectification of the potential conflicts arising from the two systems of GI protection within China. We suggested that the CTMO and the Chinese Trademark Law and regulations should take priority over other regulatory bodies and regimes in this regard.

As stated in our July 15, 2003 letter, INTA opposes changes in the law of any country that would accord GIs absolute priority over other trademarks. INTA believes that GIs are appropriately handled in China under certification or collective mark systems, as you have done at the CTMO, because they feature the fundamental principles of territoriality, exclusivity and priority. Competing European Union-type systems of GI protection which grant GIs absolute protection contravene the TRIPS Agreement in that they do not fully ensure the exclusivity of prior trademarks rights. For example, under EU/ECC Regulation 2081/92, validly registered trademarks are protected against later GIs only if they are famous and have been used for a certain "length of time." (See EU/ECC Regulation 2081/92 Article 14(3).) A validly registered trademark that does not meet these requirements of fame and use will be forced to coexist with a later GI, a situation which INTA believes introduces the potential for consumer confusion into the marketplace, and impairs the substantial investment made by trademark owners. Such a result is incompatible with the fundamental rule of exclusivity of prior right as endorsed in Article 16 of the TRIPS Agreement, and is highly discriminatory against trademarks.

INTA does not argue that trademarks should always have precedence over GIs, but that whichever intellectual property right - trademark or GI - is first in time, should also have the exclusive right to that word or mark. Certification systems like the one CTMO has successfully implemented in China are more attractive to trademark owners, and we believe more equitable in principle, because they allow for equal protection of both TMs and GIs and allow for satisfactory resolutions of conflicts by applying the principles of exclusivity, priority and territoriality. INTA believes that using the existing system for collective or certification marks is the most cost-effective way to expand the scope of protection of GIs beyond wines and spirits in China.

As the issues of GI protection are debated at the WTO in the context of the negotiations on a Multilateral Register for Wines and Spirits, it is of the utmost importance that China take the lead in advocating equal protection of GIs and trademarks based on these well-established intellectual property principles of territoriality, exclusivity and priority. INTA therefore supports China's current efforts in protecting GIs as certification marks or collective marks as it will allow for such equal protection.

In summary, we support your efforts to apply existing procedures and law to the treatment of GIs in China.

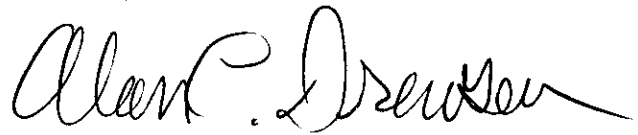
International Trademark Association

Mr. An Qinghu  
June 2, 2004  
Page 3 of 3

INTA is also willing to engage in further dialogue with the CTMO on various trademark issues, including GIs, in support of the continued development of China's trademark profession.

Lastly, I thank you for taking the time to review the recommendations set forth in this letter. If you have any comments on the views expressed in this letter, we will be happy to discuss them further.

Sincerely,

A handwritten signature in cursive script, reading "Alan D. Brown". The signature is written in black ink and is positioned to the right of the word "Sincerely,".