

Report Germany to Question B

“What rules should govern claims by suppliers about the national or geographic origin of their goods or services?”

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1. Do your jurisdiction’s laws have provisions dealing with indications of origin that are used by manufacturers, distributors and service providers to commercialise their goods and services (e.g. passing off, unfair competition law, trademark law, sui generis law regulating the use of indications of source, geographical indications, or appellations of origin)? If yes, please provide the text of those provisions.

The protection of indications of origin is governed by sec. 126 et seq. German Trade Marks Act (MarkenG). These rules are *leges speciales* to sec. 5 German Act Against Unfair Competition (UWG) which only has a small scope of application, governing misleading commercial practices.¹ Besides, there exists Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs. There are also other special provisions, e.g. Regulation (EU) No. 1308/2013 for wine and Regulation (EC) No. 110/2008 for spirits.

2.1 What requirements in your jurisdiction must be met in order for goods to be marketed with an indication of origin?

A simple geographical indication of source can be every name of places, areas, territories or countries, as well as other indications or signs, except that they are generic names. Simple geographical indications of source do not have to be connected with a special quality or a particular reputation. According to sec. 127 para 1 MarkenG, goods which use these simple geographical indications of source but do not originate from that place may only be marketed, if the use does not entail a risk of deception with respect to the geographical origin.

Qualified geographical indications of source are connected to a special property or quality and may according to sec. 127 para 2 MarkenG only be used, if the good has these special properties or this quality. Sec. 127 para 3 MarkenG stipulates that if an appellation of origin enjoys a special reputation, use of this appellation of geographical origin in the course of trade for goods or services of a different origin shall not be permitted even in cases where there is no risk of deception with respect to the geographical origin if the use for goods or services of a different origin might be of such a nature as to take unfair advantage of, or be detrimental to, the reputation or the distinctive character of the appellation of geographical origin without due cause. Sec. 127 para 2 and 3 MarkenG are only applicable, if the goods do not fall into the scope of Regulation (EU) No. 1151/2012.

The scope of Regulation (EU) No. 1151/2012, defined in art. 2, is the use of geographical indications of source for agricultural products intended for human consumption and other

¹ Ohly/Sosnitza, UWG, 6th Edition 2014, § 5 Recital 331.

agricultural products and foodstuffs. The regulation only protects designations of origin and geographical indications. According to art. 5, a product using a designation of origin must originate in a specific place, region or, in exceptional cases, a country, its 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 the product must all take place in the defined geographical area. A product using a geographical indication must originate in a specific place, region or country, its given quality, reputation or other characteristic is essentially attributable to its geographical origin and at least one of the production steps of the product must take place in the defined geographical area. For a protection under Regulation (EU) No. 1151/2012, designations of origin and geographical indications must be registered. A geographical indication of source, which falls into the scope of this regulation but is not (yet) registered, is protected neither under the regulation, nor under national law.² Goods, which are marketed under a protected designation of origin or a protected geographical indication, need to have the Union symbols associated with them on their labelling, art. 12 sec. 3 Regulation (EU) No. 1151/2012.

2.2 What are the requirements for services?

The use of simple indications of source for services must meet the same requirements as pointed out for goods. As Regulation (EU) No. 1151/2012 only governs agricultural products and foodstuffs, the protection of qualified geographical indications of source and those with a certain reputation in relation to services are treated according to sec. 127 para 2 and 3 MarkenG.

3.1 Are there different provisions for different types of goods (e.g. for wines and spirits, foodstuffs, natural goods, industrial products, etc.)?

As already seen, agricultural goods and foodstuffs are protected under Regulation (EU) No. 1151/2012. Designations of origin and geographical indications of wine are protected under art. 103 Regulation (EU) No. 1308/2013 and sec. 22b German Wine Act (WeinG). The protection of indications of source of spirits is governed in art. 16 Regulation (EC) 110/2008. There are few national rules governing a specific protection for special goods. An example is the protection of blades with the origin “Solingen”.

3.2 If so, what are the respective requirements?

The requirements of Regulation (EU) No. 1151/2012 have already been specified in Question 2.1. For geographical indications of source of wine to be protected, a registration with the European Commission is necessary. All winemakers, who produce their wine in conformity with the corresponding product specification, are allowed to sell their wine under the protected designation of origin or protected geographical indication. Infringements against this regulation can only be sanctioned by sec. 5 UWG, as the relevant public is misled.³

The name “Solingen” for cutlery may only be used, if the blades originate from the city of Solingen or the city of Haan. All essential production steps of the product must take place there and the raw materials and the processing need to be suitable to fulfil the specific purpose of the product.

² *CJEU*, Case C-478/07, Recital 107 et seq. – *American Bud II*.

³ *Ohly/Sosnitzka*, UWG, 6th Edition 2014, § 5 Recital 323.

4.1 Do the same provisions apply to domestic indications of origin as to foreign indications of origin?

The MarkenG does not distinguish between domestic or foreign indications of origin, so that protection is granted for all indications of origin.⁴ The registration of indications of origin of agricultural goods and foodstuffs according to Regulation (EU) No. 1151/2012 and wine according to Regulation (EU) No. 1308/2013 is open to all countries, not only EU Member States.

4.2 Does your jurisdiction for example apply the country-of-origin principle, according to which foreign indications of origin are judged according to the law of their country of origin?

In general, there is no difference for the protection under MarkenG, whether an indication of origin is protected in its country of origin or not.⁵ This may be different, however, if the product originates from another EU Member State. If it has lost its protection there, protection in Germany could infringe art. 34, 36 TFEU, governing the free movement of goods.⁶

The protection granted by Regulation (EU) No. 1151/2012 for foreign goods requires an international agreement of the foreign country with the EU, art. 11 sec. 2. This agreement must stipulate, which indications of origin shall be protected within the EU. A protection of indications of origin of wine under Regulation (EU) No. 1308/2013 is granted, if it is registered within the EU and the indication of origin is also protected in the foreign country, art. 94 sec. 3.

5.1 Is there a special register for the registration of indications of origin for goods and/or services within your jurisdiction?

A registration for a protection of indications of origin according to the MarkenG is neither required nor possible. In contrast to German law, Regulations (EU) No. 1151/2012 and 1308/2013 only grant protection, if the indication of origin is registered. Indications of origin of agricultural goods and foodstuffs are registered in the Database Of Origin & Registration (DOOR) administrated by the European Commission. Indications of origin of wine are registered in the database E-Bacchus, also administered by the European Commission.

5.2 If yes, what goods or services and what kind of indications of origin can be registered in this register? Please provide a brief description of the registration process and the effects of such a registration and the scope of protection of registered indications of origin.

Regulation (EU) No. 1151/2012 only provides registration of indications of origin of agricultural products intended for human consumption and certain other agricultural products and foodstuffs.

German applications for a registration under Regulation (EU) No. 1151/2012 must be filed with the German Patent and Trademark Office. The application must contain a product specification, which determines among others the protected name, a description of the product including its

⁴ *Ingerl/Rohnke*, Markengesetz, 3rd Edition 2010, § 126 Recital 12.

⁵ *Ingerl/Rohnke*, Markengesetz, 3rd Edition 2010, § 126 Recital 12.

⁶ *Ingerl/Rohnke*, Markengesetz, 3rd Edition 2010, § 126 Recital 12.

raw materials, the definition of the geographical area, evidence that the product originates from this geographical area and a description of the method of obtaining the product. For the protection of designations of origins, it is required to give details that establish the link between the quality or characteristics of the product and the geographical environment. For the protection of geographical indications, it is necessary, where appropriate, to give details that establish the link between a given quality, the reputation or other characteristic of the product and the geographical origin.

For the examination by the German Patent and Trademark Office, official statements of the responsible governmental departments are collected. The application is published, so that persons with a legitimate interest can object. After it is found by order that the application complies with Regulation (EU) No. 1151/2012, the application is sent to the European Commission, where the application is also examined. The application is published again, when the European Commission validates its conformity with the regulation. Third parties then have another possibility to object the registration. If there is no objection, the indication of origin will be registered.

The registration of an indication of origin of wine according to Regulation (EU) No. 1308/2013 is quite similar. However, German applicants must file their application with the Federal Office for Agriculture and Food (BLE).

According to art. 12 sec. 1 Regulation (EU) No. 1151/2012 resp. art. 103 sec. 1 Regulation (EU) No. 1308/2013, protected designations of origin and protected geographical indications may be used by any operator marketing a product conforming to the corresponding specification. The registration comprises a protection against: any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient; any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar, including when those products are used as an ingredient; any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin; any other practice liable to mislead the consumer as to the true origin of the product.

5.3 Is it possible that a registered indication of origin becomes a non-protected generic term or are there specific rules that prevent a registered indication from becoming generic?

According to art. 13 sec. 2 Regulation (EU) No. 1151/2012 resp. 103 sec. 3 Regulation (EU) No. 1308/2013, protected designations of origin and protected geographical indications shall not become generic.

6.1 Is the registration of certain indications of origin mandatory in order for them to be protected and their use be regulated?

For a protection under Regulation (EU) No. 1151/2012, designations of origin and geographical indications must be registered. An indication of origin, which falls into the scope of this

regulation but is not (yet) registered, is protected neither under the regulation, nor under national law.⁷

6.2 If yes, to which indications of origin and for what kind of goods and services does such registration requirement apply?

The registration requirement is mandatory for all products governed by Regulation (EU) No. 1151/2012, i.e. agricultural products and foodstuffs.

7.1 Who is entitled to apply for the registration of an indication of origin (any market player, manufacturer organisations only, etc.)?

According to art. 49 sec. 1 Regulation (EU) No. 1151/2012, groups who work with the products with the name to be registered can submit applications. A single natural or legal person may only bring in the application under specific circumstances.

7.2 Does the registration of an indication of origin confer property rights upon a specific owner?

The question can be understood in two ways. First (a), the question may be, who is entitled to assert claims. Secondly (b), there is the question whether an indication of origin grants a subjective right.

(a) According to sec. 128 para 1 MarkenG (resp. sec. 135 para 1 MarkenG), sec. 8 para 3 UWG, an injunction may be claimed by every competitor, trade or consumer association as well as Chambers of Industry and Commerce or Craft Chambers.

(b) The answer to this question depends on the legal nature of indications of origin. In Germany, there is a controversial discussion about that issue. On the one side, there is a part of literature, which considers indications of origin as a subjective right.⁸ This is based on statutory provisions in MarkenG and the jurisprudence of the CJEU, which regarded the indication of origin as a commercial right in terms of art. 36 TFEU.⁹ On the other side, parts of German literature¹⁰ and the jurisprudence¹¹ assume that indications of origin are no subjective rights. This conclusion is based on the design of the protection of indications of origin as a part of the law of unfair competition, which can be seen by the list of persons entitled to claim injunctions.

8.1 If your jurisdiction provides for a registration of certain indications of origin, who defines the rules that have to be followed and the requirements that have to be met when using the registered indication for certain goods or services (the applicants, the lawmaker, a combination of both, others)?

⁷ CJEU, Case C-478/07, Recital 107 et seq. – *American Bud II*.

⁸ Fezer, Markenrecht, 4th Edition 2009, § 126 Recital 4; Gloy/Loschelder/Erdmann/Helm, Handbuch des Wettbewerbsrechts, 4th Edition 2010, § 73 Recital 3; Knaak, GRUR 1995, 103 (105); Kahler, Die geographischen Herkunftsangaben an der Schnittstelle zwischen Markenrecht und Wettbewerbsrecht, 2002, p. 133 et seq.; Dück, WRP 2011, 1107 (1110 et seq.).

⁹ CJEU, Case C-3/91 Recital 37f. – *Turrón*; Case C-469/00 Recital 49 – *Grana Padano*; Case C-108/01 Recital 62, 64 – *Prosciutto di Parma*.

¹⁰ Sosnítza, MarkenR 2000, 77 (81 et seq.); Sosnítza, Deutsches und Europäisches Markenrecht, 2nd Edition 2015, § 20 Recital 3.

¹¹ BGH, GRUR Int. 1999, 70 (71) – *Warsteiner I*; GRUR 1999, 252 (254) – *Warsteiner II*.

As pointed out, a registration is only possible under regulations of the EU. The applicant for a registration under Regulation (EU) No. 1151/2012 needs to provide a specification of the product, which comprises a description of the product including its raw materials and of the method of obtaining the product.

8.2 If the applicants are competent to define those rules and requirements (e.g. in specifications), are there any provisions or principles that limit the applicant's power and have to be considered by the applicants (e.g. antitrust law, free speech arguments, free movements of goods, etc.)?

The German Patent and Trademark Office and the European Commission check the provided specification. The description of the product and its method of production need to represent the facts.¹² If for example, an application for a traditional beer contains the specification that the process of brewing is finished at home by the consumers themselves, like it was in the old days, the beer is however nowadays also completely brewed by breweries, the specification cannot turn back time.¹³ The description also needs to be objectively justified to avoid restraints of competition.¹⁴ Therefore, only requirements with a connection to the geographical peculiarities of the product are justified.¹⁵ According to art. 1 para 2 Regulation (EU) 664/2014, which supplements Regulation (EU) 1151/2012 and governs among other things procedural rules, any restrictions to the origin of raw materials provided in the product specification of a product the name of which is registered as a protected geographical indication shall be justified in relation to the link to the given quality, the reputation or other characteristics of the product. In addition, the borders of the geographical area may not be defined discretionary.¹⁶ Pursuant to art. 7 para 1 lit. e Regulation (EU) 1151/2012 applicants may specify the authentic and unvarying local methods as well as information concerning packaging, if the applicant group so determines and gives sufficient product-specific justification as to why the packaging must take place in the defined geographical area to safeguard quality, to ensure the origin or to ensure control, taking into account Union law, in particular that on the free movement of goods and the free provision of services.¹⁷

9.1 Is it possible that manufacturers, suppliers and distributors of goods or services, which have lawfully advertised their goods or services with an indication of origin for a long time be excluded from using the indication of origin after the indication's registration (e.g. because they cannot comply with new use requirements that apply after the registration of the indication of origin)?

As already pointed out in Question 8.2, the specification of the product under Regulation (EU) No. 1151/2012 needs to represent the facts. If a manufacturer has long made use of the indication of origin, a more restrictive specification of the product, that excludes this manufacturer, may not represent the facts. However, it is possible that manufacturers, suppliers and distributors are excluded after the registration.

¹² Ströbele/Hacker, *Markengesetz*, 11th Edition 2015, § 130 Recital 72.

¹³ *BPatG*, GRUR 2014, 192, 195 f.; Ströbele/Hacker, *Markengesetz*, 11th Edition 2015, § 130 Recital 72.

¹⁴ *Ingerl/Rohnke*, *Markengesetz*, 3rd Edition 2010, § 130 Recital 7.

¹⁵ Ströbele/Hacker, *Markengesetz*, 11th Edition 2015, § 130 Recital 74.

¹⁶ *CJEU*, Case C-465/02 and C-466/02, Recitals 56 et seq. – *Feta II*.

¹⁷ See also *CJEU*, Case C-108/01, Recitals 60 et seq. – *Prosciutto di Parma* and Case C-469/00, Recitals 47 et seq. – *Grana Padano*.

9.2 Does your jurisdiction have any provisions, which try to prevent such exclusions of previous legitimate users of indications of origin?

To prevent an exclusion after the registration, a manufacturer can object against the registration according to art. 10 para 1 lit. c Regulation (EU) No. 1151/2012 if he proves, that registration of the name proposed would jeopardize the existence of products which have been legally on the market for at least five years. This objection will not hinder the registration, but it leaves the member states the possibility to grant a national transitional period of up to 10 years, so that manufacturers can comply with the specification, art. 15 para 4 Regulation (EU) No. 1151/2012.¹⁸ After the registration, a third person can only request cancellation of the indication of origin, if compliance with the conditions of the specification is not ensured or no product is placed on the market under the indication of origin for at least seven years. However, it is not possible to base the request for cancellation on unlawful registration.¹⁹

10 Do your country's laws provide for the registration of indications of origin as trademarks or service marks, i.e. as certification marks, collective marks or individual marks? If so, what are the requirements?

According to sec. 8 para 2 no. 2 MarkenG, trademarks which consist exclusively of signs or indications, which may serve, in trade, to designate the geographical origin, are excluded from registration. This applies, when the trademark designates a place which is currently associated in the mind of the relevant class of persons with the category of goods concerned or it is reasonable to assume that such an association may be established in the future.²⁰

This quite restrictive approach excludes most geographical indications from registration. Pursuant to sec. 8 para 3 MarkenG, an exception is only possible, if the indication acquired distinctiveness through use among the trade circles concerned.

There do not exist specific German regulations governing the use of certification marks. Starting October 2017, certification marks can be registered as EU Certification marks. Indications of origin can not be registered, art. 74a sec. 1 Regulation (EU) 207/2009.

However, German law provides for collective marks in sec. 97 et seq. MarkenG. Proprietors of collective marks may only be associations having legal capacity or legal persons established under public law. The registration of geographical indications is governed differently from individual marks. According to sec. 99 MarkenG, collective marks may consist exclusively of signs or indications, which may serve, in trade, to designate the geographical origin of the goods or services. However, collective marks still need to comply with other absolute grounds of refusal, for example, with the prerequisite of distinctiveness to individualize the goods or services. A registration is also not possible, if the geographical origin has become a generic term.

The registration of a collective mark requires statutes governing the use of the mark, sec. 102 para 1, 2 No. 5 MarkenG. If the collective mark consists of an indication of origin, the statutes shall provide that any person whose goods or services originate from the geographical areas in question and comply with the conditions for the use of the collective mark which are contained

¹⁸ Ströbele/Hacker, *Markengesetz*, 11th Edition 2015, § 130 Recital 103.

¹⁹ Ströbele/Hacker, *Markengesetz*, 11th Edition 2015, § 132 Recital 28.

²⁰ *CJEU*, Case C-108/97, Recital 31 – *Chiemsee*.

in the statutes for the collective mark may become a member of the association and is to be included in the group of persons entitled to use the collective mark, sec. 102 para 3 MarkenG.

Additionally, art. 66 et seq. Regulation (EU) 207/2009 govern the EU collective mark, which grants protection throughout the European Union. Geographical origins may be registered, although this does not entitle the proprietor of the mark to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name, art. 66 sec. 2 Regulation (EU) 207/2009.

11. How are conflicts between trademarks and non-registered indications of origin or indications of origin that are subject to sui generis protection resolved under your country's laws? Are there specific rules or case law governing such conflicts?

According to sec. 13 para 1, para 2 No. 5 MarkenG, geographical indications of origin are a relative ground for refusal of the registration of trademarks. The registration of a trademark can be cancelled by court order on the request of competitors, associations, which exist for the promotion of commercial or of independent professional interests, qualified entities, which protect consumer interests, and Chambers of Industry and Commerce or Craft Chambers. The requirement for such an action is that the indication of origin is the prior right in time. For indications of origin, the decisive time is its first legitimate use.²¹

The proprietor of a trademark is not entitled to prohibit a third party from using indications of origin in the course of trade, if the use is not contrary to morality, sec. 23 No. 2 MarkenG, or as art. 6 lit. b Directive 2008/95/EC stipulates, if the third person uses the trademark in accordance with honest practices in industrial or commercial matters. This means, the third person has the duty to act fairly in relation to the legitimate interests of the trademark owner.²²

Sec. 100 para 1 MarkenG stipulates, that even if the indication of origin is registered as a collective mark, the registration does not give the proprietor the right to prohibit a third party from using such indications in the course of trade, provided that the use complies with the accepted principles of morality and does not contravene sec. 127 MarkenG (see Question 2.1).

12. If during the manufacturing process of a certain product a certain manufacturing step has taken place at a particular location or in a specific geographical area XY, but other steps have taken place in other geographical areas so that the conditions are not satisfied that the product as a whole can be considered to originate from XY, is it possible in your jurisdiction to highlight in the advertisement for this product that one specific manufacturing step took place in XY, e.g. by highlight for example "Research & Development in XY" or "Filled in XY" if those activities actually took place in XY but the product as such does not originate from XY? Do your country's laws have provisions, which regulate

²¹ *Ingerl/Rohnke*, Markengesetz, 3rd Edition 2010, § 13 Recital 11; *Ströbele/Hacker*, Markengesetz, 11th Edition 2015, § 13 Recital 32.

²² *CJEU*, Case C-100/02 Recital 24 – *Gerolsteiner/Putsch*.

the reference to the geographic origin of certain manufacturing steps? If so, can you please provide the wording of these provisions?

There are no specific rules on advertisement of certain production steps. Therefore, these advertisements are legitimate, as long as they do not mislead the public, sec. 5 UWG.

13. Do your jurisdiction's laws have specific provisions or is there any case law with regard to the requirements that have to be met to use of the indication "Made in XY" for goods?

There does not exist a specific provision for the use of the indication "Made in XY". The use of the indication "Made in Germany" does not require that every manufacturing step has taken place in Germany. It is only necessary that the main manufacturing steps, at least the most relevant, have taken place in Germany.²³ The opinion of the relevant public must consider this manufacturing step the one that gives the greatest value to the product.²⁴

14.1 Do provisions in the laws of your jurisdiction provide that for certain goods or services the geographic origin must be indicated (mandatory labelling requirements for example in the legislation with respect to foodstuffs, cosmetics, pharmaceuticals or customs)? If so, what is the wording of these provisions? To which goods or services do these provisions apply? What kind of indications must be made?

Up to the introduction of Regulation (EU) No. 1169/2011 in December 2014, there existed only few mandatory indications of origin for foodstuffs. These were for fish, fruits and vegetables, honey, organic foodstuffs, beef, eggs, olive oil and wine. With art. 26 para 2 lit. b of Regulation (EU) No. 1169/2011, the mandatory indication of the country of origin or place of provenance was exceeded on certain kinds of meat, e.g. pork, mutton, goat meat, chicken meat, turkey meat and meat of geese, ducks and guinea fowls.²⁵

Pursuant to art. 19 para 1 lit. a Regulation (EC) No. 1223/2009, cosmetic products shall only be made available on the market, if the container and packaging of the product bear the name and address of the responsible person. If the cosmetic product is imported, the country of origin must be added. According to art. 9 of this regulation, EU Member States are not enabled to restrict the making available of products, which comply with the requirements of the regulation.

Sec. 10 para 1 No 1 German Medicinal Products Act (MPG) obliges the responsible person, that pharmaceutical products are only made available on the market, if the container and the packaging of the product bear the name and address of the pharmaceutical company.

14.2 Are such mandatory labelling requirements considered to be trade restraints in your jurisdiction?

Although mandatory labelling requirements may put the producers to expense, mandatory labelling requirements aim to achieve the free movement of goods within the EU, art. 3 para 2

²³ *BGH*, GRUR-RR 2015, 209 Recital 52 – *Made in Germany*; see also *Dück*, „Made in Germany“ zwischen Auslaufmodell und Gütesiegel, 2015, Recital 238 et seq.

²⁴ *BGH*, GRUR-RR 2015, 209 Recital 52 – *Made in Germany*; Köhler/*Bornkamm*, Gesetz gegen den unlauteren Wettbewerb, 34th Edition 2016, § 5 Recital 4.84.

²⁵ See also *Sosnitzka*, GRUR 2016, 347 et seq.

Regulation (EU) No. 1169/2011.²⁶ This is also based on judgements of the CJEU that consider the information of the consumer as more efficient and less restrictive than prohibitions.²⁷ Nevertheless, the legitimate interests of the producers have to be considered, art. 3 para 2 Regulation (EU) No. 1169/2011.

15. If your jurisdiction has mandatory labelling requirements with respect to the geographic origin of certain goods or services is there a risk of conflicts between the mandatory labelling requirements and the provisions regarding the voluntary use of geographical indications? In other words, is it possible that the mandatory labelling requirements require that a product is labelled with a certain geographic origin while the provisions dealing with the voluntary use of indications of origin would not allow the use of this indication of origin, e.g. because the link between the product and the indicated geographic origin does not seem to be sufficient?

Mandatory indications of origin and voluntary indications of origin may exist side by side and supplement each other, as long as the voluntary indication does not contradict the mandatory indication.²⁸ However, there may be conflicts between the mandatory indications of origin according to Regulation (EU) No. 1169/2011 and the voluntary indications of origins protected by Regulation (EU) No. 1151/2012.²⁹

First, there is a conflict, if the geographical indication according to art. 5 para 2 Regulation (EU) No. 1151/2012 specifies that the raw material does not need to originate from the geographical origin in question.³⁰ For example, the pork of “Schwarzwälder Schinken” does not need to originate from the German region “Schwarzwald”; only the other manufacturing steps, especially the smoking, have to take place there. However, pursuant to art. 26 para 3 Regulation (EU) No. 1169/2011 an indication of origin of the primary ingredient, the pork, is mandatory, if it is not the same as the indication of origin of the product. The application of this obligation is subject to implementing acts, which have not been adopted yet. Therefore, it is yet unclear, if this additional information is now mandatory in such a case.³¹

Secondly, there may be a conflict if the mandatory use of an indication of origin is not allowed under Regulation (EU) No. 1151/2012.³² As an example, Regulation (EC) No. 1760/2000 concerns the labelling of beef and obliges producers to indicate the origin of the beef, e.g. Bavaria. However, “Bayerisches Rindfleisch” (Bavarian beef) is protected under Regulation (EU) No. 1151/2012 and may only be used for certain breeds of cattle. The use of “Bayerisches Rindfleisch” for beef of a breed of cattle, which does not comply with the specification, is prohibited under art. 13 para 1 lit. a Regulation (EU) No. 1151/2012. The only possibility to comply with Regulation (EC) No. 1760/2000 and Regulation (EU) No. 1151/2012 is, to use the indication of origin “Germany”. Therefore, parts of German literature want to allow the use of

²⁶ See also *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 3 Recital 22.

²⁷ E.g. *CJEU*, Case C-178/84 Recital 35 et seq.; Case C-407/85 Recital 16; Case C-286/86 Recital 10; *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 3 Recital 22.

²⁸ *Sosnitza*, GRUR 2016, 347 (355).

²⁹ *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 26 Recital 19; see also *Loschelder*, GRUR 2016, 339 (341).

³⁰ *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 26 Recital 19.

³¹ *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 26 Recital 19.

³² *Voit/Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 26 Recital 77.

clarifying additions, which is usually prohibited under art. 13 para 1 lit. b Regulation (EU) No. 1151/2012, if the registration of the indication of origin is very broad.³³

16. What courts, authorities, or other bodies in your country have jurisdiction to hear cases concerning the protection of indications of origin or are entitled to take measures to protect indications of origin (e.g. civil courts, criminal courts, customs authorities, food safety authorities, chambers of commerce etc.)?

According to sec. 140 para 1 MarkenG, civil courts have the exclusive jurisdiction for all claims resulting from infringements of German law of indications of origin and of protected indications of origin under Regulation (EU) No. 1151/2012. Injunctions may be claimed by the persons listed in sec. 128 para 1 MarkenG (resp. sec. 135 para 1 MarkenG), sec. 8 para 3 UWG, e.g. competitors (see also Question 7.2). An infringement of the law of indications of origin can also be a criminal offense, sec. 144 MarkenG, then the criminal courts are in charge. Pursuant to sec. 134 MarkenG, the supervision and control required according to Regulation (EU) No. 1151/2012 shall be incumbent upon the authorities responsible under state law.

17. In your personal opinion which rules and concepts of your jurisdiction with respect to the use of indications of source for goods and services do you particular endorse? Which rules or concepts would you prefer to be amended or abandoned?

The German rules and concepts governing the voluntary use of indications of source have basically proven successful. However, the increasing regulation of mandatory labelling requirements seems to create more problems than it bears advantages for the consumer. Therefore, mandatory labelling requirements should be reduced to the absolutely necessary minimum.

³³ Voit/*Grube*, *Lebensmittelinformationsverordnung*, 2nd Edition 2016, LMIV art. 26 Recital 82.

Appendix: Texts of provisions

German Provisions

Trade Marks Act

<http://www.gesetze-im-internet.de/markeng/> (also with English version)

UWG

http://www.gesetze-im-internet.de/uwg_2004/ (also with English version)

WeinG

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