

## LIDC GENEVA 2016

### Question B: What rules should govern claims by suppliers about the national of geographic origin of their goods or services?

International Rapporteur: Dr. Simon Holzer

#### HUNGARY

National Rapporteur: Dr. Ádám Liber, LL.M (SULS)\*

References and abbreviations:

Civil Code	Act IV of 2013 on the Civil Code
Union Customs Code	Regulation (EU) 952/2013 laying down the Union Customs Code
Competition Act	Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices
Criminal Code	Act C of 2012 on the Criminal Code
HCA	Hungarian Competition Authority
HIPO	Hungarian Intellectual Property Office
HNB	Hungarian National Bank
Hungarian Product Decree	Decree No. 74 of 2012 (VII. 25.) VM of the Ministry of Rural Development on the use of certain voluntary distinctive signs on food
Hungaricum Act	Act No. XXX of 2012 concerning Hungarian national values and Hungaricums
NCPA	National Consumer Protection Authority
Pálinka Act	Act LXXIII of 2008 on pálinka, grape marc pálinka and Pálinka National Council
Trademark Act	Act XI of 1997 on the Protection of Trademarks and Geographical Indications
UCP Act	Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers
Wine Act	Act No. XVIII of 2004 on viticulture and the wine industry
WIPO	World Intellectual Property Organization

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\* Ügyvéd (Attorney) at Kajtár Takács Hegymegi-Barakonyi Baker & McKenzie Law Firm (Budapest);  
E-mail: [Adam.Liber@bakermckenzie.com](mailto:Adam.Liber@bakermckenzie.com)

1. Do your jurisdiction's laws have provisions dealing with indications of origin that are used by manufacturers, distributors and service providers to commercialize 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.

Yes.

Hungary is member of the European Union and various international instruments governing the use and registration of indications of origin. Also, there are *sui generis* laws dealing with indications of origin.

- International instruments:
  - Paris Convention for the Protection of Industrial Property
  - Agreement on Trade-Related Aspects of Intellectual Property Rights
  - Lisbon Agreement for the Protection of Appellations of Origin
- EU regime
  - Regulation (EC) No 110/2008 of the European Parliament and the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks;
  - Regulation (EC) No. 1151/2012 on quality schemes for agricultural products and foodstuffs.
  - Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatized wine products
  - Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organization of the markets in agricultural products;
- General laws:
  - unfair competition related provisions of Articles 2 – 8 of the [Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices](#) (“the Competition Act”)
  - [Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers](#) (“the UCP Act”) transposing EU Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices
- Sui generis laws
  - [Article 103 – 118 of the Act XI of 1997 on the Protection of Trademarks and Geographical Indications](#) (“the Trademark Act”) this Act lays down the basic rules for the protection and registration of geographical indications in Hungary.

- [Act No. XVIII of 2004 on viticulture and the wine industry](#) (“the Wine Act”): this Act regulates the planting, cultivation and felling of vine; the production, distribution and inventory of wine industry products, and the administrative duties and competencies related to viticulture and wine production. The Act contains detailed rules regarding the certificate of origin of grapes and wines, external trade and it also special rules regarding the Tokaj Wine Area.
- [Act LXXIII of 2008 on pálinka, grape marc pálinka and Pálinka National Council](#) (“the Pálinka Act”) this Act regulates the use of the term Pálinka (Hungarian Spirit) based on the regulation of generic fruit spirits of the European Union. The Act established the National Pálinka Council being in charge for the enforcement of the provisions of the Act. The members of the Council are organizations defending the interests of Pálinka manufacturers.
- [Act No. XXX of 2012 concerning Hungarian national values and Hungaricums](#) (“the Hungaricum Act”): this Act has the objective of conservation and protection of Hungarian national values and Hungaricums, among which there are protected natural values and excellent national products, as well as agricultural products and food falling under EU regulation concerning the protection of origin.
- [Decree No. 74 of 2012 \(VII. 25.\) VM of the Ministry of Rural Development on the use of certain voluntary distinctive signs on food](#) (“the Hungarian Product Decree”): This Decree sets out rules regarding the use of voluntary distinctive information by food producers on labels, images and during advertisement of food with the scope of getting the attention of consumers. This Decree must be applied to food distributed in Hungary of which label, presentation and advertisement refer to its origin, higher quality or non-industrial production. Sections 2 to 6 contain the requisites for the use of specific distinctive information, like “Hungarian product”, “domestic product”.

## 2. What requirements must be met in your jurisdiction in order for goods to be marketed with an indication of origin? What are the requirements for services?

Generally, statements about the indication of origin must be *truthful, not misleading and be evidenced by the producer, distributor or provider*, if their accuracy is challenged.<sup>1</sup>

Origin of goods is regulated by Chapter 2 of Regulation (EU) 952/2013 (the Union Customs Code). This provides that goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture. However, in its practice, the Hungarian Competition Authority (“HCA”) acknowledged<sup>2</sup> that the administrative indication of origin that is determined by the Customs Code may not be always identical with the consumer’s perception of origin. The HCA stated that the rules of origin under the Customs Code is only a factor among the several applicable requirements that must

<sup>1</sup> Pursuant to Section 14 and Section 15(2) of the UCP Act and 64/B.(2) of the Competition Act

<sup>2</sup> Decision of the HCA Nr Vj-18/2012, para. 154-155.

be fulfilled. Therefore if the country of origin cannot be determined without doubt, then the trader has the burden of proof that the indication of that country of origin was identical with the consumer's perception of origin of the goods. The HCA expects that trader shall use a consistent approach that is sufficiently documented and comprehensive when determining the country of origin of its goods. Regarding the use of the labelling "Hungarian quality", the HCA held that it belongs to the professional duty of care of the trader that the use of this indication is subject to predefined and consistently applied common standards with regard to the entire organization and regarding foodstuffs it shall consider at least the place of production / origin and the origin of its primary products.<sup>3</sup>

In practice, country of origin has been applied to services in only a very few areas, because most services cannot be traded remotely if requiring the proximity of the consumer and service provider. Country of origin of services refer to the origin of the service supplier, but there is no Hungarian practice available regarding the factors that determine the origin, such as the place of incorporation, nationality or residence of the service provider, the center of its substantive business operations or domestic ownership and control.

**3. Are there different provisions for different types of goods (e.g. for wines and spirits, foodstuffs, natural goods, industrial products, etc.)? If so, what are the respective requirements?**

Yes.

**Union Customs Code**

The rules of the Union Customs Code and delegated regulation by the European Commission<sup>4</sup> define the administrative origin of the goods under customs provision, but this is not always decisive regarding the consumer perception of origin.<sup>5</sup>

The European Commission adopted delegated regulation supplementing the relevant rules of the Union Customs Code. According to Article 31 of the delegated regulation, goods originating in a country are those wholly obtained or produced in that country. The expression 'goods wholly obtained in a country or territory' means:

- (a) *mineral products* extracted within that country;
- (b) *vegetable products* harvested therein;
- (c) *live animals* born and raised therein;
- (d) *products derived from live animals* raised therein;
- (e) *products of hunting or fishing* carried on therein;

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<sup>3</sup> Decision of the HCA No. Vj-8/2011., Para. 30; milestone decision of the HCA No I.3.8.

<sup>4</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

<sup>5</sup> Decision of the HCA No. Vj-8/2011, Para 156.

- (f) *products of sea-fishing* and other *products taken from the sea* outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;
- (g) *goods obtained or produced on board factory ships* from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;
- (h) *products taken from the seabed or subsoil beneath the seabed outside the territorial sea* provided that that country has exclusive rights to exploit that seabed or subsoil;
- (i) *waste and scrap products* derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;
- (j) goods which are produced therein exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

Annex 22-01 of the delegated Commission Regulation also lays down conditions regarding the qualification of administrative origin of goods the production of which involves more than one country or territory. The delegated Commission Regulation defines the origin of accessories, spare parts or tools (Article 35), as well as those neutral elements and packing of the goods that cannot be taken into account when determining the origin of the goods (Article 36).

### **Foodstuffs of Hungarian origin**

Since 2012, special legal provisions govern the indication of “Hungarian”, “domestic” and “home-produce” origin of foodstuffs. Under the Decree 74/2012. (VII. 25.) VM on the use of certain voluntary distinctive signs on food (“Hungarian Product Decree”), origin is determined by the origin of the product ingredients and place of manufacture. The Decree provides that the indication of origin cannot make the impression that the good possesses higher quality or it complies with higher standards of food safety.<sup>6</sup> The Decree lays down voluntary labelling provisions and the food business operator using the indication is responsible for compliance with the Decree.<sup>7</sup> The Hungarian Product Decree provides that food business operators shall maintain complete records and a monitoring system that allow for verification that in the course of the entire distribution chain the operator consistently complies with the provisions of the Decree.<sup>8</sup>

A foodstuff can be designated as “*Hungarian origin*”<sup>9</sup> or the product may bear any other distinctive marking referring to or implying the Hungarian origin if its ingredients are of Hungarian origin and it is produced in Hungary. The Hungarian Product Decree provides that the following requirements must be fulfilled: Regarding primary products, the reference to the Hungarian origin can be indicated

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<sup>6</sup> Section 1(3) of the Hungarian Product Decree

<sup>7</sup> Section 1 (4) of the Hungarian Product Decree

<sup>8</sup> Section 1(5) of the Hungarian Product Decree

<sup>9</sup> Section 2(1) of the Hungarian Product Decree

- if the plant origin primary product's the cultivation, harvest, the wild plants' collection, cleaning and treatment, or the pre-packaging of packaged plants took place in Hungary;
- in case of animal origin primary products the birth, hatching and rearing, the hunting of wild animals, the catching of wild fishes, or, if the primary product is not produced from an animal, particularly in case of producing honey, milk and eggs the introduction of the animal into production, and - in case the animal origin primary product is packaged, then its pre-packaging took place in Hungary;
- in case of foodstuffs produced from a combination of plant origin and animal origin primary products if each the animal origin primary product and the plant origin primary product comply with requirements indicated above.

Regarding *unprocessed products*, the Hungarian origin can be indicated on the labelling, presentation or advertisement of the foodstuff if produced from a primary product complying with the requirements applicable to primary products and all steps of the production from the primary product - particularly the partition, parceling, cutting, slicing, boning, grinding, skinning, cleaning, chopping, shelling, fracturing, cooling, refrigeration, deep freezing, thawing and packaging - took place in Hungary.<sup>10</sup>

In case of *processed products*<sup>11</sup>, the Hungarian origin can be indication the labelling, presentation, visualization or advertisement of the marketed processed product, if

- the unprocessed product ingredient used for manufacturing fulfils the requirements indicated above;
- each steps of processing which is resulted in end product being created, took place in Hungary; and
- other processed product ingredients used for production shall be also of Hungarian origin, with the exception of spices, herbs and the mixture of these, which are not harvested in Hungary on an industrial scale until the commencement of production of the foodstuff, as well as edible salts, additives, enzymes and flavorings, provided that the production or manufacture of such ingredients normally does not take place in Hungary.<sup>12</sup>

In case of "*domestic products*"<sup>13</sup> or in case of the use of any other statement, labelling or other distinctive mark referring to the fact that the processing of the product took place in Hungary but the product also contains import ingredients, the following requirements must be fulfilled:

- more than 50 % of the unprocessed product ingredients used for production shall be of Hungarian origin;
- every step of processing, which resulted in producing the end product intended for the final user took place in Hungary, and

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<sup>10</sup> Section 2(3) of the Hungarian Product Decree

<sup>11</sup> Section 2(4) of the Hungarian Product Decree

<sup>12</sup> Section 2(5) of the Hungarian Product Decree

<sup>13</sup> Section 3 of the Hungarian Product Decree

- each processed product ingredient used for production comply with the above requirements.

The indication "*home-produce product*"<sup>14</sup>, or any other statement, labelling or other distinctive marking referring to that that the processing of the product took place in Hungary, and it contains imported ingredients up to a certain specified amount, can be indicated only if every process determining the ingredients or organoleptic properties of the food took place in Hungary. The selection, classification, separation, packaging and labelling is not considered as a process defining the ingredients or organoleptic properties of the processed foodstuff.

### **Hungarian Spirits (Pálinka / Törkölypálinka)**

The use of the term "Pálinka" (Hungarian Spirit) is retained for food fruit spirits complying with Annex II item 9 of the EU regulation 110/2008/EC and produced from fruits (including fruit pulp) grown in Hungary and whose mashing procedure, distilling, ageing and bottling took place on Hungary. A product made from concentrate or dried fruits cannot be designated as "Pálinka".<sup>15</sup>

The term "Törkölypálinka"<sup>16</sup> (Hungarian grape marc spirit) is retained for grape marc complying with Annex II item 6 of the EU regulation 110/2008/EC and produced from the marc of grapes grown in Hungary and whose mashing procedure, distilling, ageing and bottling took place on Hungary. Beet sugar, cane sugar, isoglucose and wine lees cannot be used in the marc. Also, the end product cannot be dressed, colored or sweetened.

The Pálinka Act lays also down the detailed conditions and rules regarding the manufacturing of special kinds of Pálinka and Törkölypálinka, too.

### **Wines**

The requirements applicable for wines are laid down by the EU wine legislation. The Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organization of the markets in agricultural products lays down the general provisions applicable to indications of origins concerning wine products.

The Hungarian Wine Act contains specific provisions with regard to Hungary and the special rules regarding the Tokaj Wine Area, such as the production of Tokaji másolás', 'Tokaji fordítás', 'Tokaji aszúeszencia', 'Tokaji eszencia', 'Aszúbor' and 'Töppedt szőlőből készült bor'.

### **Hungaricums**

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<sup>14</sup> Section 4 of the Hungarian Product Decree

<sup>15</sup> Section 2 (1) of the Pálinka Act

<sup>16</sup> Section 2 (3)-(4) of the Pálinka Act

The aim of the Hungaricum Act is the preservation of local, county and national treasures of Hungary. The term “Hungaricum”<sup>17</sup> is a collective term referring to the creations of the Hungarian people of Hungary reflecting the country’s uniqueness, features and quality; achievements and recognized as an outstanding Hungarian value. Natural persons and legal persons cannot be qualified as “Hungaricum”. If a national value is qualified as a Hungaricum, this protection shall be in addition and it will not prejudice the protection based on other legal provisions<sup>18</sup>, such as the protection of registered geographic indications of origin.

The Hungaricum Act set up the “Hungaricum Committee”<sup>19</sup> consisting of delegated members of each Hungarian Ministry, MÁÉRT (the umbrella organization for Hungarian associations outside Hungary), the Hungarian Academy of Sciences, the Hungarian Art Academy, the HIPO, the Hungarian Parliament, .The Committee keeps and compiles the “Collection of Hungaricums” based on its individual examination of national treasures listed in the Repository of Hungarian Values. National values can be identified by Hungarian local and national municipalities, government agencies, and member organizations of MÁÉRT. The national values collected this way make up the Repository of Hungarian Values from which the ones qualified by the Hungaricum Committee are qualified as Hungaricum. Based on the decision of the Hungaricum Committee the values declared Hungaricum are enrolled in the Collection of Hungaricums, which will be able to use the “Hungaricum” trademark<sup>20</sup>.



The use of the mark can be licensed to persons who maintain or care for Hungaricums.<sup>21</sup>

The Hungaricum Act lays down that the word “Hungarikum” can be used in the name of a legal person or indicated in a store or restaurant name only with the authorization of the Hungaricum Committee.<sup>22</sup>

**4. Do the same provisions apply to domestic indications of origin as to foreign indications of origin? 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?**

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<sup>17</sup> Section 1(1)(b) of the Hungaricum Act

<sup>18</sup> Section 1(2) of the Hungaricum Act

<sup>19</sup> Section 14 of the Hungaricum Act

<sup>20</sup> IR [1234547](#)

<sup>21</sup> Section 18(3)

<sup>22</sup> Section 18/A of the Hungaricum Act



In Hungary, different provisions apply to domestic indications of origin as to foreign indications of origin.

On the basis of Articles 26 and 28-37 of the Treaty on the Functioning of the European Union (TFEU) and its implementation in the Act VII of 2009 on the mutual recognition of the free movement of goods under the EC Treaty, Hungary applies the country-of-origin principle with regard to product labelling originating from other EU countries, unless there are mandatory requirements relating to, among other things, to the fairness of commercial transactions and consumer protection.

The Hungarian Product Decree also contains a mutual recognition clause under Section 7(1) of the Decree.

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

Yes.

#### **Register for Indications of Origin**

The legal protection of geographical indications such as designations of origin and geographical signs are governed by the national and Community legal provisions and the geographical indication must undergo registration in order to be protected. The national register is maintained by the Hungarian Intellectual Property Office, whereas the Community register is kept by the European Commission.

#### **Goods or Services**

A geographical sign is the name of a region, specific place or, in exceptional cases, a country that is used for marking products that originate from such area - i.e., are produced, processed or prepared in the defined geographical area - and whose exceptional quality, reputation or other characteristic is essentially attributable to that geographical origin.<sup>23</sup>

A designation of origin is the name of a region, specific place or, in exceptional cases, a country which is used for marking products which originate from such area - i. e. products which are produced, processed or prepared in the defined geographical area - and whose exceptional quality, reputation or other characteristic is exclusively or essentially the result of the particular geographical environment and the characteristic natural and human factors of this environment.<sup>24</sup>

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<sup>23</sup> Section 103(2) of the Trademark Act

<sup>24</sup> Section 103(3) of the Trademark Act

Geographical indications can be protected in Hungary under *five different legislative regimes* according to the individual product type:

- *agricultural products and foodstuffs* can enjoy Community level protection under the Regulation 1151/2012/EU;
- *spirit drinks* enjoy Community level protection based on the national protection granted by the Hungarian Intellectual Property Office under Regulation 110/2008/EC;
- *wine products'* designations of origin and geographical indications can be registered at Community level under Regulation 1308/2013/EU and
- *aromatized wine products* can enjoy protection under Regulation 251/2014/EU;
- *any other products* not covered by Community regimes, such as *industrial products*, can obtain national registration pursuant to the provisions of the Hungarian Trademark Act.

### **Registration Process**

When applying for protection on Community level there is a national and a Community procedural phase. The formal requirements of the application are laid down in Decree 16/2004. (IV.27.) IM of the Minister of Justice. The application must contain the list of products according to the Nice Classification and the applicant must pay the application fee of HUF 107 000.<sup>25</sup>

The national phase of Community applications is conducted before the HIPO. Regarding *agricultural products, foodstuffs, wine products and aromatized wine products* the application must be submitted to the Minister for Agriculture. If the application complies with formal requirements, then the Minister forwards the application to the HIPO who examines the application and informs the Minister if it agrees with the submission of the application to the European Commission. In case the HIPO agrees with the application, the Minister publishes the application for a period of two months for opposition purposes. The opposition is examined by the Minister. The decision about the opposition can be released with the consent of HIPO. The Minister must scrutinize the application within nine months from the date of application and it publishes its decision and the product description in the Gazette of the Ministry. When the decision of the Minister becomes final, then the Minister lodges the dossier with the European Commission. Upon lodging the dossier with the Commission, the geographical indication receives transitional protection in Hungary. The European Commission also scrutinizes the application and published it in the Official Journal of the European Union for a period of three month for opposition purposes. In connection with the Community opposition procedure, the Minister of Agriculture is the designated Member State authority. The European Commission registers the name and the register of geographical indications is also maintained by the European Commission.

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<sup>25</sup> Section 12(1) of Decree No 19/2005. (IV. 12.) GKM

Regarding *spirit drinks and other products not covered by Community legislation*, protection can be obtained by submitting an application to the Hungarian Intellectual Property Office. The HIPO examines the application regarding its compliance with the formal requirements and it publishes the application for opposition purposes. The HIPO grants protection and registers the name by formal decision. In case of spirits, the application must also contain a product description that is examined by the Minister for Agriculture within 9 months.<sup>26</sup> The Minister informs the HIPO if it consents with the submitted product description of spirit drinks. Regarding spirit drinks, the applicant may inform the HIPO before the decision on registration becomes final if it wishes to obtain Community level protection.

Protection of the geographical indication commences with registration and it is effective retroactively from the date of filing of the application. The protection of geographical indications is unlimited in time<sup>27</sup>.

The international registration of geographical indications under the Lisbon Treaty are governed by Section XVII/B. of the Trademark Act. If the geographical indication has been registered by the HIPO, then the applicant is entitled to make an international application to the International Bureau of the World Intellectual Property Organization (“WIPO”).

### **Effects of Registration and Scope of Protection**

Protection confers on its holders the exclusive right to use the geographical indication. Only the holders may use the geographical indication, they may not grant license to others.<sup>28</sup> On the basis of their exclusive use rights, the holders, organizations representing the interests of the proprietors and consumer protection organizations can prevent any person who in the course of trade:

- (a) uses the protected geographical indication or a denomination liable to create confusion with respect to products not originating in the defined geographical area;
- (b) uses the protected geographical indication with respect to products not included in the list of products, but similar to those and therefore takes unfair advantage of or infringes the repute of the protected geographical indication.
- (c) imitates or evokes in any manner whatsoever the protected geographical indication, even if the true origin of the product is indicated or if the protected name is translated or accompanied by various additions;
- (d) uses any false or misleading indication as to the provenance, origin, nature or essential characteristics of the product, no matter where it is indicated (e.g. on the packaging, advertising material or documents relating to the product concerned);
- (e) performs any other act liable to mislead the public as to the true origin of the product.<sup>29</sup>

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<sup>26</sup> Section 113/A (1)(d) of the Trademark Act

<sup>27</sup> Section 108 of the Trademark Act

<sup>28</sup> Section 109 (1) of the Trademark Act

<sup>29</sup> Section 110 (3) of the Trademark Act

Infringement of protection is committed by any person who uses in the course of trade by violating the rights of the holders a protected geographical indication without authorization. Any holder, organizations representing the interests of the proprietors and consumer protection organizations may take independent action against an infringement and lodge the following civil claims against the infringer:<sup>30</sup>

- establishment of infringement;
- cease and desist from infringement or its imminent threat;
- request of information about distribution channels, the identity of any third parties involved in the infringement and the business relationships established during infringement;
- request satisfaction at the expense of the infringer;
- monetary relief for the unjust enrichment of the infringer;
- seizure, destruction and recall of the products subject of the infringement
- compensation for the damages suffered because of the infringement;

### **Becoming Generic**

A geographical indication may not be granted protection if in the course of trade it has become the common name of a product irrespective of whether the product originates in the place specified by the geographical indication. However, following registration, Section 105 (2) of the Trademarks Act, Article 15 (3) of the Regulation 110/2008/EC, Article 13 (2) of the Regulation 1151/2012/EU, Article 103 (3) of the Regulation 1308/2013/EU prevents a registered indications of origin to become the common name of a product in the course of trade.

#### **6. Is the registration of certain indications of origin mandatory in order for them to be protected and their use to be regulated? If yes, to which indications of origin and for what kind of goods and services does such registration requirement apply?**

The registration of certain indications of origin mandatory in order for them to be protected. This applies to agricultural products and foodstuffs, spirit drinks, wine products' designations of origin and geographical indications and aromatized wine products.

#### **7. Who is entitled to apply for the registration of an indication of origin (any market player, manufacturer organizations only, etc.)? Does the registration of an indication of origin confer property rights upon a specific owner?**

In Hungary, any natural or legal person can obtain protection for a geographical indication, if they produce, process or manufacture a product identified by a geographical indication in the geographical area identified by such geographical indication.<sup>31</sup> The protection of a geographical indication belongs jointly to the persons who produce, process or prepare products. Foreigners are entitled to the

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<sup>30</sup> Section 27(2)-(3) of the Trademark Act

<sup>31</sup> Section 107(2) of the Trademark Act

protection on the basis of an international agreement or subject to reciprocity, only.<sup>32</sup>

- 8. 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)? 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 movement of goods, etc.)?**

In Hungary, the applicants must define the product description and the HIPO must examine it if the product description is justified.<sup>33</sup> Regarding spirits, agricultural products, foodstuffs, wines and aromatized wines, the Minister for Agriculture can approve the product description if the scrutiny of the Minister establishes that the product description was justified.<sup>34</sup>

- 9. 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)? Does your jurisdiction have any provisions which try to prevent such exclusions of previous legitimate users of indications of origin?**

Yes. Everybody could be excluded from production who does not comply with the use requirements of the registration. Such exclusions can be prevented by filing an opposition or requesting the cancellation of the registration.

- 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?**

Yes. Indications of origin can be registered as certification marks, collective marks or individual marks if the sign is distinctive, it is not liable to deceive the public and no other absolute or relative grounds for refusal are given. In that regard, the Hungarian Trademark Act excludes from trademark protection signs consisting of or containing a registered geographical indication whose registration is excluded under European Union legislation or that are used in connection with goods that originate in a

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<sup>32</sup> Section 107(4) of the Trademark Act

<sup>33</sup> Section 113(5) of the Trademark Act

<sup>34</sup> See Section 116/A(8)-(9) of the Trademark Act and Section 10 (3) of the Government Decree 158/2009. (VII. 30.) concerning spirits; Section 4(1)(c) of the Decree 16/2004. (IV. 27.) IM regarding foods and agricultural products; Section 12 of the Government Decree Nr. 178/2009. (IX. 4.) regarding wines and

geographical location other than what is indicated or for which the geographical indication cannot be used based on Hungarian or EU legislation.<sup>35</sup>

**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?**

Section 3 (4) of the Hungarian Trademark Act excludes from trademark protection signs consisting of or containing a registered geographical indication whose registration is excluded under European Union legislation or that are used in connection with goods that originate in a geographical location other than what is indicated or for which the geographical indication cannot be used based on Hungarian or EU legislation.

Section 106 (1) of the Hungarian Trademark Act excludes from protection geographical indications that are identical or similar to an earlier trademark where, in the light of a trademark's reputation and good name, and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

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

We refer to our answer concerning Q2. In Hungary, the burden of proof lies with the trader that the product can be considered to originate from XY. In that regard, the provisions of the Union Customs Code and the consumer's perception / expectations relating to the product. In line with the practice of the HCA<sup>36</sup>, there may be several factors to be considered, such as the identity of the purchaser (consumer or business customer), the nature of the product (because the primary products have more significance regarding foodstuffs<sup>37</sup>), value of the product (if routine transaction or not), the commercial usage, presentation of the product or and its packaging, consumer or customer preferences, the name or brand elements of the product, the identity or company name of the trader.

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<sup>35</sup> Section 3(4) of the Trademark Act

<sup>36</sup> See decision of the HCA Nr Vj-197/2004 para 41-42. regarding Hungairan Paprika and decision of the HCA Nr 65/1997. VJ regarding the relevance of place of manufacture of motor olis; decision of the HCA in Vj-8/2011

<sup>37</sup> Decision HCA Vj-8/2011, para 31.

The Hungarian Competition Authority expects that a trader shall use a consistent approach that is sufficiently documented when determining the country of origin of its goods.<sup>38</sup> If an indication of origin might have several interpretations, the HCA considers that each of them must be evidenced by the trader.<sup>39</sup>

The Hungarian Product Decree contains specific rules regarding the origin of manufacturing steps. Please see the details of those provisions under Q3.

**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?**

Yes. We refer to the provisions of the Hungarian Product Decree under Q3.

**14. 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? Are such mandatory labelling requirements considered to be trade restraints in your jurisdiction?**

As a rule, the geographic origin does not need to be indicated, unless the failure to indicate this might mislead the consumer as to the true country of origin.

Mandatory labelling requirements apply with regard to

- foodstuffs under Article 26 of the EU Regulation 1169/2011 on the provision of food information to consumers,
- imported cosmetic products under Article 19(1)(a) EU Regulation No 1223/2009
- the batch packaging of pharmaceuticals must indicate the place of origin of the product pursuant to Section 9 (3) of the Decree 53/2004. (VI. 2.) ESzCsM on wholesale and parallel import activities concerning pharmaceuticals;
- tobacco products under Section 6(1)(i) of the Government Decree 39/2013 on the manufacture of tobacco products.

These mandatory labelling requirements are not considered to be trade restraints or the restraints are justified, because these requirements ensure the traceability of the products.

**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**

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<sup>38</sup> Decision of the HCA Nr Vj-18/2012, para. 154.

<sup>39</sup> Decision of the HCA Nr Vj-18/2012 para. 155

**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.**

Yes.

The HCA already addressed this situation and acknowledged that the administrative indication of origin may not be always identical with the consumer's perception of origin. In this case, the consumer's perception of origin should prevail. In its decision Vj-147/2004 the HCA said<sup>40</sup> that the compliance with mandatory labelling or information requirements laid down by sector specific rules does not provide any immunity for competition law infringements, but those can be considered in connection with the setting of the fine.

**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.)?**

**Control Authorities**

The Hungarian Government designated the several control authorities concerning the protecting of geographical indications of origins:

- The *Provincial Office of the County Government Agency being in charge for veterinary and food administration control* has competence regarding the supervision of foodstuffs;
- The County Government Agency for Food Chain Safety and Veterinary Administration is competent concerning the control of spirits;
- National Food Chain Safety Office is in charge regarding the control of spirits, fruit, vegetables, agricultural products and wines<sup>41</sup>;
- County Government Agency for Plant and Soil Protection is in charge regarding the control of fruit and vegetables.

The above control authorities supervise that the products protected by geographical indications of origins comply with the product description.

The Pálinka Act has assigned the control of the production of Pálinka and Törkölypálinka to the National Pálinka Council<sup>42</sup>.

**Customs Authorities**

Any holder of registered geographical indications, organizations representing the interests of the proprietors and consumer protection organizations of origin may apply for customs measures before the Hungarian Tax Administration in order to prevent the entry into free circulation of the infringing goods in line with the

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<sup>40</sup> Decision of the HCA Nr Vj-197/2004 para 44.

<sup>41</sup> Section 18 (1) of the Government Decree 178/2009. (IX. 4.)

<sup>42</sup> Section 11(1) of the Pálinka Act.



Regulation 608/2013/EU concerning customs enforcement of intellectual property rights.

### **Consumer Protection Agencies**

Regarding misleading practices concerning geographical indications of origins, the *National Consumer Protection Authority* (NCPA) and its local inspectorates have general competence to proceed against unfair commercial practices against consumers. However, if the commercial practice relates to an activity of the undertaking which is supervised by the *Hungarian National Bank* (HNB) such as banks, insurance companies and financial service providers, the HNB shall also prosecute unfair commercial practices against consumers by such entities. If the commercial practice against consumer is capable of materially affecting competition, the *Hungarian Competition Authority* (HCA) has the power to proceed. The provisions on misleading practices and comparative advertising *vis-à-vis* business partners are also enforced by the HCA. Consumer protection proceedings of the HNB and NCPA can be also launched on the basis of a consumer complaint, but these authorities are also entitled to launch proceedings on their own initiative. Consumer complaints to the HNB and NCPA are reviewed within the framework of administrative proceedings.

### **Courts**

The Metropolitan Court is in charge for proceedings concerning the infringement of protected geographical indications.<sup>43</sup> The infringement action may be instituted by holders of the registration, by interest groups of the holders, as well as by consumer protection organizations.

Section 15 (1) of the UCP Act provides that administrative proceedings under the Act shall not prevent injured parties from enforcing civil law claims, which are based on the unfairness of a commercial practice against consumers, directly before Court. Accordingly, local consumers and businesses may file court action for compensation of damages they have sustained. The burden of proof of the accuracy of factual claims in relation to the commercial practice shall rest with the undertaking. Further, both consumers and business partners may file court action based on the infringement of Section 2 of the Competition Act (the general clause)<sup>44</sup> and claim damages as well as restitution for such infringement.

According to the Section 92 of the Competition Act, the HCA may file an action to enforce civil law claims of consumers where the infringing activities concerns a large group of individually not known consumers that can be defined based on the circumstances of the infringement. The HCA is empowered to file the action only where it has commenced competition supervision proceedings with respect to the

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<sup>43</sup> Section 115 of the Trademark Act

<sup>44</sup> Section 2 of the Competition Act: *"It shall be prohibited to engage in unfair economic activities, particularly in a manner that infringes or jeopardizes the legitimate interests of customers, buyers, recipients or users (hereinafter collectively: trading parties) or competitors, or that are contrary to the requirements of business fairness."*

infringement in question. Where, with respect to the consumers affected by the infringement, the legal grounds for the claim and the amount of damages demanded, or the overall contents of the claim in the case of other claims, can be clearly established irrespective of the individual circumstances of the consumers affected by the infringement, the HCA may request the court to award such claims and order the business entity in question to satisfy these claims, or failing this, to request the court to declare the infringement covering all consumers indicated in the claim. If according to the court's decision the violation was established covering all consumers indicated in the claim, the consumers affected may file charges against the business entity and are required to verify only the amount of damages and that the damage is the direct result of such infringement. The court's decision shall specify the consumers who are affected by the violation, and therefore are entitled to demand satisfaction based on the judgment, and shall determine the data required for their identification. In its ruling the court may authorize the HCA to publish the court's decision in a national daily newspaper (at the expense of the infringer), or to make it available to the general public (by means consistent with the nature of the violation.). If the court's decision, apart from having established the violation, also orders the business entity to provide satisfaction for a specific claim, the infringer shall be required to satisfy the claim of the consumer on whose behalf the judgment was awarded. If the consumer's claim is not satisfied voluntarily, the consumer may request judicial enforcement.

### **Criminal Enforcement**

The Hungarian Tax Administration is in charge for the investigation and prosecution of the criminal infringement of industrial property rights<sup>45</sup>, including the infringement of registered geographical indications of origin. The Hungarian Police is competent in matters concerning the misleading of consumers<sup>46</sup>. Hungarian criminal courts are competent to impose punishments and measures for criminal acts.

**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 particularly endorse? Which rules or concepts would you prefer to be amended or abandoned?**

Hungarian consumer attach significant importance to the "Hungarian origin" of foodstuffs and the Hungarian Product Decree was able to unify the local practice and to provide a safe harbor against any legal uncertainties relative to the interpretation and determination of the Hungarian origin.

The unification or harmonization of rules governing the determination of the country of origin would be welcome, because the relevant rules of the Union Customs Code do not consider consumer expectations regarding the determination of the origin of goods.

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<sup>45</sup> Section 388 of the Criminal Code

<sup>46</sup> Section 417 of the Criminal Code