

## Firm Attorney Meets with Top Asian Intellectual Property Officials

Christopher & Weisberg attorney John Christopher, a long-time member of the American Intellectual Property Law Association (AIPLA), recently served as an Association Delegate to Asia, meeting with top legal and government officials in Hong Kong, China and S. Korea.

Highlights of the trip included presentations by Mr. Christopher on the Digital Millennium Copyright Act to the leaders of the Chinese Copyright Office and the Hong Kong Intellectual Property Department.

In Korea, Mr. Christopher spoke to the Korean Patent Attorneys Association regarding recent developments in U. S. trademark law, and met with senior officials of the Korean Patent Office and justices of the Korean courts.

While in Hong Kong, Mr. Christopher met with officials of the Customs and Excise Department, justices of the High Court, and



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# Geographical Indications in the United States

Geographical Indications (“GIs”) are signs used to indicate the regional origin of a particular good or service. While trademarks are used to distinguish goods or services of one enterprise from another's, GIs are used to identify goods having special characteristics and originating from a definite geographical territory. GIs identify a good or a service as having a particular quality, reputation or other characteristic that identifies the good or service as being essentially attributable to a specific geographic origin.

Although GIs are as important as trademarks in the intellectual property world, they are often ignored or misunderstood. GIs are similar to trademarks in that they are both source identifiers. Since both trademarks and GIs serve the same functions, the United States protects them under the same system, i.e. the trademark system. GIs can be protected under common law and can also be registered as certification or collective marks.

Words or symbols that may seem commonplace today are, in fact, GIs that have been around for decades. For example, the following are GIs that have been in existence for years: COLOMBIAN -for “coffee” – which certifies the coffee came from Colombia; DARJEELING – for “tea” – which certifies that the tea

the Blue Mountain area of Jamaica; BANSHU SOMEN – for noodles, with contents originating in an area of Japan called “Banshu”; PARMIGIANO REGGIANO – for goods originating in the Parma-Reggio region of Italy; and ROQUEFORT – which certifies that the cheese was manufactured from sheep’s milk only, and was cured in the cave region of the Community of Roquefort, Department of Aveyron, France. Other well-known GIs are IDAHO for potatoes, FLORIDA, for oranges, and VIDALIA for onions. Symbols such as the Florida Sunshine Tree, the Eiffel Tower, or the Statue of Liberty, are also used as GIs.

Not every indication rises to the level of a GI. A geographic name, alone, is not a GI, without a link between some quality, reputation of other characteristic of the good and the area where that good is produced.

The United States has registered GIs for decades, and almost all GIs are owned by a government or a government-sanctioned certifying body, or, in

some instances, an individual. Similar to trademarks, GIs need not be registered with the United States Patent and Trademark Office (USPTO) to be protected. However, registration provides several added benefits such as constructive notice to the public as to the registrant’s claim of ownership of the GI, standing to bring an action for infringement of the registration in Federal Court, and the ability to obtain registrations abroad based upon the U.S. registration. Further, under U.S. law, an owner of a GI has the exclusive right to prevent confusing uses of the mark by unauthorized third parties. See 15 U.S.C. §§ 1114 and 1125. Infringement of a GI can be in the form of any unauthorized use indicating or suggesting that goods originate in a geographical area other than their actual place of origin or when the use of another GI results in unfair competition, such as passing the good off as a registered GI.

Unlike the European Community, which has a special regulatory regime for geographical indications separate and apart from its trademark system, the USPTO does not have a special

register for GIs in the United States. One can simply apply for a GI in the same manner as one files a trademark application with the USPTO. Traditional examination issues apply such as the similarity of the GI with other existing trademarks or GIs, common channels of trade, similar target markets, etc. Under U.S. trademark law, geographic terms are not registrable as trademarks if they are geographically descriptive (or geographically misdescriptive) of where the goods or services came from. This is based on the theory that others in the same area would be prevented from using a geographic term to describe where their goods originate. However, unlike trademarks, descriptiveness is generally OK with regard to GIs. GIs are the one area where the name of a place may be source-identifying. A more likely inquiry is whether the GI is considered generic by the consuming public. If so, then the mark is not protectable.

A geographical indication identifies a good and not merely a geographic area. Therefore, if the geographic term is used in such a way as to identify the source of the good, and over time consumers begin to recognize the term as identifying a particular company or group of producers, then the term no longer merely describes where the goods came from but has now risen to the level of a “source identifier,” meaning the term also describes the source of the goods. This is due to the “acquired distinctiveness” of the GI.

It becomes protectable because it has acquired “secondary meaning” under U.S. trademark law.

Obviously, GIs carry significant weight in the marketplace. GIs play an integral role in promoting trade and consumer interests and represent valuable marketing tools for promoting a company’s products.



Florida Citrus label carries significant selling power because of geographical reference

After all, a producer of citrus fruit coming from Florida with an aptly-name label of “FLORIDA CITRUS” will likely realize increased sales due solely to the GI designation, rather than only the quality of its product.

Interestingly, if a person registers a GI as a certification mark, and if your product meets the standards of the certification mark, then you are allowed to use the GI on your products. In fact, if the owner of the GI discriminates against a

producer who actually meets the standards, by denying them use of the mark, the GI is subject to cancellation. Thus, the USPTO requires that certification marks include a copy of the certification standards to be retained as part of the GI’s official record.

Geographical Indications are an interesting and often overlooked facet of trademark law. There are numerous articles that discuss and compare the U.S. and the world’s views on this important issue. It is a subject that should be incorporated into any corporate or collective trademark curriculum.

*By Jeffrey H. Kamenetsky*

*GIs can be protected under common law and can also be registered as certification or collective marks.*

contains 100% tea originating in the Darjeeling region of India; JAMAICA BLUE MOUNTAIN COFFEE – the coffee was grown in



# Christopher & Weisberg to Host a Gourmet Reception at the 2007 INTA Annual Meeting

After a successful and exciting party at the famous Senses Restaurant in Toronto for the 2006 International Trademark Association (INTA) Annual Meeting, Christopher

*The reception this year will be hosted at Avenues, the destination restaurant in Chicago's landmark Peninsula Hotel.*

& Weisberg will host a reception this year at Avenues, the destination restaurant in Chicago's landmark Peninsula Hotel. This year Avenues was awarded top marks by three different Chicago newspapers. At Avenues, the view of the Water Tower provides an exciting backdrop for the



*Jeff Kamenetsky, Joe Englander*

creations of Chef de Cuisine Graham Elliot Bowles. Chef Bowles was recently edged out by Chef Bobby Flay in an Iron Chef chocolate battle, and we eagerly anticipate his surprise dessert at the reception. We invite you to join us.

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members of the Hong Kong IP Society. In China, he met with officials of the IP Bureau in Shanghai, the State IP Office in Beijing, and justices of the Supreme People's Court in Beijing.

Christopher & Weisberg maintains an active international practice representing clients before governmental agencies in other countries, as well as representing international clients from many countries before U.S. Courts and administrative agencies.

Mr. Christopher's trip to the Pacific Rim demonstrates the firm's international ability to serve its clients on both sides of the Pacific Ocean. Feel free to contact John at 888-978-2947 to discuss either your needs and requirements or to find out more about his recent travels.

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