

**Decision highlights rigidity of GI practice
Switzerland - meyerlustenberger**

**Examination/opposition
Geographical indications/appellations of origin
National procedures**

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In *Hansen Beverage Company v Federal Institute for Intellectual Property* (Case B-102/2008, January 28, 2010), the Swiss Administrative Court has upheld a decision of the Federal Institute for Intellectual Property (IGE) in which the latter had refused to register the mark JAVA MONSTER.

Hansen Beverage Company applied for the registration of the word mark JAVA MONSTER in Switzerland for non-alcoholic beverages. The IGE refused the application, holding that 'Java' referred to the smallest but most populated island of Indonesia and, therefore, consumers would perceive the trademark JAVA MONSTER as a geographical indication of origin. Use of the mark for products not originating from Indonesia would thus be deceiving.

Hansen argued that 'Java' had several meanings, including an Arabica coffee plant and the software solution developed by *Sun Microsystems*. The IGE was unconvinced and Hansen appealed to the Swiss Administrative Court.

The court agreed with the IGE, holding that:

- the relevant consumers would understand the element 'Java' primarily as a geographical indication of origin; and
- consequently, use of the mark JAVA MONSTER for goods not originating from Java would be misleading.

The court ignored Hansen's argument that Indonesia exported virtually no non-alcoholic beverages into Switzerland. It pointed out that the mere possibility that such products could be produced in Java was sufficient.

Interestingly, JAVA MONSTER has been registered as a Community trademark by the *Office for Harmonization in the Internal Market* without any objection. The decision of the Administrative Court shows, once again, the rigidity of the Swiss practice with regard to geographical indications. In addition, it illustrates the fact that EU law has little influence on Swiss practice.

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