

Geographical indication unknown by Swiss consumers may be registered as trademark Examination/opposition
National procedures
Switzerland - Meyerlustenberger Lachenal

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The Swiss Federal Supreme Court has confirmed that a geographical indication that is not known by the relevant public may benefit from trademark protection in Switzerland (Decision 4A_6/2013, April 16 2013).

On November 21 2011 the [Swiss Federal Institute for Intellectual Property](#) (FIIP) had refused to register the trademark WILSON (filed on December 10 2010) for tobacco products in Class 34 of the [Nice Classification](#). The FIIP had found that the mark was part of the public domain, and that the relevant consumer could be misled as to the geographical origin of tobacco products bearing the mark WILSON. This latter finding was based on the fact that the city of Wilson (50,000 inhabitants), the capital of Wilson County in North Carolina (United States), is situated in an area where tobacco is grown.

The applicant filed submissions with the FIIP, claiming that the mark would be perceived by the relevant consumer as a family name, rather than a geographical indication for tobacco products. The applicant further relied on the principle of equal treatment, arguing that the trademark WINSTON had been accepted for registration by the FIIP for cigarettes that did not originate from the city of Winston, North Carolina.

However, the FIIP refused the application, finding that the relevant consumer would perceive the mark as a geographical indication, as the city of Wilson is located in an important area for the production of tobacco in the United States.

The applicant appealed to the Swiss Administrative Court. By a decision of November 16 2012 (Decision B-6831/2011), the court upheld the appeal and allowed the mark to proceed to registration.

The FIIP appealed the decision of the Administrative Court to the Federal Supreme Court, as the final instance. The Federal Supreme Court upheld the decision of the Administrative Court and confirmed that the trademark WILSON was eligible for trademark protection, even though the tobacco products at issue did not originate from the city of Wilson.

The court stated that the relevant public in Switzerland does not know the city of Wilson in North Carolina. In particular, the average consumer of tobacco products would not recognise Wilson as a tobacco production area. Even if tobacco experts may be aware of the city of Wilson, this did not apply to tobacco sellers and distributors, which are part of the relevant public in this case. Further, the court found that the mark did not fall within the public domain based on the existence of a US trademark registration containing the term 'Wilson'. This registration led the court to the conclusion that 'Wilson' is not perceived as a geographical indication within the United States, and that there was no realistic need for potential tobacco producers in the city of Wilson to use the city's name to promote tobacco products.

The decision of the Swiss Federal Supreme Court is noteworthy because it limits the FIIP's tendency to refuse on absolute grounds all trademarks that have a geographical meaning, even if they refer to places that are unknown in Switzerland.

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