

**Name of Guatemalan town refused registration for rum products
Switzerland - meyerlustenberger**

**Examination/opposition
National procedures**

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The Swiss Administrative Court has [upheld](#) a decision of the [Federal Institute of Intellectual Property](#) (IGE) in which the latter had refused to register the word mark ZACAPA for alcoholic beverages in Class 33 of the [Nice Classification](#) (Case B-5016/2010, November 10 2010).

The application for the registration of the word mark ZACAPA was filed on May 14 2008. It covered "rum, rum spirits, rum liqueur, rum cocktails and alcoholic beverages containing rum" in Class 33. The IGE refused the application, holding that the mark was descriptive or deceptive and, therefore, violated Swiss and international law. The IGE found that ZACAPA was known to consumers (at least expert consumers) as a city in the Republic of Guatemala which was reputed for its rum products. Based on this assumption, the IGE concluded that the mark:

- indicated the origin of the goods; or
- deceived the public if the products did not originate from Zacapa.

The IGE discarded the applicant's claim that Zacapa was a very small town in Guatemala which would not be known by the average Swiss consumer - therefore, consumers would perceive ZACAPA as a fanciful mark, rather than a geographical indication. Moreover, the IGE did not consider the argument that the town of Zacapa did not have a reputation for rum products and that the characteristics of rum are not attributable to its geographical origin.

The court upheld the IGE's decision, concluding that the mark was a geographical indication in the sense of Article 22(1) of the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPs) in connection with the products at issue. With regard to spirits, the TRIPS agreement limits the protection of geographical indications to cases where the quality, reputation or other characteristics of the product is essentially attributable to its geographical origin. In the present case, the connection between the goods and their geographical origin was of paramount importance to determine whether ZACAPA would be perceived as a geographical indication.

The court held that the main ingredient of rum is sugarcane, an agricultural product. The qualities of agricultural products depend primarily on the climate and the condition of the soil in which they grow. Furthermore, the manufacturing methods of rum vary significantly depending on the place of production. The court concluded that rum was characterised by its geographical origin and, therefore, ZACAPA was a geographical indication.

As the list of the goods covered by the application was not limited to products originating from the region of Zacapa in Guatemala, the court concluded that the registration of the mark would also violate Article 23(2) of the TRIPS agreement.

The decision demonstrates, once more, that the practice of the IGE and the Swiss courts with regard to the registration of marks containing geographical designations remains very strict.

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