

Webinar legal aspects of Product Development / TAMI

Webinar

Seafood Trade Corridor

13 July 2020

Jos van der Wijst

Introduction

- Jos van der Wijst
- Attorney at Law at BG.legal
- 19 attorneys
- Eindhoven (The Netherlands)
- Brainport region / AgriFood Capital
- Food/tech law
- Board member of Technology Arbitration and Mediation Institute (TAMI)



Agenda

1. Collaboration in product development
 - IP/know how
 - exclusivity
2. Export to EU: EU legislation to abide
 - Food safety
 - Labeling / Nutrition and Health Claims
3. Product liability issues
4. Arbitration and Mediation in Food Safety issues

Collaboration in product development

1. IP and food products:

Copyright	ingredients and their quantities, the idea of the product and the style, method or technique of preparation
Patents	composition of the food itself, to the actual process of making the food
Trademarks	words, logos, shapes (of the food product itself or its packaging), slogans, specific colours and sounds

Collaboration in product development

Trade secrets recipes, formulae, manufacturing processes and, potentially, sales and distribution methods

Geographical Indication : protects products from a region

Tip Trade secrets often the best/only option
Alternative deal with it in a contract (exclusivity/non-
 compete): e.g. manufacture agreement,
 distribution agreement, collaboration agr.

Collaboration in product development

Enlarged Board of Appeal: plants and animals cannot be patented after all

Kluwer Patent blogger / May 15, 2020 / 27 Comments

Plants and animals exclusively obtained by essentially biological processes are not patentable. That is the opinion (G 3/19) of the Enlarged Board of Appeal of the European Patent Office (EPO).

According to an EPO **press communiqué of 14 May 2020** [↗](#), the “Enlarged Board of Appeal of the European Patent Office adopted a dynamic interpretation of the exception to patentability under Article 53(b) of the European Patent Convention (EPC) and held that the non-patentability of essentially biological processes for the production of plants or animals also extends to plant or animal products that are exclusively obtained by means of an essentially biological process.”



Geographical Indication



EN

Official Journal of the European Union

INFORMATION NOTICE – PUBLIC CONSULTATION

Geographical indications proposed by Indonesia to be protected in the EU

(2020/C 78/04)

Ikan Uceng Temanggung	Other product of animal origin - Fish
Sidat Marmorata Poso	Other product of animal origin - Fish



Collaboration in product development

2. Contract

Product developer in Indonesia

- Develops the product
- Packs it, labels it and ships it to EU
- Holder of IP / knowhow

Importer in EU

- provides ideas / market demands
 - Provides knowledge about legal requirements
 - Becomes exclusive importer or distributor in EU ?
 - Keeps information about the product/process/concept confidential ?
 - Non competing products ?
-

Export to EU: EU legislation to abide

1. Food Safety



FSANZ identifies Salmonella in raw fish as emerging issue

By Joe Whitworth on May 23, 2020



EU Food Law

- **General Food Law**: Directive 178/2002 of 28 January 2002
- Art. 14:
 1. Food shall not be placed on the market if it is **unsafe**.
 2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) **injurious to health**;
 - (b) **unfit** for human consumption

Labeling / Nutrition and Health Claims

nutrition claims ; such as "low fat", "high fibre"

health claims ; such as "Vitamin D is needed for the normal growth and development of bone in children"

any claim made on a food's labelling, presentation or advertising in the European Union is clear, accurate and based on scientific evidence.

Food bearing claims that could mislead consumers are prohibited on the EU market

Food Import in the EU

Food business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.

This only includes business operators in the EU.

Contract: make practical arrangements (sharing information, responsibilities, costs, etc.

Technology Arbitration & Mediation Institute

Prevention and settlement of technology related disputes

Technology Arbitration & Mediation Institute (TAMI)

- is an independent foundation
- For international arbitration, mediation and alternative dispute resolution
- For technology related disputes
- An alternative for civil courts proceedings
- Located in Eindhoven (The Netherlands)



Why involving TAMI?

- Pre-Dispute And Pre-Escalation Processes To Prevent Disputes:
“It usually costs less to avoid getting into trouble than to pay for getting out of trouble” (Professor Lewis Brown, 1950).
- Experts (including Food Safety/Quality Issues) available as arbitrator/mediator
- Arbitration with international recognised arbitration award.
- The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The institute can resolve disputes regarding :

Commercial disputes related to

- supply chain issues with suppliers or customers,
- Disputes regarding the delivered products (quality, quantity, characteristics, IP)
- Food product recall (costs of testing, damages)
- supply contract breaches and terminations
- agents and distributors
- Packaging
- Border control issues (who is responsible, pays damages when products are rejected).

De-escalation, mediation & arbitration

independent, impartial, competent, fast,
cost-effective and confidential