

***Sui Generis* Geographical Indications for Apparel and Footwear**

Subjects: Law

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In a global context marked by deterritorialization, free circulation of people and products, and appraisal of cultural differences, the researchers ground the proposition that extending *sui generis* Geographical indications (GIs) to fashion items would be a favorable solution for both communicating the genius loci and promoting sustainable practices. This process would go hand in hand with the creation of shorter and more responsible supply chains, deeply connecting the wearer and the local fields and pushing for individual or community agency. Building on the lessons learnt from the food industry, though, in the fashion sector, the path could be set in the reverse direction, with GIs being granted to companies not only because of the local scope of production but also considering the abidance by specific sustainability criteria.

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1. Socio-Terroir and Sustainability Criteria for Geographically Rooted Apparel and Footwear

Relying on the product specification found in Geographical indications (GIs) and collective trademarks operating in the fashion field in France and Italy, respectively, this section outlines additional criteria that could enable “sustainable GIs” in fashion to work. Such principles reflect the growing importance of the socio-terroir elements as well as the social, environmental, and holistic dimensions related to sustainable production and consumption and also based on the cross-industry findings related to sustainability in winemaking.

1.1. Raw Materials

Raw materials in fashion are hardly sourced and processed at the local level, making this requirement not crucial for obtaining a GI.

This consideration reflects the prominence of the socio-terroir concept to identify specific non-agricultural products from non-localized variants and aligns with the arguments outlined by Zappalaglio et al. ^[1]. Indeed, the new quality schemes envisaged by the EU Commission should be based on *sui generis* GIs, namely on Protected Designations of Origin (“PDOs”) and Protected Geographical Indications (“PGIs”). It is worth noting that Article 17 of the Regulation also defines Traditional Specialties Guaranteed. However, the EU Commission recognized that, in 28 years, the TSG has not delivered the expected benefits for producers and consumers, and thus, it will be replaced by a more effective and flexible labeling mechanism managed by member states. Therefore, this scheme will not be examined in this research. The cited study by Zappalaglio et al. suggests that while PDOs would apply only to a limited number of non-agricultural products, PGIs may be more suitable to encompass specifications based both on reputation and on the traditional character of the production method. Indeed, for PGIs, Article 5(2) of Regulation 1151/2012 ^[2] requires only one step of the production to be completed in the selected area, and the intangible reputational element is generally associated with the history and socio-economic importance of the product.

This proposition is also shared by the French law, where Article L721-2 draws on the EU definition of PGIs and establishes that the GI designates non-agricultural goods originating from a particular territory and possessing specific characteristics that can be essentially attributed to that geographical origin. Article L721-7 No. 4 stresses the “savoir-faire” criteria, acknowledging that a product can be bound to a geographical area by virtue of human rather than environmental factors, such as the traditional know-how or production methods.

This argument seems to be confirmed from a comparative perspective, too, notably taking the Indian GI system ^[3] into account, where the definition of GIs recalls the one in place in the EU for PGIs. Indeed, pursuant to Art. 2 (e) Geographical Indications of Goods Act, “Geographical indication”, in relation to goods, means an indication that identifies

such goods as agricultural goods, natural goods, or manufactured goods as originating or manufactured in the territory of a country or a region or locality in that territory, where a given quality, reputation, or other characteristics of such goods is essentially attributable to its geographical origin [...]. Considering that India is well-known for protecting more handicrafts than agricultural products ^[4], it can be inferred that a PGI-like system could be suitable for fashion items as well.

Although PGIs can be more suitable in general terms, this research argues that there is also untapped potential for PDOs. Prominent examples, such as the Fibershed project ^[5], could be integrated with the creation of bio-based fibers derived from local waste (food and agriculture in particular). Solutions to scale conversion of local biomass into raw materials as well as cross-industry collaborations among local actors operating in different sectors are currently underdeveloped but could optimize the use of neglected resources and revert the fashion industry's extractive pattern by generating raw materials at the local level.

1.2. Production Methods

Besides the description of the manufacturing practices, product specifications could highlight connections between environmental and human factors as well as holistic benefits related to the use of traditional techniques, the small production scale, and the high customization. Investments and incentives for fostering research and innovation could help overcome the lack of infrastructures for converting proximity fiber production and strategic grazing into fiber and fabric.

1.3. Link with the Geographic Area

This requirement could be pushed forward by spurring the implementation of closed-loop systems together with rules for locally produced items to be locally processed at the end of their lifecycle, as in the Cardato example.

1.4. Applicants

Despite the high geographical proximity, the fashion environment is characterized by fragmentation, as each company seems to operate independently from peers located in the same territory. Positive aggregation outputs and the added value stemming from the shared identity embodied in the GI also depend on the degree of representativeness of the applicant as well as on its capacity and commitment to be a driving force for activating sectoral changes towards sustainability and innovation. Therefore, the new Consortium should build trust and credibility while ensuring constant involvement and coordination to overcome cultural barriers, which emerged as one of the main obstacles to translating sustainable commitments into actions. The first step is to ensure the inclusion of all the actors from the entire supply chain, following the French and Swiss models and going beyond the representation requirement, which is not clearly set out in the existing GI regulation at the EU level ^[6]. This would, to a certain extent, also remedy the imbalance of power affecting the fashion industry ^[7], often amounting to the marginalization of small entities, and lead to a "coo-petitive" approach ^[8].

2. Sustainable GIs and the Benefits of a Trust Enabler in the Consumer, Producer, and Institutional Dimensions

Starting from the socio-terroir elements, *sui generis* GIs would better clarify the influence of environmental and human factors on apparel and footwear coming from a particular area. Highlighting the provenance of a product, this IP asset could operate as a trust enabler in several domains.

Firstly, GIs are recognizable and harmonized signs that consumers are already familiar with as extensively seen on agri-food products. Sustainability credentials could be easily conveyed by differentiating GIs' logo colors based on the level attained, as put forward by the EU Commission in the recent pilot study on product information ^[9], and/or be coupled with track and trace technologies and advanced product labeling ^[10]. Such solutions would certainly represent a gain for a sector that has lacked reliable guidelines to inform sustainable production so far and which primarily relies on multiple and competing certification marks that are largely obscure for consumers ^[11], incompletely disclosed, and subject to change at the certifiers' whim ^[12].

The formalization of the *genius loci* could, in turn, act as a driving force for sustainable tourism development, propelling the involvement of local communities and opening new bottom-up opportunities based on collective fashion heritage, in line with the UNWTO Framework Convention on Tourism Ethics (Article 7, paragraph 2) ^[13].

GIs would not only increase consumers' trust but also trust within producers through a system that has the potential to involve all actors in the value chain and reward their collective efforts in building up the know-how from generation to generation ^[14]. To embark producers on the sustainable GI journey, an opening wedge is represented by the economic

leverage, provided that the observed or expected impacts of GI systems from producers' perspectives are mainly linked to economic issues rather than environmental benefits—as put forward back in 2009 by Barjolle et al. ^[15]. Another potential entry point draws on the lack of legal instruments to protect traditional know-how and local craftsmanship. GIs could play a significant role by rewarding the community knowledge and, to a certain extent, contribute to curbing cultural appropriation ^[16]. This, in turn, may lead to greater attention to local resources, namely artisanal skills, as an emblem of cultural identity, which are going to be lost if not adequately passed down to youngsters, with the ancillary benefits of local employment creation and social cohesion.

On another note, horizontal and reciprocal check and balance mechanisms to monitor the quality and sustainability performance would spontaneously take place within the producers' group. Since GIs perform a signaling function regarding the characteristics of the origin-labeled product, all the producers within the group have an incentive to maintain the quality of the product and the sustainability performance as highly as possible.

As a last remark, the sui generis GI system, including sustainability criteria, would increase trust in institutions, starting from the Consortium. The collective organization could also foster interrelations among the GI producers' group to vehiculate strategic initiatives. Sustainability champions, acting as collectors of best practices with a tangible and easily replicable slant, could be identified to demonstrate to peers that a new profitable business model is possible, thus triggering positive emulation effects without leading to the supremacy of most influential producers.

It is also worth noting that GIs would not compromise the heritage and distinctiveness of a brand, which is currently seen as a barrier to collective actions. Indeed, the sign would operate as the lowest common denominator, reflecting an aggregated structure that ensures a stronger image and visibility, deriving from a joint effort. In parallel, each company could keep relying on the goodwill and reputation linked to its own individual trademarks, guarding the related market share.

References

1. Zappalaglio, A.; Guerrieri, F.; Carls, S. Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task? *IIC Int. Rev. Intellect. Prop. Compet. Law* 2020, 51, 31–69.
2. Regulation (EU) No 1151/2012; Quality Schemes for Agricultural Products and Foodstuffs. European Union: Brussels, Belgium, 21 November 2012.
3. India, Geographical Indications of Goods (Registration and Protection) Act. 1999. Available online: <https://legislative.gov.in/sites/default/files/A1999-48.pdf> (accessed on 15 March 2022).
4. Marie Vivien, D. The Protection of Geographical Indications in India: A New Perspective on the French and European Experience; Ringgold Inc.: Beaverton, OR, USA, 2015.
5. Fibershed. Available online: <https://fibershed.org/about/> (accessed on 4 April 2022).
6. Marie-Vivien, D.; Carimentrand, A.; Fournier, S.; Cerdan, C.; Sautier, D. Controversies around geographical indications. *Br. Food J.* 2019, 121, 2995–3010.
7. Noto La Diega, G. Can the law fix the problems of fashion? An empirical study on social norms and power imbalance in the fashion industry. *J. Intellect. Prop. Law Pract.* 2018, 14, 18–24.
8. Rafi-Ul-Shan, P.M.; Grant, D.B.; Perry, P. Are fashion supply chains capable of coopetition? An exploratory study in the UK. *Int. J. Logist. Res. Appl.* 2020, 25, 278–295.
9. European Commission. Product Environmental Information. Available online: <https://ec.europa.eu/environment/eussd/smgp/pdf/infographic-env-info.pdf> (accessed on 4 April 2022).
10. UNECE. Recommendation No. 46: Enhancing Traceability and Transparency of Sustainable Value Chains in the Garment and Footwear Sector; UNECE: Geneva, Switzerland, 2021.
11. Taufique, K.M.R.; Polonsky, M.J.; Vocino, A.; Siwar, C. Measuring consumer understanding and perception of eco-labelling: Item selection and scale validation. *Int. J. Consum. Stud.* 2019, 43, 298–314.
12. Chon, M. Trademark goodwill as a public good: Brands and innovations in corporate social responsibility. *Lewis Clark Law Rev.* 2017, 21, 277.
13. UNWTO. Framework Convention on Tourism Ethics, Resolution; A/RES/722XXIII; UNWTO: Madrid, Spain, 2020.

14. Prévost, D.; Alexovicova, I.; Hillebrand Pohl, J. Restoring Trust in Trade: Liber Amicorum in Honour of Peter Van Den Bossche; Bloomsbury Publishing Plc.: London, UK, 2018.
15. Barjolle, D.; Paus, M.; Perret, A. Impacts of Geographical Indications—Review of Methods and Empirical Evidences. 2009. Available online: <https://ageconsearch.umn.edu/record/51737/> (accessed on 15 March 2022).
16. Osei-Tutu, J.J. Protecting Culturally Identifiable Fashion: What Role for GIs? FIU Law Rev. 2021, 14, 571–588.

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