

Babeş Bolyai University of Cluj Napoca

## Summary

The protection and defense of the right of trademarks and geographical indications in international relations

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**Keywords:** trademarks, geographical indications, treaty accession, evolution in the registration trends

### **Structure of the thesis**

The first chapter, entitled "*Conceptual approach to trademarks and geographical indications*", pursues definition and taxonomy issues regarding trademarks and geographical indications at the international level. From the analysis undertaken we can say that the trademarks definition is set forth by the Paris Convention on the Protection of Industrial Property, which sets out a general definition. From the Paris Convention of 1883 can be detached the main international classifications of trademarks, and the main conditions that must be met in order for a trademark to be registered, rules applicable even today. We consider important to mention that all international documents amending or developing the Convention respects its definition of trademarks. Regarding the classification of trademarks, we can see an evolution over time reflected in international law. As an evolutionary phenomenon, there appear the service marks, or visually perceptible marks (smell marks), the latter not yet recognized in many states.

Another researched issue is the interference between other concepts such as trademarks and trade name or brand. Regarding the interference with the trade name the conclusion we reached is that often brands originate from the commercial names often identified with the name of the person who started the business. But nevertheless there are violations of the right to trademark by means of trade name such as the Havana Club case.

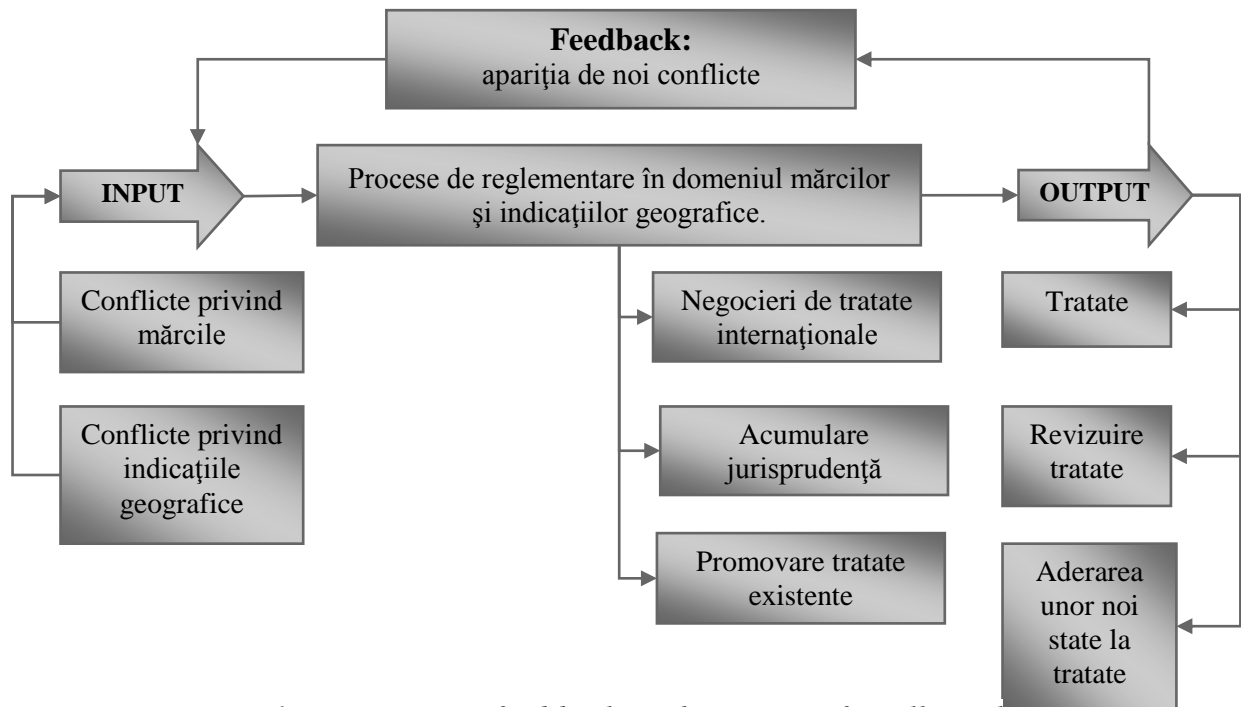
In terms of geographical indications, the reference rules are the Lisbon Agreement and the TRIPS Agreement, which defines geographical indications and appellations of origin. Regarding the classification, the literature and the documents prepared by the Secretariat of WIPO, clarifies the link, i.e., that the appellations of origin are a particular type of geographical indication.

We also sought the differences between trademarks and geographical indications, necessary approach given the fact that in practice many conflicts have arisen due to infringement of a geographical indication right by a trademark. Most times these conflicts have a strong international side and the examples are many, among which Cohibas or Budweiser.

If we analyze the trademarks and geographical indications definition to the case study conducted in the second chapter, on Romania's adjustment of intellectual property protection system to the international rules, and to the cases presented in the fourth chapter, it can be said that national laws and regional organizations regulations either comply either respects and adds some elements to the definition presented in international instruments.

The second chapter, entitled “*the international system of trademarks and geographical indications*”, covers the international system that took shape in the area in question. The study included: analysis of the system definitions, tracing how the international system in the field is form and manifests itself, which are the relations of power and interests that presses the system, and finally reveals how system is structured. There are also pursued the relationships between the trademarks and geographical indications system with other international systems such as economic, legal, states system, or the system of international organizations. The conclusion we reached is that the system of trademarks and geographical indications is either a system on junction of other systems, or a subsystem of them, depending on the perspective from which the study is carried out.

Another aspect studied is of the input and output of the international system of trademarks and geographical indications. We consider this study very relevant in explaining how the processes develop in the system, based on inputs, and which the repercussions are over outputs. An interesting development is that the system is based on the conflicts which arise between the various international actors, a fact evident in the input and feedback. Conflict situations will stimulate the development of the international legal regime for the protection of trademarks and geographical indications and also determines the need to expand the international system of protection to non-member states. The accession of new countries to the system is either at the initiative of the state or at the pressures of other forces with which non-member states interact.

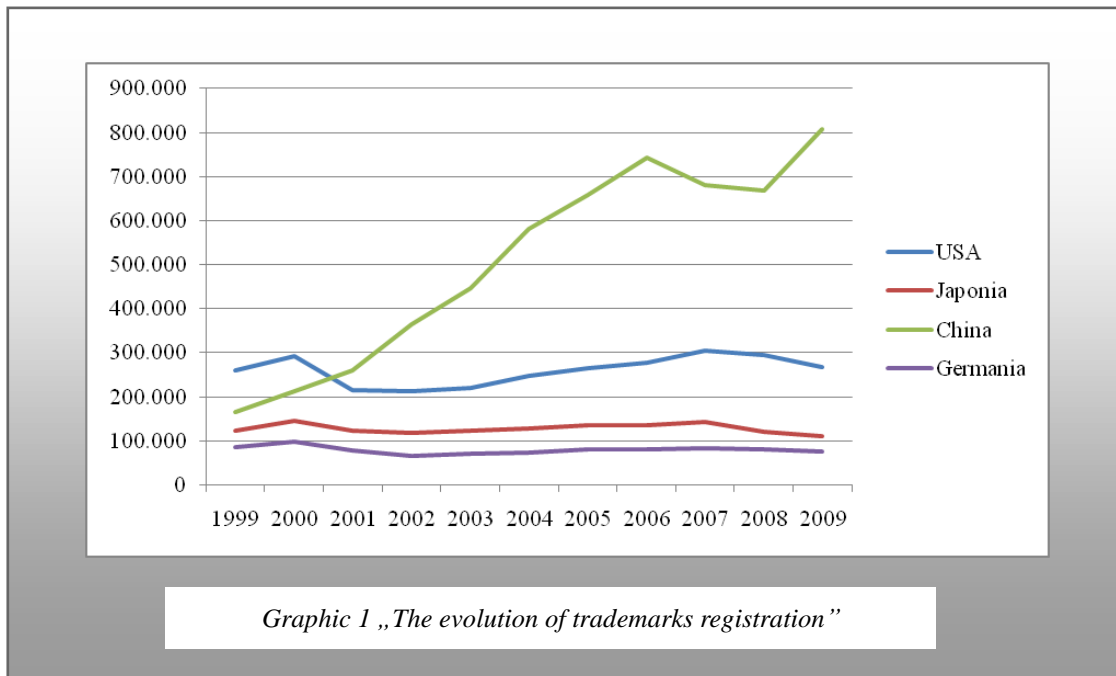


*Figure 1 Input, output, feed-back in the system of intellectual property*

Most processes are carried out into an institutional framework either universal, such as WIPO and WTO, or regional such as EU and Andean Union in Latin America or the African Regional Intellectual Property Association. The development of liberal or neoliberal current has helped the evolution of the international organizations system of trademarks and geographical indications, which explains why there are currently a large number of such organizations.

A highly actual aspect in all areas is the internet revolution which in the field of research envisaged, has helped the development of the system through the means of information available, by forming an electronic administration that facilitates the access to the services provided by international organizations or by some national IP offices. The system facilitates the access to information regarding the legislation in force, the registration procedure, submission of oppositions, mediation or arbitration procedure. Furthermore, through this form of administration, are ensured the means of advertising compulsory for the registration of a trademark or a geographical indication. At the same time, the Singapore Treaty has created the premises for on-line registration of trademarks, which eases certain issues related to the velocity of the correspondence, and thus improves the system efficiency.

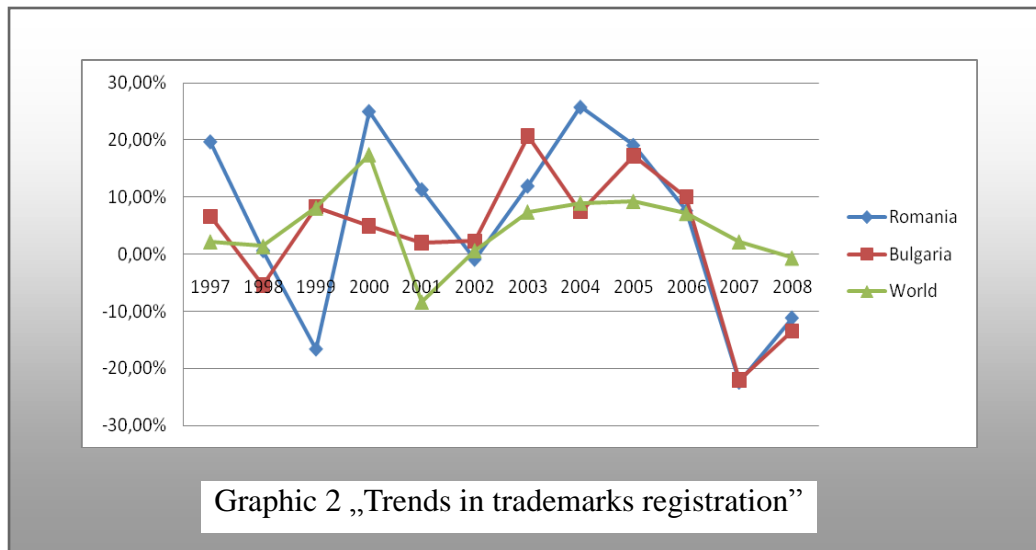
The impact of the economic system over trademarks is reflected in the statistical analysis conducted in subsection 2.4, which studies the correlation between states Gross Domestic Product and the number of trademarks registrations. The research reveals a strong correlation between the economic growth of China and the global economy and the number of trademarks registrations. Without being able to distinguish a causal relationship, it is clear that there are strong links between the two phenomena analyzed.



To illustrate the practical impact of the international system of trademarks and geographical indications over the acceding states we have chosen the Romania case for two reasons. The first relates to the history of Romania, which until 1990 was a communist-oriented state, in which the economic issues related to trademarks and geographical indications were not of great importance, and the second is related to the economic development, because Romania is a state in the process of development, and therefore presents features related to economic development and international pressure. The conclusion we reached from the study is that in terms of legislation harmonization, this was done in the first part of the cooperation with the EU, especially after the start of the accession negotiations. In terms of practice, after the legislation implementation, began the registration of trademarks of both residents and non residents, fact explainable through the high level of protection offered, in concordance with the international standards. The trends evolve depending the time and are closely related to the economic



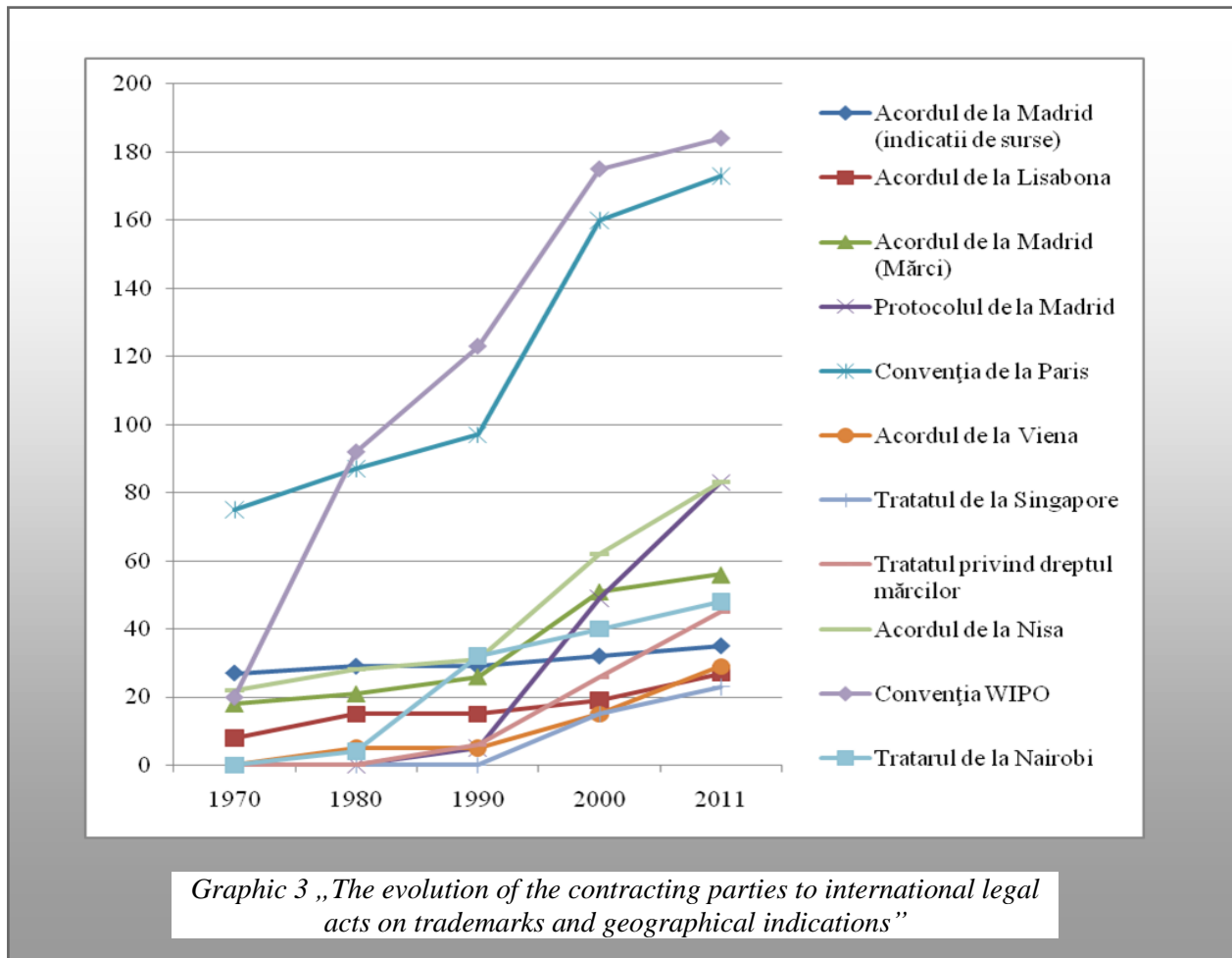
developments in Romania and abroad. Enhancing practices led to conflicts manifested in the opposition to registration or manifested before the Review Committee of OSIM either before the courts of law.



Given issues examined in the second chapter related to the international system, especially the inputs and exits from the system, in order to complete the studying of the protection of trademarks and geographical indications at the international level, we have studied the evolution of the protection of trademarks and geographical indications over time. In this respect we have followed international acts governing these aspects of industrial property worldwide. To understand the political dimension of the phenomenon we have studied both accession to those provisions and, where possible, the objections raised by states during negotiations.

The third chapter, entitled “*landmarks on the evolution of the protection of trademarks and geographical indications at international level*”, emphasizes firstly the fact that the international system of trademarks and geographical indications protection is the effect of an evolutionary process going on for more than a century, a process catalyzed by the economic importance of the phenomenon and by the evolution of the system of international treaties in general. The developments are reflected in the language used, the categories that fall under intellectual property protection, the degree of protection provided, the infringement of the right to trademarks and geographical indications, evolution of the object protection in international acts. We notice a significant expansion of trademarks areal with the development of services and, more recently, the trademarks visually imperceptible.

As a result of the research three stages of development of the international system of protection of trademarks and geographical indications is projected , findings presented in the third chapter conclusions, namely: the initial phase precepts developments of protection and defense regarding trademarks and geographical indications, the treaty development phase regarding the international registration of trademarks and geographical indications, and the final stage of standardization of practices in the field of trademarks.



By acceding to treaties and hence converging with the international system, states seeking to obtain their economic interests, particularly in the industrial and agricultural production. States reserves regarding accession to this system are caused by the fear of confronting the local producers with the commercial practice and the power behind leading brands as a form of protectionism. Examples identified are related to the position of countries in Latin America and India on to Madrid System.

The last chapter, entitled “*international conflicts disputes and tensions*” presents relevant examples of international conflicts regarding trademarks and geographical indications. From the international case law have been selected only those cases which are important in terms of the study carried out. We chose to present conflicts differently, based on the international actors involved in the dispute. It is clear that most conflicts have as subjects companies that are the first concerned in protecting their own interests. With all these it can be identified powerful influences of state in some cases, reflected either over the companies or through the pressure of governmental policies. The lack of protection of geographical indications in some countries have aroused controversy, which may manifest itself through successive conflicts on national and international arenas, the case Budweiser is highly relevant in this respect. At the same time some state policies, such as the embargo may affect intellectual property protection and defense of certain states, the case Cuba is eloquent in this respect.

In the case of trademarks the battle is on many levels. The first level concerns the phenomenon of counterfeiting, where the interest is both of the states which has an obligation to protect its own citizens, as well as from companies that see their intellectual property rights violated. State actors are involved with different gradients of interest in the fight against counterfeiting through national laws and customs checks on products entering the market, or in verifying commercial products, or through other administrative measures

Dilution is another dangerous phenomenon that can favor the loss of the right over trademarks by transforming them into generic goods. Despite all the efforts taken by companies to avoid such an unpleasant situation it must be recognized that some famous brands have become generic. In Romania for example Adidas has connotations of a kind of products, Xerox is equivalent to the copying activities, and aspirin is better known than acetylsalicylic acid.

In terms of Article 6ter regarding the registration of state symbols, we can say that they do not presents a caseload as rich as that of trademarks. However, it can be identified cases of conflict with regard to the extension of disputes concerning the application of public international law, such as Macedonia. On the other hand, if we include in this category the Olympic and sports symbols, in general, we can say that if there is economic interest they can be also subject to violations of these rights. We choose to exemplify the Olympic Games in Beijing. At the same time, growth of the Internet gave rise to conflicting situations of registration of States name as Internet domain.

## **Final conclusions**

From our point of view, in order to understand the interest of international actors regarding the trademark issue, the starting points are the two levels of international competition, on the way to get the desired results, defined by Robert Keohane and Joseph Nye<sup>1</sup>, through the two types of power: hard and soft. The hard power represents the power to impose and the soft power represents the ability to attract. The two power types are obvious when we analyze the role of the trademarks in the international system. Germany's association with Mercedes, Audi, VW, generate the idea of technology and quality, Japan's association with Sony, Panasonic and so on, generate the image of high technology and sophistication. Trademarks are to some extent associated with their origin country thus may serve as means to propagate a certain image. In today's context, when most relevant trademarks are in the backyard of transnational corporations, countries that generate trademarks are even more advanced as they have the opportunity to promote their own image using other's capital. As an example Disneyland in France promotes an American cultural model, McDonalds, even if they adapt to local markets using specific receipts promote a cultural and behavioral American behavior in the countries where it's present.

At the same time, for transnational corporations, national trademarks can be a rapid vector to penetrate local markets. As an example, the Renault group controls a significant share of local car market in Romania because of the acquisition of the local trademark Dacia. As international image, Romania gains exposure through the propagation of the Dacia Trademark worldwide by Renault.

As a consequence, in a society that is competing for attracting attention of the global market consumption, the trademark is a vector for capturing a certain kind of attention, a soft way to propagate a cultural and economic model.

If the trademark by itself represents an asset, a tool of soft power, aware or not, official or not, developed countries attempt to protect-it through law means, imposing an international legal and institutional system that can assure the protection of trademarks. Our research has revealed the mechanism through which this protection is being done. On the other hand, in certain contexts, sometimes, there have been attempts to eliminate other countries advantages by depositing them

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<sup>1</sup> Keohane Robert O., Nye Joseph S, *Putere și Interdependență*, Editura Polirom, Iași, 2009, p. 271

of their trademarks, as seen in the Aspirin case, trademark that has been object of war reparations, reducing Germany's trade advantage in pharmaceuticals. Maybe not by hazard, at international level, there are powers that attempt to diminish the power of trademarks, either by counterfeiting or by dilution. Maybe, is not an accident that China tolerates, to some extent, the counterfeiting of prestigious trademarks, flooding the global markets with products that by their questionable quality reduce the prestige of some trademarks. In fact trademarks are just a component of the wider issue of social-cultural-economic identity of a country.

The actuality of the issue is close related to the importance of trademarks at economic level. IN a free market where specialization and quality are guaranties of commercial success, an individualization trough trademark is paramount. The commercial value of trademark is best explained by cases like the acquisition of Kraft by Philip Morris at a value of 12.6 billions \$, in 1988, representing six times the value of net assets, a good share of the value being the portfolio of trademarks owned by Kraft.

If in trademark case ownership can migrate from a geographical location to another, the geographical indication is not movable. As a consequence, valuable geographical indication is a more important and also harder to promote mean to develop an image. If the choice of trademarks is huge, geographical indications are just a few, but both converge to promote a country's brand.

Today's evolution imposes a new approach on intellectual property manifested as trademarks and geographical indications, due to changes at global level in their applicability development. Trademarks are, in some situations linked to geographical indications, and are no longer an issue just for companies struggling to create an image on the markets, but there are issues of interest to other entities also. International actors in the broader sense are enjoying a image capital, that helps them in their activity and in spreading the causes they are supporting. Governments are developing country brands, based on cultural, linguistic, or geographic patrimony they own. In a multi-polar society, where the number of countries has grown exponential from the beginning of the XX century, the promotion trough soft power is paramount, in order to obtain a more significant position on the global scene. The international organizations have created themselves an image in concordance with the purposes included in their founding charts. More than that, international organizations have promoted their values globally trough publicity campaigns, trough involving personalities, and other means. This way,

organizations such as UNICEF, UNESCO, WTO, WIPO, have an amplification of their world reputation.

Trademarks accumulation by transnational corporations is not a surprising fact, as they use them as a vector for attracting attention of their consumers. We can assume that corporations use their influence to protect their own interest, but we are only able to demonstrate that governments and international organizations, in their process of developing the protection and defense of intellectual assets act as they should in accordance with international trade imperatives.

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