

Collective Marks and Geographical Indications - Competitive Strategy of Differentiation and Appropriation of Intangible Heritage

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This article aims to evaluate the potential use of collective marks and geographical indications as forms of protection for ownership and differentiation of handicraft production in Brazil, considered as intangible heritage. Although, the instruments of intellectual property are, *a priori*, suitable only for products with industrial application, the above instruments of IPR could be applied to traditional crafts as well. Geographical indications and collective marks are forms of intellectual property protection that are associated with reputation protection and market distinctiveness. Apparently, they could be effectively used to protect and appropriate benefits of economic exploitation in the case of craftsmanship as in Brazilian artisan products.

Keywords: Intangible heritage, collective marks, geographical indications, craft

Handicraft activity tends to play a relevant economic role in developing countries in terms of sustainable and endogenous growth among local traditional communities, in spite of being often condemned and labeled as low quality and low economic value goods in mass industrial production. Material cultural heritage goods are valued for their aesthetic sense of differentiation and intrinsic traditional knowledge which has resulted in an increased consumer demand for handicraft products both at national as well as international levels. However, it has not resulted in wealth creation for the artisans. Indeed, new competitors have entered into marketplace and have been able to cater to the consumer demand; as the entry barriers are low in the handicraft business due to the easy technology. So, most of the time, imitation and reproduced goods have deteriorated the profits that have been appropriated by others instead of the local traditional handicraftsmen group. Brazilian handicrafts have also suffered the same fate.

The handicraft objects stand out for their unique, traditional aspects arising out of special traditional knowledge; their uniqueness inherent due to the manual process¹, in contrast to the homogenized mass-produced goods under industrial production systems. In a differentiated consumer society, this

special characteristic of craftsmanship motivates the consumer's willingness to pay more to acquire them.

This paper suggests the use of collective marks or geographical indications (GI) to regulate the production of handicrafts, add value to goods produced and enable more efficient and transparent supply chains. The choice will depend on the specific features inherent to each of these instruments of industrial property. These instruments of industrial property can be used to signify collective reputation acting as an element of market differentiation. The paper defines the importance of IP protection in the competitive strategy to promote popular crafts. It also analyses how crafts fit under the concept of intangible heritage of Brazil and the possibility of using a collective mark to protect the capixabas clay pots and GI to mark the clay pots of Goiabeiras, from the Brazilian state of Espírito Santo.²

Differentiation in Handicrafts using IP

The instruments of industrial property (IP) are one of the means used to protect the innovative efforts in industrial products. A good reputation in the market is a key to success in trade and deserves protection. In general, marks³ are used as IP instruments to protect and build the reputation of products. Although these have been well recognized forms of IP to protect have origin and reputation of a product in Europe and elsewhere, it was only after 1996, that the Brazilian

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Industrial Property law, IPL 9279/96, established GIs as a form of IP to indicate and highlight reputation.

Collective marks⁴ and geographical indications⁵ are now commonly used as Brazilian IP instruments to safeguard collective reputation. These signs intend to identify products of a local community, and therefore can help increase economic value of the products. In the collectivity sense, they serve to identify an original producer, offering distinctiveness to products when compared to those of other competitors in the market. In this case, the quality of the products offered is intrinsically linked to the reputation of the agent, communicated in turn, by the brand or by the GI. The ownership of the collective sign can prevent others from using it, without prior consent, assuring a unique power to use the sign in the market by the licit holders of the right.⁶

Among the various types of marks allowed by the Brazilian Industrial Property Law, the collective mark⁷ is a visual sign that can be used to protect a particular economic activity managed by a collective or a group of people. Here, a certain level of organization of the group is necessary to demonstrate their interest and to apply for this instrument of protection. Collective marks could be used by a formalized group of artisans under regulation of the mark, with a given set of rules to be obeyed by the members of that entity, offering protection and adding value to their goods.

Collective marks⁸ need not necessarily be related to a specific location, but the rules ensure through the application of procedures, that the resulting products have fixed characteristics identified by their trademark registration. In reality, it serves to distinguish the origin of goods and services under the control of the owner of the collective marks. The collective mark is in particular, an indication of association.

The registration of GI on the other hand is based on a declaratory nature, and the entity represented by a collective association is recognized by the government agency responsible for granting such right.⁹ Such conditions usually are associated to a specific locality and certain peculiar features linked to the products or services are determined by human or environmental aspects.¹⁰

According to IPL 9279/96, the GI may be in two forms: (i) designation of origin or appellation of origin and (ii) denomination of origin or indication of source, each linked to certain peculiarities. The indication of source ensures the reputation associated with an economic activity of extracting, farming, handling and/or producing something under peculiar regional traditions, perpetual in time and transmitted

through generations. The term tradition is used to differentiate social culture aspects from purely industrialization processes. It is intrinsically related to peculiar know-how from a specific period of history that has been preserved through time or has maintained its essential characteristics through generations. However, when this traditional method of extraction, farming, handling and/or production is also intrinsically linked to environmental characteristics such as climate, soil, etc. ensuring a unique specificity to the product, it is called designation of origin. The adoption of a type of protection will depend on the nature of economic activity and also the objective of the competitive strategy of the agent in question.

An owner of a collective sign¹¹ (collective mark and geographical indication) may take action against those who make use of their sign in a manner that deceives consumers about the origin of the product in the market. The entity owner is thus, able to exclude others from using his mark, avoid parasitic behaviour resulting in consumer confusion about its tradeoff.¹² In this sense, the exclusive right over a sign allows its holders to establish a communication with the consumer in the tradeoff, and marketing management of the sign can lead to consumer fidelity. In a market¹³, a sign is not only used to distinguish products and to identify origin or authenticity, but also used to communicate other meanings, depending on how the signs are managed. It is also a means of reputation-building and to catch the fancy of the consumer enabling him to distinguish the product identified by it.

Collective Trademark

The primary functions and attributes of a mark are its distinctive nature, its ability to distinguish a product and the identification of the product by itself, as visualized by consumers. This distinctiveness facilitates the consumer's purchase by highlighting qualities desired by consumers. As a consequence of assisting purchase decision, a mark reduces the information asymmetry and cost transactions, contributing to economic welfare.¹⁴ The symbol is hence conceived to have a legal protection under the information-conveying function of mark. In case of collective marks, in addition to exercising this function of identification, they inform consumers about the origin of the purchased product or service, relating them directly to a certain group responsible for the economic activity, and in doing so, guaranteeing the origin of it.

A collective mark also indicates the origin of goods to which it is affixed. As an element of differentiation amongst good and service producers, collective marks are used to indicate the quality, tradition, respect for certain norms to be followed by members that wish to use it. For that reason, the collective mark has rules and regulations for use, which must be followed during production in order to have the sign affixed.

The collective mark has had an extensive trajectory, in Brazil, and was introduced into Brazilian legislation under trademark protection in 1997 (Article 123, Law 9.279/96). It designates a generic term 'entity' to the holder or applicant of a collective mark.¹⁵ Therefore, other forms of association, not cooperatives or unions, can obtain the legal protection of a collective mark. Thus, it is possible for any formalized organization that performs an activity that can generate economic benefits under an established common rule (even groups of artisans), to apply for the collective marks register in order to obtain competitive advantage by highlighting the distinguishing features of their product.

Nowadays, a brand has become an asset of great value in the market.¹⁶ Potential customer loyalty makes it a strategic element for any company or entity existing in a current highly competitive market. As stated by Kapferer^{17,14}, a brand summarizes the positive and negative aspects from business to buyer over time; intrinsically related to branded products are their distribution network, staff, communications and others aspects. The marketing efforts to build a strong brand focus on exclusivity position of differentiation that can establish a consumer's dependence at a psychological level.

A collective mark has become an additional instrument of differentiation in trade and business, since, most of the time, management of this sign is related to issues such as quality maintenance, product differentiation, among other aspects of commercial sustainability. Thus, its management is complex due to the amount and diversity of interests involved, requiring establishment and faithful compliance with rules, under penalty of disqualification of members of the community.

Geographical Indication

The use of GI¹¹ as an instrument of industrial property aims to protect a collective sign that is able to identify a product originating from a particular region, preserving its reputation in the market and thereby adding value to it. The GI can be sought for a community or for those who have an interest in demonstrating that a region produces an economically

viable product with peculiar characteristics. For application of GI, the applicant must submit documented and validated evidence to ensure that the peculiarities of the production, extraction and even the product itself has certain characteristics attributed to the locality.

This type of protection is well known and used by European countries, but Brazil did not acknowledge this form of industrial property until it came into force under IPL 9279/96.

Primary concern of an associative holder of GI is to impress upon its members, the importance of maintaining the geographical characteristics responsible for the grant of legal protection in order to sustain the market distinction. The geographical origin based reputation conveyed under the collective sign will add value to the products it is affixed on, as long as they preserve the local specificity of the product. Maintenance of the geographical characteristics is essential for product distinction as well as its protection under GI.

Generally, the products marked by GI are often agricultural ones due to the importance attached to the geographical character in granting the protection (extraction and / or traditional production-related or to local particularities in terms of environmental locality as such climate, soil and others). At first glance, this instrument seems to be far from the nature of the handicraft activity. However, GI can be used when there is a unique geographical characteristic in the manufacturing process that provides a singularity to the product allowing it to gain distinction in the market. One of positive impacts of GI is that it is a great stimulus to investment in the given locality, contributing to the recognition of the economic activity by the local community, besides creating jobs and revenue. To a certain extent, it may also tend to encourage tourism in the region. However, the representative members of the GI owner often come under pressure from local actors to increase the previous delimited area protected by GI. It may not be a good move if the incorporated area does not possess the characteristics identical to the original one, since it will weaken the reputation built under GI as a unique product and lose its ability to attract the consumer.

Differentiation: Competitive Strategy

The competitive strategy, according to Porter, 'consists in being different'. It means deliberately choosing a different set of activities to provide a unique mix of value.¹⁸ The creation of value is related

to the formalization of activities to attend consumer's needs in a market providing different product.

So groups of artisans formally organized can create a unique combination of value to their products as well as define the existence of rights and duties among their members, resulting shared costs and benefits. In case of handicrafts, the distinction is linked to its traditional value-addition that should be properly communicated and moreover should have benefits of identity, already built over time, shared.

As the collective mark and GI demand a formal collective representation and sharing of interests, they can be a tool to build relationships and increase interaction among members. Although, these instruments, as a collective sign, are suitable to local productive organizations, their use may also be applied to artisans' activities as they share: tradition, learning by doing, social-cultural network and identities in a semi-structured way.

Brand and know-how, as collective intangible assets can benefit from cost sharing among different business units, providing cost saving.¹⁸ Once the cost of creating an intangible asset has been incurred, it must be freely extended to other business, except to costs of adaptation or modification.

Both collective mark and geographical indication are intangible assets that lead to significant savings among its members, as it allows sharing expenses and costs of tasks such as marketing efforts that do not necessarily relate to production itself. The collective mark and the GI as signs can highlight traditional craftsmen group's identity and can be an asset to be shared towards a strategy of value associated to a 'brand promise delivery'. The delivery of a distinctive sign that conveys a set of competitive information such as a distinctive culture based-goods linked to *savoir-faire* and local tradition stressing a group identity, in itself, can promote differentiation and competitiveness in an artisan's group.

A collective distinctive sign allows its members to benefit from an equitable distribution of costs of investments in products with competitive advantage, such as promoting their production, investing in advertising campaigns, etc. that could be extremely expensive or even out of reach for individual isolated initiatives, or for that matter micro and small enterprises. A well-structured group can share marketing cost and financial support, purchase raw materials at best prices and create distribution

channels that those with limited financial resources could afford. With the help of strong, recognized formal structure, there can be better product negotiation by the entity holder of the sign whereby he can obtain a fair and more consistent price for the product. Protection under the collective mark or GI allows efficient management of the sign preventing parasitic behaviour providing for penalization of those that use the sign without previous authorization, thus benefiting all members of the association.

The process is not simple, but in Brazil, many regions have been working with the craft in an informal semi-structured way. These regions have already obtained market recognition for their products due to their uniqueness, and their handicraft production have been well-accepted by consumers. Prime instances are Swaddle at Santarém region (state of Pará, in north area), Ceramics at Jequitinhonha Valley, tulle lace at Rapoza region (state of Minas Gerais, in southeast area), Ceará bobbin lace (state of Ceará, in northeast area), pottery of Goiabeiras region (state of Espírito Santo, in southeast area), Maracas and dolls Joust Pirenópolis (state of Goiás, in west-center region) etc.

In this article, the potential case of potters at Espírito Santo state (Capixabas potters) and pans/pottery of Goiabeiras (a specific region in Espírito Santo state), is addressed.

Pottery in the Region of Goiabeiras

A reputation marked by a distinctive sign, like a collective mark or GI, is useful to identify a producer and also to distinguish his products from other competitors in the market. It may also be used to communicate a range of information attributable to the products that would be beneficial in a positive competitive strategy. Besides, this sign can also impart others values that assume a cognitive dimension, such socio-cultural values. Therefore, it is a powerful instrument to raise awareness among the general consumer and to be used to transform a collective sign into a strong brand. Efficient management of a collective sign should incorporate the socio-economic-cultural dimensions of the group of individuals or the locality, to which the group belongs in order to maximize its market differentiation and enhance valuation for the groups themselves. According to Lia Kruncken¹⁹, local resources and products involve physical and cognitive

dimensions that must be considered to gain better understanding into the relation between manufacturing and social consumption of the products to highlight local quality aspects and origin of the products.

The women potters who make handcrafted pans in Goiabeiras region play a significant role in an economic activity traditionally explored by women. This craft is considered a Brazilian intangible heritage, the knowledge of which is passed through generations, from mother to daughter. This craft has been preserved, despite the development and growth of the borough of old Goiabeiras, on the banks of a mangrove forest in Victoria, capital of Espírito Santo. According to Belas²⁰, the concept of Brazilian intangible heritage has become more widespread in Brazil since the Constitution (dated 1988), in its Article 216, defined the notion of Brazilian cultural heritage as a set of material and immaterial assets.

The activity of the artisans was inventoried by the technicians of the Institute of Historical and Artistic Heritage (IPHAN). The handicraft activity of potters, and pans of Goiabeira have been recognized as Brazilian cultural heritage after initiating a process to analyse their merit, on 26 March 2001 (under registration number 01450.000672/2002-50). However, the activity was enrolled in the Book of Knowledge on 21 November 2002. The handicraft activity uses the technique of pottery which originated from the Tupi-Guarani culture and Una, both derived from an ancient indigenous culture, that were absorbed by Portuguese settlers and descendants of African slaves. The recognition of this pottery craft as a Brazilian cultural heritage resulted in its appropriation as one of the symbols of national identity.²¹

The identification of the ancient Brazilian cultural links was seen as a confirmation of continuity over time that allowed recognition of the craftswomen's clay pan as one of cultural value.^{21,22} The search of origin can be transposed to a real historical period in order to attribute traditional value aspects to the group. The craft in itself is a visual manifestation of a group's identity.

The preservation of this local know-how by the handicraftswomen ensured by the productive technical process put together by a productive social organization, in this case, the pottery pan production, from the material raw to the finishing

(dictated by the end-use of the pan), is the reason of the existence of the group. Thus, the space is recognized as a territory where the relationships are built – the geographical space as an extension of the group's social identity. In fact, the collective identity emerges due to the importance of maintenance of its practice, as a tradition, built and rebuilt, invented and reinvented by each member of the social group in their daily routine.²³

According to Dias²⁴, the invention of a tradition²⁵ emerges from a reaction to new situations or from a necessity or to face continuous changes and innovations of modern life. Indeed, it is an attempt to maintain a constant social life and while allowing simultaneously the adaptive and flexible component to re-invent something from the past. The inventive process of handicraftswomen from Goiabeira region started as soon as they recognized their identity, with a tacit promise to preserve their past through the pan pottery craft.

The handicraftswomen organized themselves into an association and applied to the Heritage Institute to consider the possibility of registration of their craft activity as an intangible heritage.²⁶ This title aimed the preservation of this traditional knowledge, through legal protection. The demand for protection emerged from the necessity of the distinction from other groups of pan pottery artisans. The handicraftswomen from Goiabeira region claimed authenticity of the clay pan production based on its identity built on territory and special know-how involved in its production and genealogy.²⁷

The region of old Goiabeira is historically recognized for producing clay pots moulded by hand with rudimentary tools. The clay possesses unique local features that result in a specific product different from those of other localities in Espírito Santo state. The clay comes from the deposit of Mulembá, whose composition and size of granules affect their production (no oven), providing a unique product with lower occurrence of cracks, faster drying, relative shorter heating time and finally a good fire resistance, besides asymmetry, quality finishing in the final product.²⁸

The production activity of cookware is extremely rooted in the local culture with consistent and strong ties to the culinary culture of Espírito Santo state. This peculiar traditional know-how of clay pots of Espírito Santo state, associated with the form of the

pottery of handicraftswomen of Goiabeiras and to the gastronomy of the region, provides a social, economic, political, historical and cultural meaning to this economic activity. This set of attributes transcends and permeates the regional cultural identity of the state.

In the preservation of Goiabeiras local identity, what stand out are the family relations and neighborhood policy maintained in the production of clay pot, which closely entwined the artisan activity into their daily life.²⁸ The growth in consumer demand for the unique pottery has led them to organize the activity to attend to the consumer interests in their products. These handicraftswomen founded a kind of 'office', in which has been seen the most visible cultural and economic activity of the region.²⁹ Moreover, they have established an association called the Association of Handicraftswomen of Pottery Pans from Goiabeiras (AHPPG), which was founded in 1987 to ensure their identity. The AHPPG was created to mobilize, integrate, create awareness among the handicraftswomen about their rights and job conditions that resulted in the management, production, commercialization of the economic activity in a collective manner.²⁴

The claim to protection arose as a response to their mutual interest in enhancing and maintaining the activity, in terms of social-economic and cultural awareness among the artisan community and local society. A channel of negotiation between the producers and the market was established by the association which was also responsible for organizing a production chain of the artisans.

Indeed, the formal organization of handicraftswomen of pottery clay pan, AHPPG, was created primarily to defend the interests of the product and to preserve the craft threatened by loss of access to the deposits of clay in the Valley Mulembá. Indeed, the project of building a sewage treatment station, at Valley Mulembá, contributed to increased awareness about the importance of the cultural enterprise in the economic and political context.²⁸

In fact, all intangible heritage goods represent dynamic processes that preserve complex tradition and culture over time. The social aspect is integrated into the productive practice that makes it alive and active, and therefore subject to reinterpretation and re-invention. The clay pan is the material object which manifests and simultaneously represents the

identity of the group, while preservation is an option exercised by the group through excellence in the skill acquired by training in their daily life.²¹

The pottery craft is appropriated as one of the dimensions of Capixaba regional identity. The cultural preservation and cultural appreciation are factors dependent up on the capacity of the social group and the productive activity to adapt to each other in a changing environment, establishing a systemic relationship.

Challenge: Preserving the Traditional Craft

The local tourism industry has played an important role in promoting the clay pots associated with local traditions, as a regional specialty, pushing the demand for the product. The demand increase culminated in the entry of men, into an activity regarded as essentially domestic and feminine.²⁸

However, the entry of males into this activity domain did not create an identity conflict among the handicraftswomen of clay pan pottery from Goiabeiras region. This is perhaps, because men are in much lesser numbers than females and, so this local traditional activity can still be claimed by handicraftswomen as their own. The men in the craft do not even call themselves as craftsmen or master craftsmen. In fact, the relations of family and neighborhood - originally gathered informally - came to be ruled by a formal and hierarchical power. Thus, was instituted a structure of delegation according to competence, linked to an ancient hierarchic structure rather than creating a leadership dispute or a sense of rivalry. This rivalry could have been a source of conflict and possible distortion of the cultural identity of handicraftswomen of clay pan pottery, if priority was given to the economic aspect instead of the peculiar know-how of this traditional activity.

The urban growth around the neighborhood of Goiabeiras region has also constituted a threat to the preservation of local tradition. Indeed, the spatial confinement of the region has contributed to the maintenance of cultural aspects, including the transmission of knowledge to descendants and the interactive relationship with the mangrove.²⁸

The exploitation of the deposits of Mulembá Valley is forecasted to exhaust its resources in approximately 18 years, which will directly impact the future of this activity and survival of this intangible heritage good. Despite this forecast, the belief among the artisans is that the clay from Mulembá area shall remain an inexhaustible source of raw material.²⁹ However,

IPHAN in partnership with the Mineral Technology Center (CETEM) aims to identify the possibility of an alternative material with similar characteristics in other clay deposits, allowing the continuation of this handicraft.²⁹

The black colouration of the clay pottery results from tannin tincture which is obtained from the bark of red mangrove. This steady destruction of the mangrove is likely to cause an imbalance in the local wetland ecosystem. The burning of the clay pots in the open space and the storage of the firewood also leads to a negative environmental impact. As a result, special programs for sustainable management have been implemented.²⁹

For promotion and dissemination of the technical aspects of this clay pan pottery, the handicraftswomen's skill has been showcased in exhibition fairs along the country, where documentation of this activity including photographs, films, recordings, and interviews about the know-how has been allowed. As a result, this knowledge is practically open and a source of know-how for other groups. Attempts to promote and keep the tradition alive are hence, susceptible to variation and even distortion of the regional cultural identity. The lack of instruments of protection against competitors, and also the lack of enforcement rules and standardization of procedures can stimulate opportunistic competitors to appropriate the knowledge and exhaust the potential market of craft. The situation can be aggravated, if it causes the deterioration of the well-known quality of the clay pots from Goiabeiras region, damaging the reputation of the artisan's traditional know-how and production. The adverse effects can already be foreseen in the predatory competition from imitators offering similar utensils into market, stimulated by the increased demand for particular clay pots. Market competition has introduced many different configurations of pan and pots of various sizes and versions: with or without lids, and to some extent without the same qualities expected from pan pottery of Goiabeiras.

The new comers, even industrialized ones, do not use the same techniques and know-how employed by the pottery artisans from Goiabeira. They employ techniques that use the lathe and furnace, and another type of clay without the same features of the clay from the Mulembá Valley. These alternative techniques allow large scale production and also low

product prices, the products however, being of very inferior quality. The distinction between the genuine product from the artisans and products made by imitators is only a stamp affixed to recognize its tradition and identity.^{24,29} Unfortunately, this measure has not been able to prevent misrepresentation by competitors or even provide a recourse mechanism such as indemnification against loss or damage, lost profits and reputation tarnishment of the artisan's community of Goiabeiras.

Thus, the PROMOART (Program for Promotion of Crafts Cultural Tradition), linked to the Program More Culture from the Ministry of Culture, showed a real interest in the requisition for use of GI by the artisan community from Goiabeiras to differentiate their product. The initial approach is focussed on the use of GI adding value to local production.

Collective Mark or Geographical Indication – Strategic Use

In case of artisan potters, a collective mark or GI may be suitable for protection in economic trade relationships.^{19,30} In the specific case of the pottery clay pan's artisans from Goiabeiras, the appropriate instrument for protection is GI under a designation of origin, arising out of the specific qualities of clay from Mulembá Valley which influences the production of clay pots from Goiabeiras region (without lathe and oven). It gives the product unique characteristics like symmetry, finish superior, thermal and heat differentiated properties and others, related to a specific geographical location. The recognition of this activity including the ceramic technique used in production process as an intangible heritage of ancient indigenous tribes has supported the idea of using designation of origin, namely, GI protection.

In the case of a distinguishing strategy for the clay pan from Espírito Santo, the collective mark is the most appropriate instrument of protection to preserve the added value resulting from the regional identity of Espírito Santo. The adoption of this strategy is also an available alternative to the artisans in a scenario where the clay deposits of the Mulembá Valley get exhausted. The search for other mines in the state with characteristics similar to the ancient clay does not necessarily assure the same differentiated peculiarities once found from Mulembá Valley. Indeed, the maintenance of the same characteristics is a challenge and, at the same time, a risk in terms to offer pottery clay products good enough as the older

one. Here, the clay can be from various areas of the state and without the specific feature influenced by the geographical environment. In addition, possible variations in the know-how in the manual productive process of clay pots and other utensils can be covered by a collective mark. This would avert the real threat of the craft disappearing in a period of time due to lack of natural resources and dying local traditions due to fast urban growth. As stated earlier, the isolation of the area was responsible for the preservation of the intangible property and the sustenance of social bonds.

In the minds of the consumer, the uniqueness of the clay pan is linked to its origin, attributed to its qualitative aspect intrinsically related to its environmental characteristics derived from its locality, to its productive process and also to its cognitive meaning (such as preserving the tradition, local identity, social values and other values). In the event of non-availability of Mulembá Valley clay and tannin tincture, the consumer may not be willing to pay more for a product just for its traditional meaning, as the product (clay pot or other utensils) would not have the same specific quality. As a matter of fact, all these factors are interlinked. It is also possible that such circumstances may discourage artisans to use the traditional means to produce pots and other artifacts. The situation can be worse as it can result in a loss of competitiveness in the market.³¹

The competent authorities of the state and municipal governments respectively of Vitória city (capital of Espírito Santo state) can encourage the adoption of collective marks and GI as strategic instruments to protect reputation. In fact, both strategies tend to be complementary from the perspective of exhaustion of natural resources from the Mulembá Valley in future. A possible strategy can be to bring the AHPPG into the collective mark universe and to submit it to the entity responsible for the request of the collective mark of the artisans of the State, the Association of Handicraftswomen Pottery Pan from Capixabas (AHPPC).

For a collective mark or GI, the essential requirement by any group is to establish formal relations between its members, like an association, as in the case of the artisans from Goiabeiras organized as the AHPPG. In view of the depletion of the raw material (the clay from Mulembá Valley), artisans can make use of indication of origin (the other type of

protection under geographical indication) or collective mark.

The use of indication of origin is linked to the capacity of the artisan group to preserve the traditional know-how in the production process, which in turn is dependent on finding another clay deposit with the same characteristics as the clay deposit from Mulembá Valley.

Another possibility is that the group of artisans from Goiabeiras (AHPPG) merges into the possible association of pottery handicraftswomen from Capixabas (Paneleiras Capixabas) that would hold the collective mark. However, once the AHPPC establishes the rules of using the collective mark, the association of Goiabeiras (AHPPG) would be forced to follow these regulations. Such a collective mark may be advantageous to the survival of the artisans' activity as rules can be such that they allow minor adaptations of the product according to consumer demand. The hypothetical association of handicraftswomen of pottery pan from Capixaba (AHPPC), as suggested, can envisage the extent of product line, allowing not only pots to be marked with the collective sign, but other clay pottery products in this segment, in contrast to what is allowable in GIs due to intrinsic link to geographical location which does not allow any flexibility in terms of production.

Strategy for Protection and Sustenance

Sustainable consumption and production¹⁹ would be dependent on the quality of the product as well as social and physical local characteristics that identify the product. This can also facilitate offering of new goods and services towards strengthening territorial vocation exploration.

The first step in seeking protection through a collective mark or GI would be to put in a request to the official department, charged for the registration, by a formal organized entity. The whole process starts with mapping the qualities of the product as well as ties with the region. Following this recognition, is possible to appreciate and evaluate the competence in the proposed area.

In strategic competitive differentiation, these factors must be encouraged, and popularized in order to add value and be used as marketing tools for a specific consumer segment. It is therefore, important to protect the local identity, tangible and intangible heritage, bearing in mind that identity and heritage are the pillars of the competitive strategy of

these traditional products. Also, local traditional manifestations such as religious commemorations, follies of kings, ox star, bands of Congo, among others must be preserved. If such values are lost, not only the local identity, but the product appeal linked to its cognitive elements would be destroyed. The product would be in the risk of being seen as a mass product, without a specific combination of values.

One of the concerns about sign (like collective mark or GI) management is the quality of the product which in turn depends on local production and the development of sustainable production and consumption systems. In fact, the strategy should include development of new products and even services (applicable to the pottery clay artisan's community), inculcating pride in the local identity, its traditions and places, which could develop and promote a system totally integrated with tourism in a manner to create better product identification. This strategy will result in the consolidation of territorial and social networks, fostering strong bonds that are difficult to break, particularly in GI. In this case, territorial marketing tools, focused on cultural identity, could be used as means to consolidating networks, helping them to structure themselves.

The objectives of creation, protection and collective management of signs should be shared with all artisans of clay pots (and other kind of clay utensils) in the state that aim differentiation and seek protection. The process of self-management is an essential aspect and must be encouraged and even assisted when necessary. The artisans should assume the responsibility and be committed to lead the collective sign identity into the market.

Finally, a superior marketing mechanism is essential for a successful promotion of the products, which also must be seen as a responsibility of each member of the association.

Conclusion

Collective marks and GI are the means of distinguishing products with unique properties in a market and can be used to add to the traditional values and competence. Indeed, it will depend on the strategy chosen by the group's artisans to protect their art and craft.

In both cases, the process is collective and aims at sharing equitably costs as well as benefits generated. The creation of an entity, *a priori*, may represent a difficulty to gather a group of artisans, but after

having overcome these initial difficulties, all members of an association can benefit from the structured and solid networks. An appropriate working relationship among all stakeholders can be created with assigned rights and duties.

The authors firmly believe that collective marks and GI shall benefit Brazilian cultural heritage in that they would facilitate the maintenance of popular traditions, empower the organized artisans by handing them the power of self-management. Disempowered, disorganized artisans are without representation, and therefore without any bargaining power to negotiate a value for their products. Since at the beginning of the value chain these products lack local identity and hence value among consumers. In contrast, at the end of this value chain, the handicraft products attain high value, due to the differentiation and uniqueness which is recognized. Collective marks and GI can be used to invert the value chain in granting benefits to the artisan and also be seen as a form of re-building appreciation of local identities and building confidence among the local artisans themselves.

References

- 1 Drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basket weaving, needlework, textiles, carpets or any kind of manual work recognized as a particular community's expertise. Also any culture heritage, know-how that has passed from generation to generation.
- 2 Capixabas is an expression used to designate people born in the state of Espírito Santo, Brazil.
- 3 Brazilian Industrial Property Law restricts protection through 'marks' to only perceptive visual signs categorizing marks into: product mark, service mark, collective mark and certification mark. The first two are obviously awarded for products and services as their names indicate. The confusion arises between certification mark and collective mark. According to Brazilian law, the certification mark is used to authenticate the conformity of a product or service to certain specific rules or technical specifications in terms of quality, nature, applied material and/ or methods. So, the certification mark is given to an entity to be affixed on products or services subject to certain conditions. Certification mark does nothing to indicate the distinctiveness of a product or service but only works as an instrument for standardization of minimum quality aspects. Gil Rita Largo, *Las Marcas Colectivas y las marcas de garantía* (Thompson/Civitas Navarra), 2006. The legal function protected by the certification mark is related to the conformity of products and services, Ângulo A C U, *As Marcas de Certificação*, Tese de Doutorado Em Direito, Área de Relações Exteriores, UFSC, 2006. In contrast, a collective mark is used to distinguish products or services belong to certain members, supported by agreed common rules of use; from those of other agents/members who do not follow and share the same

rules of use, Carvalho M M, Marcas Colectivas – breves considerações, in *Direito Industrial*, Vol 5, (Coimbra, Almedina) 2008. Although the collective mark is a collective symbol, its holder is a unique legal entity. The collective mark works as an instrument to enhance reputation in the market and managed by the owner of the sign (or symbol) – the juridical legal entity, Munoz-Nájar L A G, Marcas Especiales, in *Propriedad Intelectual – El uso de la marca como herramienta de Mercado*, (USAID, Ministry of Production, Lima) 2009.

- 4 In many national jurisdictions, the industrial property law treats both association or corporative marks and guarantee marks or certifications marks as collective marks, while, in other national jurisdictions, these functions are treated separately, each one protected specifically by industrial property law, as in Brazil. Thus, collective mark can be of two types: the collective mark in strict sense; or association mark and guarantee mark or certification mark. An association mark indicates that the product or service originates from an association member, while certification mark indicates that the service or product is subject to some kind of control or rules imposed by the right holder of the sign. Carvalho M M, Marcas Colectivas – breves considerações, in *Direito Industrial*, Vol 5 (Coimbra, Almedina), 2008.
- 5 The protection of local reputation was developed through time and each national jurisdiction applied it according to its social economic goal. Indeed, the recognition of local reputation led to a set of different kind of protection classified into four domains or protection models: i) unfair competition ii) passing-off; iii) protected related to origin and registered geographical indications; iv) collective marks and certification marks, Almeida A F R, *Indicações de Proveniência, Denominações de Origem e Indicações Geográficas*, 2004. GIs are registered in Brazil. The protection model for GIs is a combination of the four domains described above. In case of the Portuguese legal framework for GIs, there is specific provision to punish those indulging in unfair competition, Ascensão J O, *Questões problemáticas em sede de indicações geográficas e denominação de origem*, in *Direito Industrial*, Vol 5 (Coimbra, Almedina) , 2008.
- 6 Carvalho M M, Marcas Colectivas – breves considerações, in *Direito Industrial*, Vol 5 (Coimbra, Almedina), 2008. The collective sign allows the development of a competitive strategy at the firm level, especially small sized firms that tend to provide an easier entrance to low quality products. The advantages arise from the possibility of sharing cost, marketing benefits and others assets. In Peru, the legal collective mark framework considers the following peculiar characteristics for collective protection under collective mark instrument: the geographical origin of products or services, the manufacturing process, raw material employed, quality, the liaison as a member of the entity of the right holders, etc. Munoz-Nájar L A G, Marcas Especiales, in *Propriedad Intelectual – El uso de la marca como herramienta de Mercado*, (USAID, Ministry of Production, Lima), 2009.
- 7 In 1994, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) ratified the recognition of collective marks under the Paris Convention (Article 7bis) and extended it to all World Trade Organization (WTO) members, even those countries which were signatories of the Paris Convention. The situation arose in case of recognition of GIs by TRIPS. Brazil as one of the members, was obliged to recognize and protect collective signs under LPI 9279/96. The only restriction imposed by the international directive with respect to collective mark relates to its holder and its use; the holder of the right has to be a representative entity of the collective and the protection instrument must be used by a group. The international agreements left it to national jurisdiction to determine the specific conditions for protection. There is no international mark directive to harmonize the use of collective mark or guarantee mark or certification mark. Carvalho M M, Marcas Colectivas – breves considerações, in *Direito Industrial*, Vol 5, (Coimbra, Almedina) 2008; Ascensão J O, *Questões problemáticas em sede de indicações geográficas e denominação de origem*, in *Direito Industrial*, Vol 5, (Coimbra, Almedina), 2008.
- 8 The Brazilian legal framework relating to collective mark imposes the condition of collective use and requires that there are rules which govern the use in compliance with TRIPS. Here, the local character is meaningless. Carvalho M M, Marcas Colectivas – breves considerações, in *Direito Industrial*, Vol 5, (Coimbra, Almedina), 2008.
- 9 In Brazil, it is the Instituto Nacional de Propriedade Industrial, INPI (National Institute of Industrial Property). After having identified the products, their characteristics and productions conditions, their local reputation is rigorously protected. Any infringement is combated under criminal law, as in Portugal. In national jurisdictions, the recognition may be through a legal act (declared by law) or an administrative act (arising from a recognized public entity), Almeida A F R, *Indicações de Proveniência, Denominações de Origem e Indicações Geográficas*, 2004. In Brazil, the registration of geographical indication is an administrative act vested in the INPI.
- 10 The function of GI is to differentiate one product from another, similar to other IP instruments, although it is not accorded to a single person or specific persons. It is given to a set of people bound by a certain geographically boundaries indicating common property or collective rights, Ascensão J O, *Questões problemáticas em sede de indicações geográficas e denominação de origem*, in *Direito Industrial*, Vol 5, (Coimbra, Almedina) 2008; Almeida A F R, *Indicações de Proveniência, Denominações de Origem e Indicações Geográficas*, 2004. In Brazil, false representation as a holder of GI comes under unfair competition. GI in Brazil, is considered as collective private property rights.
- 11 Almeida A F R, *Indicações de Proveniência, Denominações de Origem e Indicações Geográficas*, 2004, Ascensão J O, *Questões problemáticas em sede de indicações geográficas e denominação de origem*, in *Direito Industrial*, Vol 5 (Coimbra, Almedina), 2008.
- 12 The parasitic behaviour is attributed to those who take advantage of the success of others without having invested in their own business or market goods or services using the sign of another without the holder's authorization. This practice tarnishes the image and reputation of the owner of the sign, as the parasitic user may commercialize the products and service without providing the same quality, Ramello Giovani, What's in a sign? Trademark law and economic theory, *Journal of Economic Surveys*, 20 (4) (2006) 547-565.

- 13 Munoz-Nájjar L A G, Construyendo marcas inteligentes, in *Propriedad Intelectual – El uso de la marca como herramienta de Mercado*, (USAID, Ministry of Production, Lima), 2009.
- 14 Ramello Giovanni, What's in a sign? Trademark law and economic theory, *Journal of Economic Surveys*, 20 (4) (2006) 547-565.
- 15 According to the World Intellectual Property Organization (WIPO) 'the collective marks are signs which serve not to distinguish the goods or services of one enterprise from those of others, but to distinguish the origin or other common characteristics of goods or services of different enterprises which use the collective mark under the control of the owner. Collective marks are usually owned by associations of enterprises which offer the goods or services under the control of the owner.' The Brazilian collective mark legislation does not explicitly constrain its use to only enterprises as it refers to terms like economic activity and a more generic term, entity.
- 16 The mark has gained such importance in the recent times that the sign itself could be a subject matter of commercial negotiation, separate from the related tangible financial enterprise. Hence although, it may not be that useful in identifying the product or service origin, it is apt to distinguish one commercial entity from another, Barbosa D B, *Proteção das marcas - uma perspectiva a semiológica*, (Lumen Juris, Rio de Janeiro), 2007.
- 17 Kapferer J-N, *Marcas. Capital da empresa criar e desenvolver marcas fortes*, 3rd edn (Bookman, Porto Alegre), 2003, p. 20.
- 18 Porter M, *Estratégias competitivas, Técnicas para análise de indústrias e da concorrência* (Campus, Rio de Janeiro), 1986.
- 19 Krucken L, *Design e território. Valorização de identidades e produtos locais*, (Studio Nobel, São Paulo), 2009.
- 20 Belas Carla Arouca, O conceito de patrimônio imaterial e a prática dos inventários culturais in *Proteção aos conhecimentos das sociedades tradicionais*, edited by Benedita da Silva Barros *et al.* (Belém, Museu Paraense Emílio Goeldi/Centro Universitário do Pará), 2006, p. 265.
- 21 Dias C C, Os saberes em traduções – a fabricação das panelas de barro de Goiabeiras, *Culturas e Artes Populares*, 4 (1) (2007) 49-56.
- 22 Although, the know-how of clay pan, used by the community of handicraftswomen from Goiabeira region, in Espírito Santo, presents traces of indigenous culture, it is not only a claim of indigenous people. The theoretical framework that emerges from the study of this indigenous artifact at the region of Goiabeiras leads to the idea that the art not only belongs to the Brazilian society in general but also has an ancient permanency in this territory, Simão L M, *A Semântica do Intangível, Considerações sobre o registro do ofício de paneleira do Espírito Santo*, Dc Sc Programa de Pós-Graduação Em Antropologia, Universidade Federal Fluminense, 2008, p. 123. This traditional know-how has passed from generation to generation and was incorporated as an element of the popular culture from Espírito Santo State. This specific know-how was preserved because the region of Goiabeiras is situated within such boundaries that it has seen little urban access. The clay pan has been associated with a traditional food that is incorporated in social culture aspects of people's daily life. Dias C and Panelas de Barro Preta, *A Tradição das Panelas de Goiabeiras – Vitória-ES/Rio de Janeiro*, Mauad X, Facitec, 2006.
- 23 *O Ofício das Panelas de Goiabeiras*, (IPHAN, Brasília), 2006; Simão L M, *A Semântica do Intangível, Considerações sobre o registro do ofício de paneleira do Espírito Santo*, Dc Sc Programa de Pós-Graduação Em Antropologia, Universidade Federal Fluminense, 2008.
- 24 Dias C and Panelas de Barro Preta, *A Tradição das Panelas de Goiabeiras – Vitória-ES/Rio de Janeiro*, Mauad X, Facitec, 2006.
- 25 Hobsbawn Eric, Ranger Terence (Orgs), *A invenção das tradições*, (Rio de Janeiro, Paz e Terra) 1986.
- 26 *O Ofício das Panelas de Goiabeiras*, (IPHAN, Brasília), 2006. The drive for protection has increased since then. The association Put in a request for GI to INPI on 19 May 2010, under indication of source. Although the association is known as Association of Handicraftswomen of Pottery Pans from Goiabeiras (AHPPG), the entity as the holder of right is Associação das Panelas de Goiabeiras.
- 27 Dias C C, Os saberes em traduções – a fabricação das panelas de barro de Goiabeiras, *Culturas e Artes Populares*, 4 (1) (2007) 49-56; Simão L M, *A Semântica do Intangível, Considerações sobre o registro do ofício de paneleira do Espírito Santo*, Dc Sc Programa de Pós-Graduação Em Antropologia, Universidade Federal Fluminense, 2008.
- 28 *O Ofício das Panelas de Goiabeiras*, (IPHAN, Brasília), 2006; Dias C and Panelas de Barro Preta, *A Tradição das Panelas de Goiabeiras – Vitória-ES/Rio de Janeiro*, Mauad X, Facitec, 2006; Simão L M, *A Semântica do Intangível, Considerações sobre o registro do ofício de paneleira do Espírito Santo*, Dc Sc Programa de Pós-Graduação Em Antropologia, Universidade Federal Fluminense, 2008.
- 29 *O Ofício das Panelas de Goiabeiras*, (IPHAN, Brasília), 2006.
- 30 GI has been thought as a possible manner to add value and protect the craft indirectly as a tool of cultural preservation. There are many studies in literature that propose it. In the Indian jurisdiction, GI is applied to protect symbolical products of cultural identity, including craft objects, besides agriculture goods. Marie-Vivien D, *Le droit des indications géographiques en Inde – Un pays de l'ancien monde face aux droits français, communautaire et international* Dc Sc En Droit et Sciences Sociales, Ecole des Hautes Etudes en Sciences Sociales, Centre D'Etudes des Normes Juridiques-Yan Thomas, 2010. The case of collective trademarks and the cultural districts of San Gregorio Armeno, at Italy, in Naples is an illustrative example. Traditional cribs, made in Naples, were threatened by industrialized cribs that came from China, where the mass scale production provided cheaper cribs though not of the same quality as the traditional ones. A collective mark was therefore affixed on the traditional cribs to identify the authentic craft made in Naples. There was thus, a valuation of cultural identity and simultaneously aggregation of value, as the consumer pays more to acquire authentic handicraft cribs than the similar industry manufactured cribs, Cucca T, Marelli M, e Santagata W, *Collective Trademarks and Cultural Districts: The Case of San Gregorio Armeno – Naples*, Working paper No 01/2007, Dipartimento di Economia 'S Cognetti de

Martiis' International Centre for Research on the Economics of Culture, Institutions and Creativity (EBLA). Università di Torino. The WIPO has discussed the aggregation of value and protection of handicrafts applying IP, Marketing de la artesanía y las artes visuales: Función de la propiedad intelectual: Guía práctica, Organización Mundial De La Propiedad Intelectual (OMPI), Ginebra: CCI/OMPI, 2003, p. 1-149; Intellectual Property and Traditional Cultural Expressions/Folklore, Booklet no 1, WIPO Publication N 913 (E). A local evaluation has been discussed under the productive chain and its value chain by the approach of

collective IP instruments, as well as the valuation of local identity aspects.

- 31 The non-availability of raw material may result in the loss of protection through the denomination of origin (DO). This however, does not dismiss the possibility of using other forms of GI such as indication of source (IS), since it is not tied to qualities or characteristics that are exclusively and essentially from the geographical environment. As a matter of fact, is linked to a traditional know-how of a community passing from one generation to another in a given locality, which deserves reputation protection.