

ALTERNATIVE PROTECTIONS SCHEMES - “THE NEW SWISSNESS LEGISLATION”

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SWISS MADE AND ITS CONNOTATIONS



- Reliable
- Industrious
- Innovative
- Organised
- Precise
- Quality driven



APPAREL



SOME INDUSTRY EXAMPLES



swatch 



THE SWISSNESS LEGISLATION – RATIONALE

- Swiss Goods and services have high reputation among consumers at home and abroad.
- Due to this reputation higher prices can be achieved (20% more for general products, 50% more with luxury goods - Watches).
- Many companies use Swiss terms (“Swiss”, “Made in Switzerland”, “Swiss Quality”) or emblems (“Wilhelm Tell,” “Matterhorn”) for co-branding.
- This has led to misappropriation through products that are hardly connected with Switzerland.



EXAMPLE OF “MISSAPPROPRIATION”

Chocosuisse Union des Fabricants Suisse de Chocolat and Others v Cadbury Limited [1999] EWCA Civ 856

“Swiss Chalet“- Bar by Cadbury.

- Goodwill held by all Swiss chocolate producers.
- High Court held that significant amount of people would only mean Swiss chocolate coming from Switzerland.



Misrepresentation by Cadbury



THE NEW LEGISLATION

- The Swiss Parliament passed the “Swissness” legislation on 21 June 2013.
- Legislation basically prescribes how much “Swiss” a product must be in order to be labelled “Swiss”.
- Also regulates when the Swiss cross can be applied to products.



LEGISLATION VALID UNTIL 31 DECEMBER 2016

Products:

- 50% of the production cost must be the result from work conducted in Switzerland **and** the main production stage must occur within Switzerland.

Services:

- Head office of the entity must be seated in Switzerland **or** the people having the actual control of the entity are **either** Swiss nationals **or** have their domicile in Switzerland.

THE LAW APPLICABLE FROM 01 JANUARY 2017

Natural Products (i.e. mineral water, plants and meat):

- 100% from Switzerland (fountain - place of harvest - where the animal spent most of its life, or place of hunting or fishing)

Industrial products:

- At least 60% of manufacturing costs must occur in Switzerland. All production costs (i.e. costs for raw materials, semi-finished products, accessory parts, product-related salaries and production overhead costs) can be taken into account and now additionally the costs for research and development, quality assurance and certification.
- **In addition**, at least one essential manufacturing step must have taken place in Switzerland.
- **Note:** Special legislation for watches and cosmetics.

Services:

- Entity must have its headquarters in Switzerland and must be actually administered from there.

THE LAW APPLICABLE FROM 01 JANUARY 2017 – FOODSTUFFS

- **General Rule:**
- At least 80% of the weight of the raw materials of the weight of the available raw materials in Switzerland must actually originate in Switzerland.
- Milk and Milk products must be 100% Swiss.

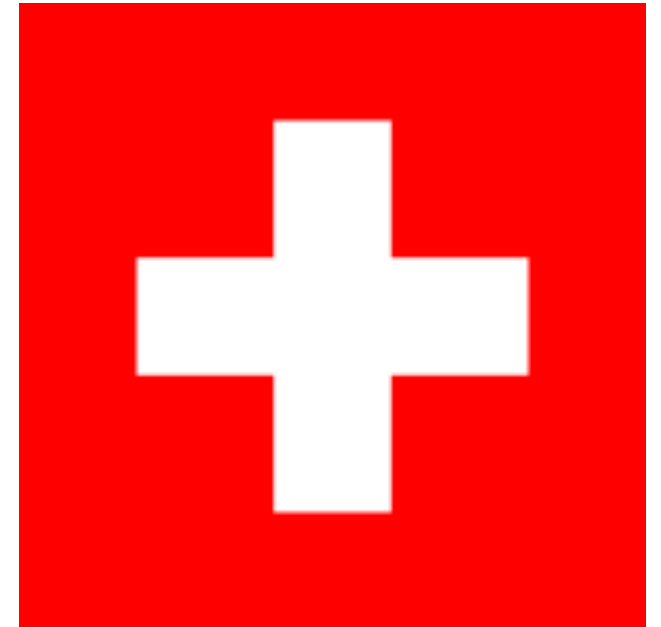
USE OF THE SWISS CROSS

Products:

- Newly introduced now for products (previously only for advertisement and decorative uses).
- Use of cross now possible when products are made according to the new legislation.

Services:

- Allowed for Swiss services.



WHAT ABOUT SWISS CHOCOLATE?

- Chocolate consists substantially of Cocoa Beans.
 - at least 43% Cocoa Solids, including not less than 26% Cocoa Butter; less for milk chocolate and couverture Chocolate - **Directive 2000/36/EC.**
- Ivory Coast: Largest producer of cocoa beans worldwide (33% in 2012).



SPECIAL RULES FOR CHOCOLATE AND COFFEE

Art 48 b (3) Swiss TM Act (de lege ferenda)

- Excluded from the rule that subsection 2 of this Article provides are such natural products that cannot be produced in Switzerland due to natural conditions (i.e. Cocoa, coffee, avocado etc.).
- Milk in the Milk Chocolate however must be from Switzerland for the chocolate to qualify as Swiss chocolate.
- Also such natural products that are temporarily not available (i.e. crop failure harvest – however: restrictive use!).
- Reference to single Swiss ingredient possible (i.e. lasagne with Swiss beef) – However, no use of Swiss cross possible on the entire product.



REGISTER OF GEOGRAPHICAL INDICATIONS FOR NON-AGRICULTURAL PRODUCTS (PDO/PGI)

- The new legislation will establish a register of protected designations of origin (PDO) and geographical indications (PGI).
- Registry will be held at the Swiss Intellectual Property Institute.
- Intended to reinforce their protection in Switzerland and abroad.

- It applies, in particular, to handcrafted products in the non-food sector such as textiles or ceramics, industrial products such as watches, and products obtained through extraction such as minerals or salts.



SOME CONSEQUENCES

- Not everyone in the industry was happy.
- Loss of use of the Swiss cross for many products even when they are produced by Swiss companies
 - Example: “Michel Saft” produced since 1929.
- Trade off: Purchasing expensive ingredients to remain “Swiss” but then lose on price competition.
- Where companies use foreign products (and lose their “Swissness”) then the question arises whether they should move production abroad.
- Industry association “Fédération des Industries Alimentaires Suisses » (FIAL) asked for more exceptions for products that were not available in Switzerland or did not have the required quality.



ISSUES WITH TRIPS?

Definition of Geographical Indications

- Article 22.1: ... indications which **identify** a good as originating in the territory of a Member, or a region or locality in that territory, where a given **quality, reputation OR other characteristic** of the good **IS essentially attributable** to its geographical origin.

Do products solely coming from domestic raw materials actually contribute to a quality, reputation or characteristic? (i.e. Swiss sugar does not contribute to the characteristic of the good; is not different to other comparable materials)

Could therefore not be applicable for GI protection according to TRIPS.

(Thomas Cottier and Rachel Liechti-McKee, *Sind die neuen Swissness-Bestimmungen mit den völkerrechtlichen Verpflichtungen der Schweiz vereinbar?* Die Volkswirtschaft 10-2014: http://dievolkswirtschaft.ch/content/uploads/2014/10/08_Cottier_DE.pdf)



MERCI DE VOTRE ATTENTION!

