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THE VIOLATION OF INTELLECTUAL PROPERTY RIGHTS IN FOODSTUFF SECTOR: ECONOMICAL AND SOCIAL CONSEQUENCES

Introduction

The transformations that have characterized the economic systems of many countries around the world have allowed the production and consumption of enormous quantities of goods, which, together with the development of transportation and technology, have encouraged the growth of trade and the expansion of markets.

This has resulted in remarkable uniformity of the characteristics of goods, the consumption patterns and the life style of humans and, therefore, product's future development. In the era of globalisation and e-commerce the ever growing interest of consumers for local products is an expression of their need to regain their roots and enhance their cultural traditions, in response to the uniformity and homogeneity of markets and the need for food safety.

The food and agriculture sector is of great economic importance and is characterised by dynamism and innovation.

The particular aspect that characterises the foodstuff sector is linked to the evolution of food; nowadays, food is no longer limited to satisfying basic needs but has taken on other emotional overtones and is thus influenced by ethnic, religious, cultural, territorial and social factors.

In this context food products become bearers of tradition, pleasure, health and cultural identity; they have an emotional and social value, as well as a use value. The modern-day trend of promoting and giving preference to local produce, which have had a historical and cultural value as well as an economic one, goes against the widespread globalisation of food.

Italy is a country which boasts a large culinary tradition, thanks to its geographical, historical and cultural characteristics. In Italy, there are a large "gastronomic reserves" available in the shape of local produce and local recipes, which bring together the values of tradition, old-fashioned techniques and local cultural history.

Out of a total of 935 products recognised at an European level, Italy is at the first place with 215 certified products, (134 Protected Designation of Origin- POD and 81 Protected

Geographical Indication-PGI) with guarantee of origin, followed by France (175), Spain (140) and Portugal (116) (ISMEA 2010).

These figures are very interesting because they show that countries traditionally considered to have a strong agricultural and culinary tradition have particular interest in protecting their products. In Italy, the rate of growth of certification, in this last year, had been double (+15,4%) respect to the rest of Europe (+7,4%).

These products have become well-known on an international level and have great market strength, thanks to their highly valued taste and nutritional characteristics and the quality and selection of the ingredients.

As regards the regional distribution, Veneto (34) and Emilia Romagna (32) have the highest number of protected products, followed by Lombardy (22), Tuscany, Lazio and Sicily (21) and Campania (20); these two last regions are the best placed southern regions. Bottom of the list is Liguria (3) preceded by Valle D'Aosta (4), Friuli Venezia Giulia (5) and Molise with 6 products.

If we divide up the 215 certified Italian products according to category of commodity we find that 38% belongs to the category of fruit and vegetables, 19% are extra virgin olive oils, 18% are cheeses, 15% are meat products.

The turnover in 2009 was in 5,3 billions of euro, with a growth rate of 3%. The export rate, in the same year, had been close to 1,3 billions of euro, with an increase of 15%. The export is directed for 67,2% to EU Member States and for 32,8% to Extra UE Countries.

The success of locally produced Italian products all over the world has stimulated the development of a phenomenon which has already reached alarming proportions and has a devastatingly negative effect on exports and on the smooth operation of markets: counterfeiting, an illegal commercial practice which deceives consumers and damages producers.

Counterfeiting is considered as a violation of Intellectual Property Right (IPR) that takes places every times goods carry an indication of origin which is not the real one, or when there are distinctive signs, logos and so on that induce consumers to believe that the goods have particular characteristics typical of other products.

Counterfeiting has become a widespread phenomenon with continuous growth that represents a serious threat to international security, to consumer's health and to economic development.

There is already, beyond a doubt, a parallel market of "food forgeries", in which Italian local products occupy a prominent place.

The violation of intellectual property rights

The protection of goods and consumers is a major issue for businesses, which daily have to guard against imitation, counterfeiting and adulteration of their products, and for Governments that must implement the best legislative and control instruments to cope the situation.

On a European level, the number of goods suspected of infringing on intellectual property rights (IPR), in 2009, was 119 million articles.

In the past, the problem of infringing on Intellectual Property Rights (IPR) mainly regarded luxury goods; nowadays, this problem involves goods for daily use such as shampoos, toothpaste, toys and household appliances and products potentially dangerous to health such as food, beverages and medicines that record for 18% of the total amount of seizures.

The majority of products counterfeited come from China (64%) but in certain products category other countries play an important role, especially Egypt for toys, United Arab Emirates for medicines and lighters and Turkey for foodstuff.

In fact, counterfeited foodstuffs originated from 57,36% from Turkey, 26,04% from USA, 6,28% from Uruguay, 5,07% from China, 2,86% from Tunisia and 2,39% from other countries.

The European legislative framework is the Council Regulation (EC) n. 1383/2003 relating to the intervention of customs authorities in the case of goods suspected of violating intellectual property rights.

The custom control has been extended to case of encroachment on intellectual property rights regarding food products with protected designations of origin. This regulation is now on revision because EU wants to prepare a new proposal whose aim is the IPR enforcement, in terms of protection of creativity and consumer safety.

The protection of IPR is, in fact, a point of the EU's 2020 strategy and the faith against the trade of counterfeited goods is reflected in the 2009–2012 action plan. An action plan, concerning EU-China cooperation on IPR, entered in force on April 2009 with the aim to strengthen the application of customs controls to fight against counterfeiting and piracy.

Following the Regulation, goods resulted counterfeited can be destroyed immediately or a legal action can be taken to verify if there is effectively an infringement.

Counterfeiting is the violation of laws that protect trademarks, geographical indications (PGI), designations of origin (POD), trade-mark and the rules on labeling, advertising sales, health and safety of consumers.

This problem shows its gravity especially in products that are recognised as “superior quality” thanks to certification. As we said before, Italy is well known in the world for its wide range of food and beverages products, and the characteristic to be “Made in Italy” is now synonymous of quality and genuineness. For this reason, Italian products are often imitated and this can cause a immense damage to the Italian economy because “Made in Italy” is the main element on which Italian firms base their marketing strategies.

The diffusion of counterfeited products can determine not only an image and economical damage but can represent a big risk for consumer health.

The trade mark infringement can be implemented through: the imitation of product packaging, the so-called “look alike”, which may not lead to deception about the origin of the product, and the use of suggestive signs which recall a prestigious geographical origin although it is not directly called.

Trademark protection against this parasitical exploitation, works on the undue service of the “message” linked to the brand.

The trade mark infringement defrauds the consumer, as the “distinctive function” which is typical of commercial warranty and product quality, is eliminated.

In particular, the main ranks of counterfeit of food products are:

- Counterfeiting of protected geographical indications (POD, PGI, STG) as defined by Regulation 506/2006;
- Misleading links to geographical areas, the use of the name “Italy”, names, symbols or pictures that can refer to it on products made elsewhere, the so-called “Italian Sounding”;
- Biopiracy, that means the appropriation of collective knowledge accumulated over the centuries and passed down from generation to generation that are now became an integral part of the culinary tradition of a country or region.

As consequences of these problems there are:

- the decrease in companies turnover;
- the contraction of the Gross Domestic Product (GDP) of individual countries;
- the resulting tax shortfall;
- the increase of unemployment;
- economic and social repercussion;
- a not regular functioning of the market;
- the risk for health and safety.

The business of counterfeiting of “Italian sounding” amounts, on an international level, to about 60 billion euro. Counterfeiting in the food sector occupies the third place following clothing trade and video, CD and software sectors.

In Europe, in 2008, Customs Authorities had sequestered about 2.4 million of counterfeited food products, about 1,4% of the total amount of seizures, with an increment of 26% compared to 2007.

The phenomenon generates a turnover slightly less than half of the entire value of Italian food production. In Italy, in 2008, this phenomenon has generated 1,1 billion euro of turnover with a negative occupational implication of 24.282 units (Censis 2009). Foodstuff with a value of 159 million of euro have been sequestered, +34% compared to 2007. In 2009, the customs agency has seized more than 25,000 cans of San Marzano tomatoes with false labels as well as 24 thousand pounds of cheese called “mozzarella” produced by a German company and destined for export to Libya.

In any case, it is difficult to measure and quantify exactly this phenomenon because EU statistics make it possible to quantify the overall amount of products detained by EU customs authorities, but they are not able to give detailed information as food products are not specifically grouped but generally classified as “foodstuff, alcoholic and other drinks”.

Another problem is that lots of counterfeited foodstuff avoids customs inspections because of illegal trade.

This situation determines a big loss of the Italian Treasury measured in terms of tax lost (especially VAT), that has been estimated in 5,3 billion of euro (Censis 2009). If the total turnover of the counterfeiting would be put down on the legal market, an additional production on the national economy would be created and it would be possible to transfer about 130,000 people, actually involved in the chain of false, on a regular work.

The more counterfeited Italian product is Parmigiano reggiano and cheese in general. In fact on the market it is possible to find products with the “Italian sounding”, for example: Parmesan (USA), Parmesao (Brasil), Regianito (Argentina), Asiago del Wisconsin (USA), Mozzarella Company (USA), Timbozola (Australia), Cambozola (Germany, Austria, Belgium), Danish Grana (USA).

In USA the turnover linked to the imitation of Italian cheese is more than 2 billion dollars.

Table 1 shows the 14 most imitated Italian products in the world.

Table 1

The 14 most imitated Italian products in the world

Original product	Imitation	Countries
Asiago	Asiago	USA, Canada
Fontina	Fontina	USA, Canada, Argentina
Gorgonzola	Gorgonzola, Gorgonzola, Timboonzola	USA, Canada, Brasil and Australia
Grana Padano	Grana Padano	USA, Canada
Mortadella Bologna	Bologna, Bologna mortadella, Bolonita, Bolonha, Bolognella	USA, Canada, Argentina, Brasile, Cile, Costarica
Mozzarella di bufala campana	Mozzarella campana	Australia e Cina
Parmigiano Reggiano	Parmesao Regianito, Parmesan Regiano, Parmesano, Parmesan, Parmigiano	USA, Canada, Argentina, Brasile, Australia, Japan, Souther and Centre America
Pecorino romano	Romano	USA, Argentina, Australia
Prosciutto di Parma	Parma, Parma ham	Brasil, USA, Canada
Prosciutto di San Daniele	Daniele Prosciutto & Company	USA
Prosciutto toscano	Toscano	Brasil
Chianti	Chianti, Chianti Station	USA, Argentina
Grappa, (Barolo, Piemonte, Lombardia, Trentino, Friuli, Veneto e alto Adige)	Grappa	South Africa
Marsala	Marsala	USA, Argentina, Australia

Fonte: Elaborazione Coldiretti.

On a national level various initiatives have been taken to protect food products in the attempt to prevent imitation and thus competition with products authentically made in Italy.

The protection of intellectual property rights is contained in the articles 473 and 474 of the penal code, which identify various possible offences. In the some code, foodstuff frauds are disciplined in articles 440, 442 and 444 and their consequences for economy in the articles 515, 516 and 517.

In the Italian law n. 273/02 measures and initiatives against counterfeiting are considered and a proxy to the Government is provided. The aim of this proxy is to disseminate the knowledge about “Made in Italy” products and to increase their diffusion on the market.

In the Finance Bill 2004, a National Committee against Counterfeit had been constituted inside the Minister of Productive Activities; its aim is monitoring, control and legal assistance to firms injured by counterfeiting cases. This law reinforced the protection of “Made in Italy”; legislators provided for agreements between Customs Agency and producers, at the request of the latter, in order to set up a multimedia databank for the collection of characteristic data suitable for identifying the peculiarities of products needing protection, without additional costs to the public, that may be useful in recognizing the original model and discovering counterfeit ones. All the information contained in the profiles feeds the risk analysis system and the system of screening custom declarations that accompany goods when crossing the frontiers. This databank is known as FALSTAFF (Fully Automated Logical System Against Forgery and Fraud). During inspections, officers can immediately consult all the information provided by producers that are contained in FALSTAFF databank, facilitating the identification of counterfeit goods or those not conforming to legal quality and safety standards.

The fight against counterfeiting is also carried on through European or bilateral cooperation agreements, joint customs operations, and workgroups within the World Customs Organization (WCO).

Recently (2010), the Italian Agriculture Commission has passed a strict country of origin law which responds to the pressing calls coming from “Made in Italy” manufacturers to obtain protection for high-quality goods manufactured in Italy. The objective is to introduce the compulsory labelling of all imported goods to signal their origin to the consumer and to enable them to distinguish between domestic and imported products.

In the past a great debate occurred between Italy and the European Union. In the European Union opinion, the protection of “Made in Italy” could create market distortion and protectionist barriers. Now, the European Union allows the labelling of country of origin for some products: beef, fish, seafood, fruit and vegetables and, from 2004, for olive oil, honey and poultry. In 2006, Italy added canned tomato products such as “passata” to the list and in 2007 Italy began requiring producers of olive oil to label not only the country where the oil was produced, but also the origin of the olives and their percentage in the final product.

The new Italian law wants to enforce the protection of Italian food products; especially art. 4 which specifically states “in order to avoid food fraud and to make consumers well informed and ensured on the origin of a product it is mandatory to indicate on the label of finished products the origin of ingredients and the possible use of OGM at all the stages of the food production”. New rules about traceability of foodstuff will be created and a list of preferred products and ingredients will be established.

Although the Italian Parliament has expressed great complacency for the new directives, the European Union has halted the legislation because it seems to go against European constraints (the free circulation of goods for example) and it has become resolutely opposed to such a move.

At the same time there is a contradiction in Italian behaviour; in fact, on the one hand there is great attention given to the protection of Italian products for safety and economical reasons and on the other hand, the Italian law 263/1962 that regulates the production and sale of foodstuff and considers it a crime against public health has been vetoed by means of measure (L. 179 /2009) which revokes all laws antecedent of 1970. As a consequence, from December 2010 there is a regulatory gap that revokes sentences in cases against counterfeited products because “it is no longer considered as a crime by law”.

Conclusions

The harmful economical, social and health effects in the illicit trade of counterfeit goods are well known. The protection of geographical indications of products and various strategies are used to protect intellectual property and the authenticity of goods, in whichever category they belong to.

The European Union recognises protection for products with a designation of origin although this protection does not extend beyond the European Union itself. In this sense, the extension on an international level of geographical foodstuff protection can only be hoped for. The only protection available for non-certified products appears to be the registration of trademarks together with the compulsory use of labelling indicating the origin of products, thus allowing consumers to know what they are buying.

The national agro-food sector suffers from unfair competition in terms of price and return on investment caused by counterfeit products. Aggressive price lowering strategies induce consumers to opt for counterfeit products and thus limit the possibility of future expansion of the market share. The Italian Minister of Productive Activities has started a powerful informative educational campaign with the aim of highlighting problems related to counterfeit goods; at the same time, it stresses the distinctiveness of food products that are derived from the Italian traditions.

The rising of customs controls (FALSTAFF), the creation of legislative measures, the commercial strategies used to increase information to consumers and the promotion of

marketing tools as well as the initiatives for limiting the effect of the counterfeiting on the market are the only possible solutions for stemming this spreading phenomenon.

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Summary

The transformations that have characterized the economic systems of many countries around the world have allowed for the production and consumption of enormous quantities of goods which, together with the development of transportation and technology, have encouraged the growth of trade and the expansion of markets. This has resulted in a remarkable uniformity in the characteristics of commodities, the consumption patterns as well as the life style of humans and, thus the future inno-

vation of products. Amongst the widespread globalisation of food and in the era of globalisation and e-commerce, a demand has grown for local products which have historical, cultural and economic value. The success with the global marketing of Italian products has stimulated the development of a phenomenon of counterfeiting Italian appearing products, an illegal commercial practice which deceives consumers and damages producers.

The aim of this paper is to analyse the social and economical impact that counterfeiting has on the Italian market and the initiative created to fight against this phenomenon.

