

**SUBMISSION ON BEHALF OF**  
**COMITÉ INTERPROFESSIONNEL DU VIN DE CHAMPAGNE (CIVC)**

submitted by Brown Cooper Monier-Williams

**IN RESPONSE TO CONSULTATION ON UK IMPLEMENTATION OF THE**  
**DIRECTIVE ON THE ENFORCEMENT OF**  
**INTELLECTUAL PROPERTY RIGHTS (2004/48/EC)**

1. Comité Interprofessionnel du Vin de Champagne (CIVC) is a semi-public body created by law of France with legal personality, and charged with responsibility for all aspects of the trade in Champagne from production to marketing [see [Appendix 1.doc](#)]. Included in its powers and duties is the responsibility to manage and defend the rights in the name Champagne against abuse both in France and overseas.
  
2. Article 4 of Directive 2004/48/EC on the Enforcement of Intellectual Property Rights requires that:  
  
“Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this chapter:  
*[inter alia]*.  
  - (c) intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;
  - (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law”.
  
3. The Consultation on Implementation in UK proposes “No action required” in relation to article 4, on grounds that all relevant rights holders are already permitted to bring proceedings either pursuant to pre-existing statute or under Part 19 of CPR.

4. The concept of the *appellation d'origine* is not recognised nor protected as such by English law. Other causes of action must be found in order to protect rights in a name such as Champagne in the UK.
5. There is limited regulatory protection for Geographical Names of Origin afforded by English law pursuant to EU Regulation, most notably for Wines and Spirits but also for other Agricultural Foodstuffs, but such protection is limited both in its effect and in the range of products against which protection may be sought [see [Appendix 2.doc](#)].
6. As a result, rights holders of *appellations d'origine* have usually sought protection in UK by means of actions under passing-off. Such cases have formed a strong line of authority in English law establishing the collective right of producers to protect Geographical Names of Origin (such as “Champagne” or “Sherry”) against a much wider range of abuse than is proscribed by regulation.
7. Such passing-off actions are founded on the goodwill in the businesses in products using the names in question; such goodwill is the property of the producers and traders in such products.
8. Part 19 of CPR permits representative actions in a situation where all Plaintiffs share the same interest. Such provisions (and their predecessor Rules) have been utilised in English law to enable representative actions to be brought by producers and traders to enforce protection of such collective rights under the law of passing-off on many occasions [see [Appendix 3.doc](#)].
9. While it may be contended that a Trade Association such as the CIVC or Scotch Whisky Association has a commercial interest in Champagne or Scotch Whisky as the case may be (in that its existence and success depend on the success of its subscribers), it cannot be said that such commercial interest is “the same” as the interest of its trading members or subscribers in the business of selling Champagne or Scotch Whisky [see [Appendix 4.doc](#)].

10. Accordingly, although the actions in defence of Names of Origin have in practice been organised and administered (and indeed funded) by the relevant Interprofessional trade associations (such as the CIVC) representing the producers and traders in question, English law has required that the nominal Claimants in such actions be producers and traders.
11. The naming of individual traders as Claimants can cause problems and difficulties, both from the kudos of wide public recognition which may cause resentment from fellow-traders, and from the odium of commercial embarrassment when the potential Defendant may be a major customer. Both are inappropriate where the right protected is a collective right; neither would arise where a collective defence body can bring the action in its own name.
12. The right to sue for passing-off in English Law in respect of a Geographical Name of Origin is a form of intellectual property [see [Appendix 5.doc](#)] and falls within the purview of recital 13 of the Directive:

“(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and/or by the national law of the Member State concerned. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, including parasitic copies, or similar activities.”

13. One of the purposes of the Directive is to require member states to permit Trade Associations (such as the CIVC) or other agencies (such as the INAO) who have the conduct of such actions in defence of the relevant Name of Origin in other member-states to bring such actions in all member states. Recital 18 of the Directive makes clear that:

“(18) The persons entitled to request application of those measures, procedures and remedies should be not only the rightholders but also

persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.”

14. In continental Europe, and especially in France, Interprofessional associations similar to CIVC are established in every wine producing area with legal personality and semi-public status, and all producers and traders in the relevant area are required by law to subscribe to them. They are regularly recognised throughout the EU (but not in the UK) as the appropriate bodies to bring actions to protect the appellation in question. [see appendix 1]
15. In summary:
  - a. The Collective right to protect against abuse of a Name of Origin by means of a passing-off action is a species of intellectual property;
  - b. Such right belongs to the producers of and traders in such Name of Origin;
  - c. Interprofessional bodies such as CIVC are professional organisations in charge of the management of the collective rights of their subscribers in the Name of Origin in question, and are responsible for the defence of the collective interests of their subscribers in such Name of Origin;
  - d. Interprofessional bodies such as CIVC are regularly recognised elsewhere in the EU as having a right to represent their subscribers in protecting such rights;
  - e. Representation by such bodies in an action under passing-off for the protection of such rights is not permitted under English law, whether by Part 19 of CPR or by other statutory provision;
  - f. In the words of Chadwick L.J. in *Chocosuisse*: “the remedy lies in an alteration to the Rules of Court. It does not lie in bending those Rules to allow a representative action in circumstances which, as drawn, they were not intended to cover.”
16. Accordingly, it is submitted that there is a lacuna in the proposed implementation of the Directive by UK; and that a specific amendment to

English law is required to enable Trade Associations and bodies such as CIVC to bring passing-off actions on behalf of their subscribers or members, based on their subscribers' or members' collective rights.

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**Appendices:**

- 1 - Comité Interprofessionnel du Vin de Champagne
- 2 - Limitations of Regulatory protection for names of Quality wines psr
- 3 - Collective rights in Names of Origin protected by passing-off
- 4 - Interest of Trade Association in passing-off
- 5 - Passing-off rights qualify as Intellectual Property within the ambit of the Directive

**Submission by Brown Cooper Monier-Williams  
on behalf of Comité Interprofessionnel du Vin de Champagne (CIVC)**

**Appendix 1**

**Comité Interprofessionnel du Vin de Champagne (CIVC)**

1. The CIVC is one of various interprofessional organisations created in agriculture and viticulture over the last 65 years or so in such areas as flax, beet, flowers used in the perfumery trade etc. and, in the viticultural sector, Cognac, Armagnac, Bordeaux, Burgundy, Beaujolais and many others.

2. Each of these organisations is concerned with some agricultural product which is subject to processing. The object in each case is to define and organise the relationship between the primary producers and those who

process and sell the finished product and to safeguard their separate as well as their joint interests.

3. Created in 1941 by law of 12th April 1941, the CIVC is one of the earliest of these organisations, and also one of the most comprehensive. It is a semi-public body with legal personality, and power to sue and be sued.

4. All the vinegrowers of the Champagne area (who number about 15,000), and all the Champagne firms (numbering 140 or thereabouts), are required by law to subscribe to the organisation. It deals with everything which has to do with the production of Champagne under the various aspects of law, economics, technology, and institutional communication.

5. The functions of the CIVC are very wide. They are described in eight paragraphs of the 1941 law which sets out to organise, control and direct the production and distribution of the wines produced within the limits of the Champagne District, and to organise and control the relationship between the various interested bodies within the profession. The CIVC has official power to make regulations for the Champagne trade which have the force of law.

6. In the technological field, it has created and maintains ultra-modern laboratories, where research in the biology of the vine and the protection of the vineyard are carried out; apart from pure research work,

these laboratories are available to any member for free advice and analyses. At the same time, great efforts are made to improve the technical knowledge of the vine-growers, to introduce more modern methods of culture and to encourage the highest quality at all stages of production.

7. The functions of the CIVC also include the study of both exports and home markets, preparation and maintenance of statistics, the legal defence of the appellation "Champagne" wherever it has been usurped and publicity and information as well as public relations in France and abroad.

8. The CIVC places very high value on the protection of the name Champagne world-wide, and the CIVC's members seek to ensure that this protection is obtained insofar as local laws permit. With this end in view the CIVC has been responsible for arranging to institute legal proceedings in England, from the original "Spanish Champagne" case in 1957/8, through the "Champagne Cider" case in the 1970s and ultimately to the Elderflower Champagne" case in 1992. The CIVC has also conducted proceedings in Canada, in Bermuda, in Australia, in Japan, in New Zealand, in India, and in Sri Lanka, as well as many cases throughout continental Europe including in Germany, Belgium and France.

9. These cases are in addition to the countless interventions made on the CIVC's behalf to prevent abuse of the appellation Champagne which have been concluded without the need for litigation.

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**Appendix 2**

**Limitations of Regulatory Protection for Quality Wines Produced in a Specific Region**

1. **COUNCIL REGULATION (EC) NO 1493/1999 REPLACES AND CODIFIES EARLIER REGULATIONS, WHICH SET UP A EUROPE-WIDE FRAMEWORK REGULATING THE PRODUCTION OF QUALITY WINES PRODUCED IN A SPECIFIC REGION (“QWPSR”) AND THE USE OF THE NAMES OF SUCH “SPECIFIC REGIONS” ON THE PACKAGING OF SUCH WINES. FURTHER REGULATIONS PROVIDE A FULL LIST OF ALL SUCH NAMES AND LAY DOWN DETAILED RULES GOVERNING THE USE OF SUCH INDICATIONS.**
  
2. **ARTICLE 52 (1) OF 1493/99 REQUIRES THAT “THE NAME OF A SPECIFIED REGION . . . MAY NOT BE USED TO DESIGNATE PRODUCTS OF THE WINE SECTOR NOT PRODUCED IN THAT REGION . . .”.**
  
3. **ARTICLE 52 (4) STATES THAT “THE NAME . . . OF A GIVEN REGION . . . MAY ONLY BE USED FOR THE DESCRIPTION, PRESENTATION OR ADVERTISING OF A BEVERAGE OTHER THAN WINE OR GRAPE MUST ON CONDITION . . . THAT THERE**

IS NO RISK OF CONFUSION AS TO THE NATURE, ORIGIN OR SOURCE AND COMPOSITION OF SUCH BEVARAGE.”

4. THE COMMON AGRICULTURAL POLICY (WINE) (ENGLAND AND NORTHERN IRELAND) REGULATIONS 2001 MAKE PROVISION FOR THE ENFORCEMENT OF THE EUROPEAN REGULATORY FRAMEWORK BY MEANS OF SEVERAL CRIMINAL OFFENCES RELATING TO INFRINGEMENT OF THE REGULATIONS. SUCH CRIMINAL OFFENCES MAY ONLY BE PROSECUTED BY THE RELEVANT PROSECUTING AUTHORITY AND CONFER NO RIGHT FOR OTHER BODIES OR PERSONS TO BRING PRIVATE PROSECUTIONS.

5. HOWEVER, COUNCIL REGULATIONS ARE DIRECTLY APPLICABLE AND HAVE HORIZONTAL DIRECT EFFECT, CONFERRING ENFORCEABLE CIVIL RIGHTS ON CITIZENS OF MEMBER STATES, WHERE THEY ARE “SUFFICIENTLY CLEAR, PRECISE AND UNCONDITIONAL”

*CONSORZIO DEL PROSCIUTTO DI PARMA V ASDA STORES LTD (CASE C108/01)*

6. IN *TAITTINGER AND OTHERS V ALLBEV LTD AND OTHERS* [1994] 4 ALL ER 75, MANN LJ CONSIDERED THE EFFECT OF THE PREDECESSOR REGULATIONS TO 1493/99 CONCERNING QWPSR. HE HELD THAT, BY ANALOGY WITH THE TORT OF BREACH OF STATUTORY DUTY, SUCH REGULATIONS DID GIVE RISE TO A CIVIL RIGHT FOR PRODUCERS, AND THAT IT WAS APPROPRIATE TO GRANT AN INJUNCTION TO A PRODUCER TO RESTRAIN AN INFRINGEMENT OF THE REGULATIONS THAT ADVERSELY AFFECTED THAT PRODUCER.

*TAITTINGER AND OTHERS V ALLBEV LTD AND OTHERS* [1994] 4 ALL ER 75 PER MANN LJ

7. ALTHOUGH CIVC WAS NAMED AS PLAINTIFF JOINTLY WITH TAITTINGER IN THE ABOVE MENTIONED CASE, NO DECISION WAS REACHED IN THAT CASE ON WHETHER A TRADE ASSOCIATION HAD *LOCUS STANDI* TO BRING AN ACTION UNDER THE QWPSR REGULATIONS WHETHER ON ITS OWN BEHALF OR REPRESENTING A PRODUCER SO ADVERSELY AFFECTED.
8. IN ANY EVENT, THE PROTECTION AFFORDED BY THE CITED REGULATION IS SEVERELY LIMITED OUTSIDE THE WINE SECTOR STRICTLY SO DEFINED. ART 54(4)(B) OF THE REGULATION, QUOTED ABOVE, PROVIDES AN EXPRESS PERMISSION FOR QWPSR INDICATIONS TO BE USED ON BEVERAGES OTHER THAN WINES PROVIDED THAT THERE EXISTS NO “RISK OF CONFUSION”. HENCE, WITHOUT PROOF OF CONFUSION, SUCH EXPRESSIONS AS “CHAMPAGNE CIDER” AND ELDERFLOWER CHAMPAGNE” WOULD BE PERMITTED.
9. IN ADDITION, THE REGULATION PROVIDES NO PROTECTION WHATEVER AGAINST INFRINGEMENT BY NON-BEVERAGE PRODUCTS.
10. IN *TAITTINGER V ALLBEV LTD* [1994] 4 ALL ER 75, THE COURT OF APPEAL RECOGNISED THIS LIMITATION INHERENT IN THE PROTECTION OFFERED UNDER THE REGULATION (THOUGH IN FACT THEY FOUND THAT THERE WAS A “MORE THAN MINIMAL RISK” OF SUCH CONFUSION, SUFFICIENT TO GRANT A REMEDY UNDER THE REGULATION).
11. In *Bulmer –v- Bollinger* [1978 RPC 79] no remedy of any kind was available against abuse on any product other than wine (in that case cider and perry), whether or not confusion was present, as the then-current Regulation contained no provision equivalent to art. 54(4).

12. Accordingly, a well-known name such as Champagne is, and has been, far more effectively and widely protected in the UK by means of a passing-off action, for which confusion is not an essential requirement {see appendix 3} rather than by recourse to the European qwpsr regulations.

**Submission by Brown Cooper Monier-Williams  
on behalf of Comité Interprofessionnel du Vin de Champagne (CIVC)**

**Appendix 3**

**Collective rights in Names of Origin protected by passing-off**

1. The line of case law protecting the shared goodwill in a Geographical Name of Origin by means of an action for passing-off is founded on the decision of Danckwerts J in *Bollinger –v- Costa Brava Wine Company Ltd* [1959] 3 All ER 800.

“There seems to be no reason why such licence should be given to a person, competing in trade, who seeks to attach to his product a name or description with which it has no natural association so as to make use of the reputation and goodwill which has been gained by a product genuinely indicated by the name or description. In my view, it ought not to matter that the persons truly entitled to describe their goods by the name and description are a class producing goods in a certain locality, and not merely one individual. The description is part of their goodwill and a right of property. I do not believe that the law of passing-off, which arose to prevent unfair trading, is so limited in scope.”

2. In *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] 2 All ER 927, Lord Diplock confirmed the judgment and adopted Danckwerts J’s reasoning in relation to shared goodwill and collective right:

“It seems to me, as it seemed to Danckwerts J, that the principle must be the same whether the class of which each member is severally entitled to the goodwill which attaches to a particular term as descriptive of his goods is large or small.”

3. The law expounded in *Bollinger –v- Costa Brava* has been used in many other cases seeking to protecting the collective right in shared goodwill in numerous indications of geographic origin, including the following reported cases:
  - **Sherry - *Vine Products Ltd v MacKenzie & Co Ltd*** [1969] RPC 1

- **Scotch Whisky** - *John Walker & Sons Ltd and others v Henry Ost & Co Ltd and another* [1970] 2 All ER 106
  - **Swiss Chocolate** - *Chocosuisse Union Des Fabricants Suisses De Chocolat and others v Cadbury Ltd* [1999] RPC 826 (CA)
  - **Parma Ham** – *Consorzio del Prosciutto di Parma v Marks & Spencer Plc* [1991] RPC 351
  - **Champagne** – on numerous occasions and in numerous jurisdictions, including: *H.P. Bulmer Ltd. and Showerings Ltd. v J. Bollinger S.A. and Champagne Lanson Pere et Fils* [1978] RPC 79; *Taittinger and others v Allbev Ltd* [1994] 4 All ER 75; *Comite Interprofessionnel du Vin de Champagne v Wineworths Group Limited* [1991] 2 NZLR 432.
4. The principles of law in *Bollinger –v- Costa Brava* have also been developed and extended in the Elderflower Champagne case (*Taittinger and others v Allbev Ltd and others* [1994] 4 All ER 75), in which the unanimous Court of Appeal allowed a much wider remedy, in effect introducing dilution to English law derived from extended passing-off. The Court held unanimously that protection was available under passing-off, and it was not a requirement to establish confusion or a risk of confusion where the exclusivity of the name abused was “diluted” by the infringing product (in this case an elderflower cordial marketed as “Elderflower Champagne”).
5. The three Appeal Court judges specifically found that:
- "Any product which is not Champagne but is allowed to describe itself as such must inevitably ... erode the singularity and exclusiveness of the description Champagne and so cause ... damage of an insidious but serious kind" - per Bingham MR
- "The consequences of debasement, dilution or erosion .... will be incrementally damaging to goodwill" - per Mann LJ
- " erosion of distinctiveness .... in this country is a form of damage to the goodwill of the business .... the goodwill in the distinctive name ... will be eroded with serious adverse consequences" - per Gibson LJ
6. **SUCH DECISIONS, WITHOUT THE NECESSITY TO PROVE CONFUSION, ARE CONSISTENT WITH THE ESSENTIAL**

**ELEMENTS OF PASSING-OFF EXPLAINED AT THE HIGHEST AUTHORITY. LORD OLIVER IN THE JIF LEMON CASE (RECKITT & COLEMAN -V- BORDEN 1990 RPC 341) RESTATED THE “CLASSICAL TRINITY” OF REPUTATION, MISREPRESENTATION AND DAMAGE WITHOUT REFERENCE TO ANY REQUIREMENT TO ESTABLISH CONFUSION.**

7. **IN THE ADVOCAT CASE (ERVEN WARNINK BV AND OTHERS V J TOWNEND & SONS (HULL) LTD AND OTHERS [1979] 2 ALL ER 927), LORD DIPLOCK SOUGHT TO DEFINE THE REQUIREMENTS TO INCLUDE EXTENDED PASSING-OFF BY IDENTIFYING FIVE CHARACTERISTICS WHICH MUST BE PRESENT IN ORDER TO CREATE A VALID CAUSE OF ACTION FOR PASSING-OFF:**

“(1) a misrepresentation (2) made by a trader in the course of trade, (3) to prospective customers of his or ultimate consumers of goods or services supplied by him, (4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence) and (5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a quia timet action) will probably do so.

Again, there is no necessity to establish confusion or the risk or likelihood of confusion.

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#### **Appendix 4**

**Interest of Trade Association in passing-off**

1. **CPR 19.6 SETS OUT THE RULES ON “REPRESENTATIVE PROCEEDINGS”:**

“Where more than one person has the same interest in a claim –

- (a) the claim may be begun; or
- (b) the court may order that the claim be continued

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.”

2. CPR 19.6 is based on RSC, Ord 15, r 12(1) which provided that:

"Where numerous persons have the same interest in any proceedings ... the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them."

3. The question of a Trade Association bringing Representative Proceedings on behalf of its members was considered by Nourse LJ in *Consortio del Prosciutto di Parma v Marks & Spencer Plc and Others* [1991] RPC 351, where he held:

“ . . . the consortium has its own interest in maintaining the action against the defendants, namely the prevention of the reductions in its membership, both present and future, which would or might result from a perception amongst producers that it was not doing its best to further their interests. But . . . the consortium's interest is entirely different from that of the producers. . .

“There being no identity of interest between the consortium on the one hand and the producers of Parma ham on the other, it necessarily follows that the former cannot represent the latter in these proceedings.”

4. In *Chocosuisse Union des Fabricants Suisses de Chocolat and others v Cadbury Ltd* [1999] All ER (D) 205 the Court of Appeal confirmed that a Trade Association has no standing to represent its members in representative proceedings unless it has the same individual right. The Court specifically confirmed that a Trade Association did not have the same interest as its members in respect of passing off where it was not itself a producer.

“I am unable to identify any business interest or goodwill which the trade association, Chocosuisse, is entitled to protect in an action in England for passing-off against a trader. Chocosuisse does not, itself, manufacture or sell Swiss chocolate. It is said that its business depends on maintaining the reputation of Swiss chocolate throughout the world, including in England and Wales. But nothing that Cadbury is said to have done can be regarded as a passing-off in relation to that business...

“If there is no individual right, then it seems to me that Ord.15, r.12 can be of no assistance. But, even if there were an individual right, it

is not the same right as the right of the Swiss Chocolate Manufacturers whom the association seeks to represent.

“I respectfully agree with the Vice-Chancellor's view [expressed by Sir Richard Scott VC in *Scotch Whisky Association and others v JD Vintners Ltd* (unreported, 6.3.96)] that it would be convenient if a trade association were permitted to sue in a representative capacity on behalf of its members. But I find it impossible to reach the conclusion that that is permitted under the language of Ord.15, r.12(1) in circumstances where, as will usually be the case, the trade association either has no interest of its own capable of founding a cause of action; or, if it has any interest of its own, that is not the same interest as that interest of its members. The remedy lies in an alteration to the Rules of Court. It does not lie in bending those Rules to allow a representative action in circumstances which, as drawn, they were not intended to cover.”

*Chocosuisse Union des Fabricants Suisses de Chocolat and others v Cadbury Ltd* per Chadwick LJ

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**Appendix 5**

**Passing-Off Rights qualify as Intellectual Property within the ambit of the Directive**

1. The European Commission's comments (2005/295/EC) on the scope of the Enforcement Directive are:

“Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (1) states in Article 2(1) that the Directive applies to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned. The Commission considers that at least the following intellectual property rights are covered by the scope of the Directive:

*[inter alia]*

- geographical indications,
- trade names, in so far as these are protected as exclusive property rights in the national law concerned.”

2. Both geographical indications and trade names are protected in England and Wales as components of the goodwill protected by a passing off action (see Appendix 3).
3. A Claim Form for an action for passing off is specifically required to be marked “Chancery Division, Intellectual Property” (CPR PD63 19.1)
4. The Paris Convention for the Protection of Industrial Property [1883] describes the scope of Industrial Property as covering actions generically known as “the repression of unfair competition”:

“Article 1

“

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

**(3) INDUSTRIAL PROPERTY SHALL BE UNDERSTOOD IN THE BROADEST SENSE AND SHALL APPLY NOT ONLY TO INDUSTRY AND COMMERCE PROPER, BUT LIKEWISE TO AGRICULTURAL AND EXTRACTIVE INDUSTRIES AND TO ALL MANUFACTURED OR NATURAL PRODUCTS, FOR EXAMPLE, WINES, GRAIN, TOBACCO LEAF, FRUIT, CATTLE, MINERALS, MINERAL WATERS, BEER, FLOWERS, AND FLOUR.”**

5. **THE EXPRESSION “INDUSTRIAL PROPERTY” (FROM THE FRENCH *PROPRIÉTÉ INDUSTRIELLE* OF THE ORIGINAL CONVENTION) IS A SYNONYM OF THE MORE MODERN ENGLISH FORM “INTELLECTUAL PROPERTY”.**
6. **THE CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO), DEFINES INTELLECTUAL PROPERTY IN ARTICLE 2 SUBSECTION (VIII) AS COVERING THE GENUS OF RIGHTS KNOWN AS “PROTECTION AGAINST UNFAIR COMPETITION” AS WELL AS COMMERCIAL NAMES AND DESIGNATIONS:**

“(viii) “intellectual property” shall include the rights relating to [*inter alia*] . . . protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

7. Article 10*bis* of the Paris Convention defines the scope of the expression “unfair competition”. Sub-paragraph (3) states specifically that “The following in particular shall be prohibited:

1. . . .;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor ”

Passing-off, as defined by both Lords Diplock and Oliver (see Appendix 3 paragraphs 6 & 7), is a misrepresentation (or false allegation) in the course of trade which causes or is likely to cause damage to the business or goodwill of a competitor’s business. Such definition of passing off falls clearly within the species of Intellectual Property defined in the Paris Convention as “protection against unfair competition” in article 10*bis*(3)(2) cited above.