

AMICUS CURIAE BRIEF (THIRD PARTY OBSERVATIONS)

TO THE PRESIDENT AND MEMBERS OF
THE GRAND BOARD OF APPEAL OF THE EUIPO:
AMICUS CURIAE BRIEF (THIRD PARTY OBSERVATIONS)
ECTA AISBL

RE: **R 1946/2024-1, SCCS (fig.)**

Publication date: 1 September 2025

ECTA has prepared this brief in relation to case R 1946/2024-1, SCCS (fig.), pending before the Grand Board of Appeal of the European Union Intellectual Property Office (“GBoA EUIPO”).

Article 37 (6) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark (“EUTMR”), and repealing Delegated Regulation (EU) 2017/1430 (“EUTMDR”) allows for intervention of interested groups or bodies in EUIPO appeal proceedings referred to the EUIPO Grand Board of Appeal (GBoA).

A. ABOUT ECTA

ECTA, which was formed in 1980, is an organisation concerned primarily with intellectual property matters. ECTA has over 1,300 members, coming from all the Member States of the EU, with associate Members from more than 50 other countries throughout the world.

ECTA brings together those practicing in the field of IP. These professionals are lawyers, trade mark and patent attorneys, in-house lawyers concerned with IP matters, and other specialists in these fields.

The extensive work carried out by the Association, following the above guidelines, combined with the high degree of professionalism and recognised technical capabilities of its members, has established ECTA at the highest level and has allowed the Association to achieve

23 October 2025

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the status of a recognised expert spokesman on all questions related to the protection and use of IP.

In addition to having close links with the European Commission and the European Union Intellectual Property Office (EUIPO), ECTA is recognised by WIPO as a Non-Government Organisation (NGO).

ECTA does also take into consideration all questions arising from the new framework affecting trade marks, including the globalization of markets, the explosion of the Internet and the changes in the world economy.

The present brief was drafted by ECTA independently of the parties in the case at issue.

B. ECTA'S INTEREST IN THE CASE

ECTA is not a party in the case but believes that the case is significant to the development of IP law and presents itself as an *amicus curiae* ("friend of the court") in the matters raised therein.

Through its Amicus Curiae Task Force (ACTF) and ECTA members contributing to the ACTF projects, ECTA provides expertise concerning trade mark and other IP-related matters through the submission of *amicus curiae* briefs.

The fact that ECTA decides to file an *amicus curiae* brief does not mean that ECTA believes that the jurisdiction has made an error or an incorrect decision. The purpose of the present intervention is to ensure that the GBoA is fully informed about the relevant issues that may impact the law and practice within the European Union.

ECTA plays a neutral role, addressing only the legal issues. ECTA hereby acts in the interest of the represented manufacturers, producers, suppliers of services, traders or consumers, who may be affected by the issues of concern in this case as described below, and thus by the result of this case as required by Article 37 (6) EUTMDR.

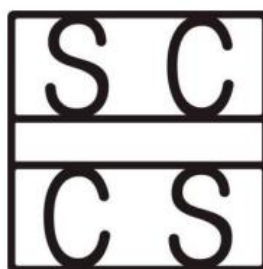
ECTA hopes that this submission may be of assistance to the GBoA.

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C. BRIEF SUMMARY OF THE PROCEDURAL HISTORY OF THE CASE

The matter concerns an appeal by the **Consorzio Tutela Salva Cremasco (the “Applicant”)** regarding the rejection of the application filed on 9 January 2023 for the registration of the EU collective mark



for the following goods, as per the limitation made on 10 November 2023:

Class 29: Cheese sauces; cheese-based snacks; cheese-based spreads; all the aforesaid goods based on ‘salva cremasco’ (GI) cheese; ‘salva cremasco’ (GI) cheese.

The Examiner took a decision (‘the contested decision’) refusing the application in its entirety ex Article 76(2) EUTMR.

The grounds relied upon by the Office in its decision of refusal can be summarised as follows:

- The sign for which protection is sought is identical to that in the PDO product specifications for ‘SALVA CREMASCO,’ protected under EU Regulation 1151/2012.
- The logo contained in the PDO’s product specification must be used by all producers whose products comply with those specifications, regardless of membership in the PDO Consortium. Conversely, an EU collective mark may only be used by members of the association owning it, under specific conditions.
- The fundamental difference between PDOs/PGIs and collective marks is that the former guarantee the geographical origin and specific qualities of the goods, while the latter guarantee the collective commercial origin linked to association members.

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- In this case, the relevant public would perceive the sign as identifying the PDO product originating from a specific geographic area, as its use with the PDO name is mandatory. That would likely generate confusion in the consumers' mind, who might perceive the sign as a geographical designation of origin rather than a collective mark intended to guarantee the collective commercial origin of the goods. This constitutes the alleged misleading character of the sign as referred to in Article 76(2) EUTMR.
- Furthermore, the Office highlights that collective marks are the property of the Applicant association and may only be used by their members, while PDOs/PGIs may be used by any operator marketing a product conforming to the corresponding specifications.
- Hence, the collective mark at issue in this application misleads the public in that it gives the impression that it can be used by anyone who meets the production criteria laid down in the product specifications for the PDO, when in reality it can only be used by authorised parties belonging to the association. Allowing non-members to use the collective mark would contradict the core principles and legal framework for collective marks under EU law.

The Applicant appealed the Contested Decision claiming that:

- The Consorzio Tutela Salva Cremasco is the official body appointed by the competent Italian authorities for the protecting, promoting, supervising and enhancing the PDO 'SALVA CREMASCO'.
- When assessing the misleading character referred to in Article 76(2) EUTMR, reference should be made to the perception of the relevant public when they come into contact with the trade mark.
- In the case at hand, at the time of the application, all the producers of the PDO were members of the Consortium, and even if there were non-member producers, the presence on the market of a collective mark owned by the Consortium, identical to the logo contained in the product specifications for the PDO, would not have misled the consumers.
- It must be borne in mind that the Consortium is also the body responsible for protecting and promoting 'SALVA CREMASCO' cheese. Therefore, when making their

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purchase decision, consumers will perceive the product as belonging to the Consortium's network and will consider the mark as further reassurance of the fact that the cheese (or cheese-based product) they are buying comes from the Consortium's network and, hence, complies with the Consortium's processing standards, this being absolutely complementary to the quality guarantee offered by the PDO 'SALVA CREMASCO'.

- The registration of the logo will enable the Consortium to perform its duty to protect the 'SALVA CREMASCO' cheese and prevent the unlawful use of the PDO.

In the same manner, the registration of the logo would enable the Consortium to protect the sign through an international registration designating non-EU countries where geographical indications are not protected and recognised.

- Hence, the purpose of the registration is to strengthen the protection of the PDO 'SALVA CREMASCO' and to prevent unauthorised third parties from using the logo even without using the name 'SALVA CREMASCO'.
- It must be also pointed out that the Italian legislation does not prevent Consortiums to be owners of collective marks that identify PDOs, PGIs and TSGs. On the other hand, the EU law does not provide explicit grounds for refusing to register collective marks that identify PDOs or PGIs. First and foremost, Article 74(2) second sentence at the end EUTMR provides that *'in particular, such a mark shall not be invoked against a third party who is entitled to use a geographical name'*, which can be interpreted as meaning that geographical collective marks relating to PDOs and PGIs may be registered by the entities officially entrusted with protecting those PDOs and PGIs.



Südtiroler Speck Konsortium
Consorzio Tutela Speck Alto Adige

- The Applicant mentions EUTM No18756425



and EUTM No 18 563 996 as examples of collective marks which reproduce PDOs which have been accepted by the EUIPO where the reference to the Consortium is placed in the background.

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The Applicant has furthermore provided the following information in response to the Chairperson and Rapporteur of the First Board's requests for clarification on the use of the application:

- 1) The applied sign may also be used by any producers who are not members of the Consorzio, provided that they are part of the certified production chain of the PDO 'SALVA CREMASCO'.
- 2) The plastic matrices used to reproduce the sign on the product (cheese) are owned by the Applicant and produced by a single entity authorised by the Consorzio. Upon clearance from the PDO "SALVA CREMASCO" certification body, the Consorzio orders the production and delivers the matrix to the new producer. The granting of the use of the matrix by the Applicant to all producers may be understood as a licence of the mark, including to non-member producers, who thus remain connected to the Consorzio.

The First Board of Appeal by Interim Decision of 7 July 2025 deemed it justified to refer the matter to the GBoA enabling common case law to be developed on the points of law raised in this case. This for the following reasons:

- The issue of whether a collective mark, identical to the logo in the product specifications of a geographical indication, is potentially misleading is sensitive and raises legal questions about the protection scope and functions of collective marks versus geographical indications.
- The Applicant confirmed that there is a theoretical possibility that the logo could be used by producers outside the Consortium, provided they belong to the certified PDO production network, raising questions about compatibility with EU rules on simultaneous protection by PDOs and collective marks.
- Case law on this matter is limited, especially since the latest revision of the EUTMR. The Office's Guidelines currently reject such registrations on grounds of misleading the public, but the EUTMR does not explicitly restrict collective mark ownership for such logos nor whether regulatory bodies like the Consortium can own them. Past decisions found cumulative protection of collective marks and PDOs possible when signs are similar

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(15/11/2023, R 1073/2022-5, GRANA PADANO (fig.), § 19), but it remains unresolved when the signs are identical.

- As argued by the Applicant, additional trade mark protection alongside the PDO/PGI may be needed to ensure effective protection, especially outside the EU where geographical indications lack recognition and protection.

For all the reasons set out above, the Board considers it justified to refer the case to the GBoA, which also aims to develop a common jurisprudence on the legal issues raised by the case.

ECTA notes that Regulation (EU) No 1151/2012 is applicable to this case *ratione temporis*; the new Regulation EU 2024/1143 contains provisions on the subject matter that are substantially the same. As such the matter is also of importance in relation to Regulation EU 2024/1143.

D. REASONS WHY ECTA IS SUBMITTING THIS BRIEF

The case presents the following issues, which are of high importance for the IP community and currently need clarification:

1. The possible combination of the protection conferred by a geographical indication and by a collective mark. More specifically, whether a logo identical to that contained in the product specification of a PDO can be registered as a collective mark and, if so, under which conditions.
2. The potentially misleading character of an application for a collective mark consisting of such a logo. Including, whether the inclusion of the logo in the product specification of the PDO has any influence on the consumers' perception of the logo itself.
3. The apparent conflict between the regulation of geographical indications, in the sense that they can be used by everyone meeting the corresponding specification, and that of collective marks, in the sense that they can only be used by the members of the holder association; and whether this is relevant at all for the assessment of absolute grounds for refusal.

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E. ECTA'S ANALYSIS

In the challenged decision, the Examiner notes the following:

- The sign at stake is identical to the logo contained in the product specification of the PDO 'SALVA CREMASCO'.
- According to the concerned product specification, use of that logo is mandatory for all operators wishing to use the PDO 'SALVA CREMASCO'¹.
- Collective marks are the property of the applicant association and may only be used by their members (cf. Article 74(1) EUTMR²).
- Conversely, PDOs may be used by any operator marketing a product conforming to the corresponding specification (cf. Article 12(1) of Regulation EU 1151/2012³).

In the light of these facts, the Examiner considers the collective mark to be misleading within the terms of Article. 76(2) EUTMR⁴ on the basis of the following assumptions:

- The misleading character referred to lies in the perception of the average consumer, who would perceive the sign as a PDO – which serves to provide a guarantee to consumers of the geographical origin of the goods and the particular qualities inherent in such goods – rather than a collective mark – intended to guarantee the collective commercial origin of the goods.
- Hence, confusion is created as to the collective character of the sign applied for. While the collective mark may be used

¹ Article 8: «su tutti gli incarti e/o su tutte le confezioni (ndr. del formaggio) è obbligatoria, in etichetta, la dicitura “SALVA CREMASCO” DOP, unitamente al logo della denominazione di forma quadrata che riporta al proprio interno le seguenti lettere così



disposte: 

² „A European Union collective mark ('EU collective mark') shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings”.

³ „Protected designations of origin and protected geographical indications may be used by any operator marketing a product conforming to the corresponding specification.”

⁴ „An application for an EU collective mark shall also be refused if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.”

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only by members of the applicant association to distinguish their products, being authorised to do so by the regulations governing use, the PDO, and the logo provided for by the product specification as mandatory for packaging, may be used by anyone who produces cheese in accordance with the specification for such cheese.

- In that sense, the collective mark at issue in this application misleads the public in that it gives the impression that it can be used by anyone who meets the production criteria laid down in the product specification for the PDO, when in reality it can only be used by authorised parties belonging to the association. If the regulations governing use permitted the use of the collective mark by those who were not members of the association, this would not be consistent with the nature of the collective mark.

1. A logo contained in the product specification of a PDO can be simultaneously registered as a collective mark.

As indicated in the interim decision of the First Board of Appeal, “[t]he issue of the potentially misleading character, within the meaning of Article 76(2) EUTMR, of an application for a collective mark, consisting of a figurative sign that is identical to the logo contained in the product specification of a geographical indication, is particularly sensitive; the examination of this issue is likely to raise further legal questions relating to the scope of protection and the specific functions of these different categories of rights” (§ 16).

In this respect, ECTA has the following observations.

The EUTMR contains no provision that prohibits the registration of a collective mark consisting of a figurative sign that identically reproduces the logo contained in the product specification of a geographical indication. On the contrary, Article 74 EUTMR provides for the possibility for associations of producers to apply for collective marks, and that the owner of a EU collective mark “*shall not entitle its proprietor to prohibit a third party from using in the course of trade such signs or indications, provided that he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark shall not be invoked against a third party who is entitled to use a geographical name*”. Consequently, the possibility of registering a collective mark corresponding to a geographical

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indication and, *a fortiori*, a logo contained in the product specification for a geographical indication, is implicitly recognised.

Such a possibility has been acknowledged in proceeding No. R 1073/2022-5, where the Board of Appeal has consented to the registration as a collective mark of a logo containing a geographical indication when this collective mark is owned by the entity responsible for the protection and promotion of the geographical indication.

ECTA is aware that the cited case does not refer to a figurative sign identical to the logo contained in the product specification of the geographical indication, which is the case here. Unlike the case at issue, the figurative sign examined in case R 1073/2022-5 had minimal differences with respect to the logo contained in the product specification of the GRANA PADANO geographical indication and even included the GRANA PADANO expression. What is, however, relevant for the general resolution of this issue is that, in the cited proceeding, the Board of Appeal, affirms: “[a]s a preliminary point, it is emphasised that the EUTMR does not lay down an express prohibition of the combination of the protections conferred by the collective mark and the geographical indication, even where the signs in question are similar or identical. Moreover, there are no judgments of the Court, known by this Board, that have denied [...] any overlap between the scope of protection of geographical indications and those trade marks” (§ 19).

Moreover, Article 45(1)(b) of EU Regulation 1151/2012⁵ provides the following: “[w]ithout prejudice to specific provisions on producer organisations and inter-branch organisations as laid down in Regulation (EC) No 1234/2007, a group is entitled to: (...) take action to ensure adequate legal protection of the protected designation of origin or protected geographical indication and of the intellectual property rights that are directly connected with them”. The wording of Article 45(1)(b) of EU Regulation 1151/2012 was reproduced without substantial amendments in Article 32(4) of EU Regulation 2024/1143.

In this respect, ECTA is of the opinion that by not allowing the possibility to register the official logo of a geographical indication as a collective mark, the Office is depriving the producers’ associations from engaging in the actions described in Article 45(1)(b) of EU

⁵ The regulation in force at the time of the filing of the application for the registration of the refused collective mark.

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Regulation 1151/2012, now reflected in Article 32(4) of EU Regulation 2024/1143. As a matter of fact, when the logo contained in the product specification of the geographical indication does not include any reference to the geographical indication, as it is the case at issue, the only available means of protection is through the registration of a collective mark, as the protection afforded to the geographical indication by the relevant regulations would not extend to its logo.

ECTA is of the opinion that geographical indications and collective marks are not opposed to each other, but should rather be used together as instruments for the efficient protection of the producers' interests. The collective mark complements the geographical indication and enables the effective enforcement of the official logo.

Therefore, for the resolution of these cases, the Office should take into account that, in principle, there is no bar to the registration of a collective mark consisting of a figurative sign which identically reproduces the logo contained in the product specification for a geographical indication.

2. Assessment of the possible misleading character and the relevance of the inclusion of the logo in the PDO specification.

The EUIPO deems that the misleading character referred to in Article 76(2) EUTMR exists any time the applied for collective mark is identical to the logo contained in the product specification of a geographical indication and regardless of who is the owner of the collective mark. Instead, ECTA believes that there is no such misleading character, and certainly not when the owner of the collective mark is the Consortium or the entity or association in charge of the promotion and protection of the logo connected with the geographical indication. The relevance of the ownership of the collective mark has already been recognised by the Board of Appeal case law in the cited proceeding No. R1073/2022-5, which states as follows: "[l]astly, the fact that the Applicant for the trade mark application in question is the officially appointed body responsible for protecting and promoting 'Grana Padano' cheese, although not in itself sufficient to rule out any deceptiveness of the sign in relation to the relevant public, undoubtedly contributes to that result, since it is for the consumer to further guarantee that the Applicant for the

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collective mark application in question is the person officially responsible for protecting the ‘Grana Padano’ cheese” (§ 28).

In the absence of a specific prohibition precluding registration as a trade mark of a logo contained in the product specification of a PDO, refusal may only be justified on the basis of the ordinary grounds for refusal set out in the EUTMR. In this regard, the Examiner considers that the applied trade mark is misleading within the terms of Article 76(2) EUTMR because it will be perceived as a PDO rather than as a collective mark. However, ECTA wonders if the Examiner would have reached the same conclusion if, instead of relying on circumstances that seem unrelated to how consumers perceive the sign, he had instead taken into account the consumers’ perception of the sign applied for, in connection with the designated goods.

While it is true that geographical indications and collective marks have different purposes (the first serves to provide a guarantee to consumers of the geographical origin of the goods and the particular qualities inherent in such goods, and the second serves to guarantee the collective commercial origin of the goods) and different requirements for use (the first may be used by anyone meeting the product specification, and the second may be used by the members of the holder association), ECTA considers this to be irrelevant for the consumers’ perception of the signs applied for as collective marks.

In this regard, as indicated by the Board of Appeal’s interim decision (§ 6):

“- The relevant public would see the sign in question merely as a logo used essentially to identify the product marketed under the PDO ‘SALVA CREMASCO’, originating from a given geographical area and having particular qualities attributable to it. The affixing of the logo is mandatory under Article 8 of the product specification, with the result that the logo will inevitably be used together with the name of the PDO ‘SALVA CREMASCO’. For this reason, the relevant public will connect the logo with the PDO ‘SALVA CREMASCO’.

– The misleading character referred to in Article 76(2) EUTMR therefore lies in the perception of the average consumer, who would perceive the sign as a geographical designation of origin rather than a collective mark intended to guarantee the collective commercial origin of the goods.”

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ECTA believes, however, that consumers will perceive the logo as a sign collectively identifying the goods that benefit from the geographical indication. Since, in this case, the goods are limited to those compliant with the PDO specification⁶, that impression does not appear to be misleading but accurate.

Admittedly, the finding of the Examiner in this case is in line with the current Guidelines of the Office, according to which *“if a collective mark consists of: (i) a GI or (ii) a logo contained in the GI product specification, the public is liable to be misled as regards the character or significance of the mark because these elements may be taken to be a geographical indication rather than a collective mark whose function is to indicate the membership of an association”*⁷. However, in ECTA’s opinion, the Guidelines of the Office may lead to inconsistencies, as they allow registration of these logos as collective marks on the sole condition that the name of the holder association or Consortium is added to the sign (even if only in the smallest possible characters). See in this regard some of the examples that were cited by the Applicant and analysed in the Examiner’s decision of 5 August 2024⁸:

EUTM nº 018756425



EUTM nº 018563996



⁶ Class 29: Cheese sauces; cheese-based snacks; cheese-based spreads; all the aforesaid goods based on ‘salva cremasco’ (GI) cheese; ‘salva cremasco’ (GI) cheese.

⁷ Part B Examination, Section 4 Absolute grounds for refusal, Chapter 15 European Union collective marks, 3.1 Misleading as to the character or meaning of the mark.

⁸ These logos are also identical to those contained in the respective product specification of the concerned PDO and PGI.

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In ECTA's opinion, the addition of the name of the holder association cannot dramatically change the consumers' perception. It cannot be reasonably maintained that, in one case, consumers will wrongly perceive the sign as a mere geographical indication, while in the other they will be able to recognise its true collective character. The perception by the relevant consumers of those two types of signs (one including the holder's name and the other without it) can only be virtually identical, particularly given how closely the expressions "Consorzio Tutela" or "Consejo Regulador" are associated with geographical indications by the Italian and the Spanish public.

In addition to the alleged deceptiveness as to the character of the sign, the Examiner points out that "(w)hile the collective mark may be used only by members of the Applicant association to distinguish their products, being authorised to do so by the regulations governing use, the PDO, and the logo provided for by the product specification as mandatory for packaging, may be used by anyone who produces cheese in accordance with the specification for such cheese". And, therefore, the Examiner concludes that "the collective mark at issue in this application misleads the public in that it gives the impression that it can be used by anyone who meets the production criteria laid down in the product specification for the PDO, when in reality it can only be used by authorised parties belonging to the association".

However, in ECTA's opinion, considering the perception of the average consumer, it is unrealistic to assume that a sign of this kind conveys a message about whether its use is available to anyone meeting certain technical specification or restricted solely to the members of an association. Consumers will neither understand nor care about those requirements of membership.

In conclusion, the sign  does not appear to convey a deceptive message regarding its character or its availability for use, and it certainly does not do so as a consequence of its inclusion in the product specification of the PDO 'SALVA CREMASCO'. In general terms, ECTA believes that the ground for refusal of Article 76(2) EUTMR does not accommodate the situation that the EUIPO is trying to prevent here: the apparent conflict that the PDO logo is to be used by all operators complying with the specification, while the collective mark is to be used only by members of an association.

Article 76(2) solely addresses cases where the public is liable to be misled as regards the character or significance of the mark, e.g. because they are likely to be perceived as an official conformity

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badge or as a certification provided by an independent party, unrelated to the proprietor⁹ and in ECTA's opinion this provision is not a vehicle to resolve normative frictions between regimes.

3. The apparent conflict between the regulation of geographical indications and that of collective marks.

It follows from the above that the rationale for rejecting registration of a logo as a collective mark, where that logo is identical to one contained in the product specification of a PDO, appears to lie in the apparent conflict between geographical indication legislation and trade mark legislation, particularly as regards the persons authorised to use the logo in question (any operator complying with the specification *vis-à-vis* members of the holder association).

In this regard, ECTA believes that the assessment of the EUIPO should be limited to verifying whether the signs applied for fall under any of the grounds for refusal set out in the EUTMR, without extending to any apparent conflict between different pieces of legislation. The alleged normative conflict does not constitute an absolute ground for refusal and is certainly not included in that of Article 76(2) EUTMR, which is based on the perception of the public (*if the public is liable to be misled as regards the character or the significance of the mark, in particular if it is likely to be taken to be something other than a collective mark*).

Consequently, the Examiner's considerations on this specific issue do not appear to be directly connected with the assessment of absolute grounds for refusal.

F. CONCLUSION

ECTA's views on the case referred to the GBoA are as follows:

- A logo contained in the product specification of a PDO can be simultaneously registered as a collective mark.

⁹ It may happen when the sign conveys a strong certification message, e.g., due to the inclusion of words such as "verified", "certified", etc.

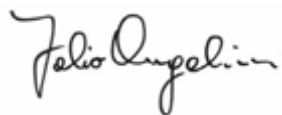
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- Such a collective mark does not necessarily mislead the consumers as to the character or the significance of the mark within the terms of Article 76(2) EUTMR.
- The alleged normative conflict concerning the availability of use of geographical indications, on the one hand, and collective marks, on the other, does not constitute an absolute ground for refusal and is certainly not encompassed within the scope of Article 76(2) EUTMR.

ECTA Amicus Curiae Task Force



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The extensive work carried out by the Association, following the above guidelines, combined with the high degree of professionalism and recognised technical capabilities of its members, has established ECTA at the highest level and has allowed the Association to achieve the status of a recognised expert spokesman on all questions related to the protection and use of trade marks, designs and domain names in and throughout the European Union, and for example, in the following areas:

- Harmonization of the national laws of the EU member countries;
- European Union Trade Mark Regulation and Directive;
- European Union Design Regulation and Directive;
- Organisation and practice of the EUIPO.

In addition to having close links with the European Commission and the European Union Intellectual Property Office (EUIPO), ECTA is recognised by WIPO as a Non-Government Organisation (NGO).

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