

Geographical Indications as Forensic Science Objects in the Field of Intellectual Property: Theoretical Aspects and Main Tasks

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This article purpose is to study the modern theoretical and legal foundations of forensic examinations related to various means of individualizing goods and services, in which one of the objects under study is geographical indications; to analyze the principles of legal protection of geographical indications in Ukraine and the peculiarities of regulating relations arising in connection with their registration, use, and protection; to form an indicative list of the main tasks of expertise related to geographical indications. For achieving the set goal, general scientific (analysis, synthesis, generalization, description, systematization, etc.) and special methods were used. It has been determined that conflicts over geographical indications may arise in relation to the following objects: registered and well-known trademarks, domain names, as well as indications that have not acquired legal protection, etc. The practice of resolving disputes over such designations has been analyzed, the definition of the subject of expertise related to geographical indications has been formulated, and a list of its main tasks has been outlined. The provisions proposed here form the basis for the formation of theoretical and methodological principles of expertise in the field of intellectual property and the improvement of methodological approaches to the performance of expert tasks.

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Keywords: *intellectual property; forensic science; expert; specific expertise; objects of intellectual property; geographical indications; name of origin place of goods; trademarks; topic of forensic examination; tasks of forensic examination.*

Research Problem Formulation

Active development of any type of forensic examination is impossible without a theoretical and methodological basis for its implementation. As O. Kliuiev and E. Simakova-Yefremian rightly point out, “leading components of the doctrine of forensic examination are its theoretical and methodological foundations (since it is on their basis that the foundations of any forensic research are determined, which ensures solution of a number of problems: organizing thesaurus of forensic science; defining new types of objects and, accordingly, new types of expert researches; identifying patterns and principles of development of forensic examination; identifying insufficiently studied aspects of methodological support for forensic activities; determining the prospects for the development of specific areas of forensic science including the entire science of forensic expertise in general) and the core (key provisions, patterns, and principles that reveal peculiarities of the structure of forensic science doctrine and characterize its specificity)”¹.

Forensic examination in the field of intellectual property in Ukraine has been carried out for more than 20 years. During this time the practice of performing certain expert tasks has been accumulated, as well as theoretical and methodological approaches to conducting research on

various intellectual property objects have been developed. Among the types of intellectual property objects to be studied are geographical indications, which (along with trademarks and commercial (brand) names) belong to the legal means of individualization of participants in civil circulation, their goods and services.

Conducting forensic examinations in the field of intellectual property requires knowledge of the specifics of providing legal protection to intellectual property objects, peculiarities of creating and using such objects, as well as knowledge of the methodology for establishing factual data and circumstances of the case. Quite often, within the same examination, the patterns of creation and use of various objects of intellectual property rights are investigated. This is especially true when a certain designation has dual protection: for example, it is registered both as a trademark and as a geographical indication.

In this aspect, one of the most important doctrinal components of forensic science in the field of intellectual property is the development of its theoretical and methodological foundations, which requires fulfillment of a number of specific tasks, in particular: conducting scientific research on theoretical and legal aspects and the practice of resolving disputes on the recognition or violation of rights to various objects of intellectual property; outlining insufficiently studied elements

1 Ключев О., Сімакова-Єфремян Е. Доктринальні підходи до судової експертизи в Україні. *Право України*. 2021. № 8. С. 30–31. DOI: 10.33498/iouu-2021-08-028 (date accessed: 12.08.2025).

of methodological support of forensic expert activity; identifying the main expert tasks and developing methodological approaches to their solution.

Analysis of Essential Researches and Publications

Currently, Ukraine has accumulated practical experience in applying special knowledge to consider cases of recognition and violation of rights to various means of individualization of participants in civil circulation, goods and services. Given the number of orders of examinations related to trademarks, it is quite clear that theoretical scientists and practical experts paid close attention to these objects, in particular, in order to develop the most advanced methodological approaches to the performance of expert tasks.

Methodological approaches to conducting forensic examinations related

to various means of individualization of goods and services are covered in the following developments: “Methods of conducting expert studies related to means of individualization”²; “Methods of researching trademarks (marks for goods and services)”³. Lists of recommended scientific, technical and reference literature used during forensic examinations⁴ contain methodological recommendations and reference literature that outline certain theoretical and methodological aspects of conducting examinations in the field of intellectual property, such as: “Methods of forensic expert research of indications of origin of goods”⁵; “Methodological recommendations for conducting expert studies in cases related to unfair competition”⁶; “Methods of forensic examination of marks for goods and services (trademarks)”⁷, “Methodology of forensic examination of commercial (brand) names”⁸.

- 2 Ковальова Н. М., Голюкова О. В. та ін. Методика проведення експертних досліджень, пов'язаних із засобами індивідуалізації / за ред. В. Л. Федоренка. Київ, 2017. 56 с. Зареєстр. в Мін'юсті України 23.03.2018 р. Реєстр. код 13.6.01 / Реєстр методик проведення судових експертиз : вебсайт. URL: <https://rmpse.minjust.gov.ua/page/24> (date accessed: 12.08.2025).
- 3 Методика дослідження торговельних марок (знаків для товарів та послуг) / В. Л. Федоренко (відповід. викон.) та ін. Київ, 2023. 179 с. Зареєстр. в Мін'юсті України 28.04.2023 р. Реєстр. код 13.6.02 / Там само.
- 4 Про затвердження переліків рекомендованої науково-технічної та довідкової літератури, що використовується під час проведення судових експертиз : наказ Мін'юсту України від 08.05.2018 р. № 1467/5 (зі змін. та допов.). URL: <https://ips.ligazakon.net/document/MUS30115> (date accessed: 12.08.2025).
- 5 Методика судово-експертного дослідження зазначень походження товарів : звіт про НДР / кер. Г. В. Прохоров-Лукін ; викон.: А. В. Андреева, Л. О. Величко, Н. Б. Климова та ін. № ДР 0111U000411. Київ, 2011. 114 с.
- 6 Методичні рекомендації проведення експертних досліджень у справах, пов'язаних із недобросовісною конкуренцією : звіт про НДР (заключ.) / кер. Ю. Г. Охромеев. № 0111U000197. Київ, 2012. 84 с.
- 7 Методика судово-експертного дослідження знаків для товарів і послуг (торговельних марок) : звіт про НДР (заключ.) / кер. Г. В. Прохоров-Лукін ; викон.: А. В. Андреева та ін. № 0108U005823. Київ, 2009. 400 с.
- 8 Методика судової експертизи комерційних (фірмових) найменувань : звіт про НДР (заключ.) / кер. Г. В. Прохоров-Лукін ; викон.: А. В. Андреева та ін. № 0110U002834. Київ, 2011. 78 с.

The main concepts of expertise related to the study of commercial (brand) names, trademarks (marks for goods and services), geographical indications, and methodological approaches to solving certain expert tasks are covered in the works of P. Krainev⁹, O. Doroshenko¹⁰, H. Prokhorov-Lukin¹¹, V. Fedorenko¹², K. Sopova¹³, N. Kovalova¹⁴, T. Chabanets¹⁵, etc. However, the formation of scientifically grounded theoretical and methodological foundations of expertise in the field of intellectual property related to geographical indications remains relevant to this day.

Article Purpose

In order to analyze the principles of legal protection of geographical indications in Ukraine; peculiarities of regulation of relations arising in connection with their registration, use and protection; to study

the practice of appointing and conducting forensic examinations of these objects; to form an indicative list of the main tasks of the examination related to geographical indications, which will further become the basis for improving methodological approaches to the implementation of expert tasks.

Research Methods

For achieving this goal, general scientific (analysis, synthesis, generalization, description, systematization, etc.) and special methods were used.

Main Content Presentation

When considering litigation on the recognition or violation of rights to various means of individualization of goods and services, it may be necessary to apply

- 9 Крайнев П. П., Ковальова Н. М., Мельников М. В. Судові експертизи у сфері інтелектуальної власності / за ред. П. П. Крайнева. Вінниця, 2008. 376 с.
- 10 Дорошенко О. Ф. Судова експертиза як засіб доказування при розгляді цивільних справ щодо порушення прав на об'єкти інтелектуальної власності : автореф. дис. ... канд. юрид. наук. Київ, 2007. 23 с. URL: <https://uacademic.info/en/document/0407U002274> (date accessed: 12.08.2025).
- 11 Методологічні основи судової експертизи об'єктів інтелектуальної власності : звіт про НДР (заключ.) / кер. Г. В. Прохоров-Лукін ; викон.: А. В. Андреева та ін. № ДР 0104U003403. Київ, 2006. 290 с.
- 12 Федоренко В. Л., Коваленко В. В., Ковальова Н. М. Торговельні марки, як об'єкт судової експертизи з питань інтелектуальної власності: походження та методичне забезпечення. *Експерт: парадигми юридичних наук і державного управління*. 2022. № 1 (19). С. 15–29. DOI: 10.32689/2617-9660-2022-1(19)-15-29 (date accessed: 12.08.2025).
- 13 Сопова К. А. Предмет і засоби доказування у справах щодо прав на торговельну марку : дис. ... канд. юрид. наук. Київ, 2018. 235 с.
- 14 Адлер О. Г., Тимошик Л. П., Ковальова Н. М., Голікова О. В., Чабанець Т. М. та ін. Судова експертиза об'єктів права інтелектуальної власності в Україні : наук.-метод. вид. / за ред. проф. В. Л. Федоренка. Вид. 2-ге, розшир. і допов. Київ, 2022. 196 с. ; Федоренко В. Л., Скрипнюк О. В., Фоя О. А., Чабанець Т. М. Питання ідентифікації позначень, що використовуються для індивідуалізації товарів, послуг та учасників цивільного обороту, та які є об'єктами порівняння при проведенні експертного дослідження торговельних марок. *Експерт: парадигми юридичних наук і державного управління*. 2021. № 5 (17). С. 67–95. DOI: 10.32689/2617-9660-2021-5(17)-67-95 (date accessed: 12.08.2025).
- 15 Федоренко В. Л., Скрипнюк О. В., Фоя О. А., Чабанець Т. М. Зазнач. твір. DOI: 10.32689/2617-9660-2021-5(17)-67-95 (date accessed: 12.08.2025).

special knowledge to clarify the facts related to direct or indirect use of registered geographical indications or their imitation. The establishment of such facts belongs to the tasks of examination in the field of intellectual property in the specialty 13.6 “Research related to commercial (brand) names, trademarks (marks for goods and services), geographical indications”.

Until 01.01.2020, in the Law of Ukraine: *On Legal Protection of Geographical Indications* (Art. 1) ¹⁶ the *indication of origin of goods term* was interpreted as covering (combining) the following terms:

- simple indication of origin of the goods;
- qualified indication of origin of the goods ¹⁷.

A simple indication of the origin of goods is any verbal or pictorial (graphic) designation that directly or indirectly indicates the geographical place of origin of the goods. For example, the name of a geographical location used to indicate the origin of goods (*Made in China, Made in Kyiv*, e.g.) is a simple indication of the origin of goods. Some graphic images also evoke associations with a specific geographical location (indicating the place of origin of the goods): the image of the Golden Gate is associated with Kyiv, the Eiffel Tower with Paris, the pyramids with Egypt, etc. Simple indications of the origin of goods are not subject to state registration and are not protected by intellectual property rights, although they may be included in trademarks as separate elements. The main re-

quirement for their use is that they must not mislead consumers as to actual origin of the goods.

Intellectual property rights are protected by qualified indications of origin of goods (hereinafter referred to as the QIOG), among which the geographical indication and the name of the place of origin of the goods are distinguished.

According to the current version of Art. 1 of Law of Ukraine: *On Legal Protection of Geographical Indications*, the above terms should be used today in the following meaning:

“3) **geographical indication** is the name of a place that identifies a product that originates from a certain geographical place and has a special quality, reputation or other characteristics due mainly to this geographical place of origin, and at least one of the stages of production of which (production (extraction) and/or processing, and/or preparation) is carried out in a certain geographical territory”;

“9) **name of the place of origin of goods** is a type of geographical indication, which means a name that identifies a product that originates from a certain geographical place and which has special qualities or properties solely or mainly due to a specific geographical environment with its inherent natural and human factors, and all stages of production (production (extraction) and/or processing, and/or preparation) are carried out in a certain geographical territory” ¹⁸.

According to Part 1 of Article 6 of this Law: “legal protection of a geographical indication is granted on the basis of their registration in accordance with the procedure

16 Про правову охорону географічних зазначень : Закон України від 16.06.1999 р. № 752-XIV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

17 Там само : станом на 31.12.2019 р. URL: <https://zakon.rada.gov.ua/laws/show/752-14/ed20121205#Text> (date accessed: 12.08.2025).

18 Про правову охорону URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

established by this Law or in accordance with international treaties of Ukraine"¹⁹.

In Ukraine, legal protection extends to geographical indications registered under the national procedure; geographical indications of the European Union, which Ukraine protects in accordance with the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (hereinafter referred to as the *Association Agreement*)²⁰; and geographical indications, which Ukraine protects in accordance with the Agreement between Ukraine and Georgia²¹.

Provisions of Chapter 9 "Intellectual Property" of Sect. IV "Trade and Trade Related Matters" of the Association Agreement²² in Ukraine shall apply from 01.01.2016. Ukraine has undertaken to protect geographical indications for wines, flavored wines and spirits of the EU specified in Annex XXII-D to this Agreement, in accordance with the level of protection stipulated in Subsection 3 "Geographical Indications" of this Agreement. For example, the EU agricultural products and food products that Ukraine should

protect include French *Roquefort* cheese, Italian *Prosciutto di Carpegna* ham, *Gorgonzola* cheeses, *Parmigiano Reggiano*, Spanish *Jamón de Teruel* ham, etc.

According to the Ukrainian National Office of Intellectual Property and Innovation, the Register of Geographical Indications has 3133 registered objects²³. According to the national procedure, only 38 objects were registered, among which 29 are exclusively Ukrainian (for example, «Миргородська», «Поляна Квасова», «Трускавецька», «Таврія», «Кролевецькі Рушники», «Гуцульська овеча бриндзя», «Петриківський розпис», «Херсонський кавун», «Мелітопольська черешня» etc.).

During the examination, it is taken into account that legal protection is provided to a qualified indication of the origin of the goods, which indicates a specific geographical place from which this product originates, meets the conditions for granting legal protection under Art. 7 of the Law: On Legal Protection of Geographical Indications and which is not subject to the grounds for refusal to provide legal protection stipulated by Art. 8 of this Law²⁴.

19 Про правову охорону URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

20 Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : ратифік. із заяв. Закон. України від 16.09.2014 р. № 1678-VII (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/984_011#Text (date accessed: 12.08.2025).

21 Угода між Україною та Грузією про взаємну правову охорону географічних зазначень для вин, спиртних напоїв та мінеральних вод : затв. Указ. Президента України від 13.09.2007 р. № 866/2007 [Чинна для України від 07.11.2007]. URL: https://zakon.rada.gov.ua/laws/show/268_078#Text (date accessed: 12.08.2025).

22 Угода про асоціацію URL: https://zakon.rada.gov.ua/laws/show/984_011#Text (date accessed: 12.08.2025).

23 Реєстр географічних зазначень / IP Office. Український національний офіс інтелектуальної власності та інновацій (УКРПНОВІ) : вебсайт. URL: <https://nipo.gov.ua/reiestr-heohrafichnykh-zaznachenn/> (date accessed: 12.08.2025).

24 Про правову охорону URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

Here are some examples of geographical indications that have acquired legal protection on the territory of Ukraine: «Кролевецькі Рушники», «Петриківський розпис», «Поляна Квасова», «*Chacha*». As a registered name of the product origin are «Гуцульська овеча бриндзя», «Херсонський кавун», «Таврія», «Миргородська», «Трускавецька», «*Borjomi*», «*Prosecco*», «*Фѐта*», «Мелітопольська черешня», etc.

When forming the theoretical foundations of examinations related to various means of individualization of goods and services, and developing methodological approaches to the performance of expert tasks, it is necessary to take into account the main provisions of the legal protection of geographical indications in Ukraine and the peculiarities of regulating relations arising in connection with their registration, use and protection. Let us consider the provisions of Law of Ukraine: On Legal Protection of Geographical Indications.

According to Part 2 of Article 6, “the scope of legal protection of a geographical indication is determined by the characteristics of the goods and the boundaries of the geographical place of origin specified in the Register”²⁵.

Part 2 of Article 17 provides:

“Registration of a geographical indication entitles the persons specified in Article 9 of this Law to:

- a) use a geographical indication;
- b) take measures to prohibit the use of a geographical indication by persons who are not entitled to do so;
- c) carry out activities to ensure the conformity of the goods for which the geo-

graphical indication is registered, the specification of the goods agreed by the specially authorized body, or the document specified in part six of Article 10 of this Law;

- d) disseminate information and carry out other activities aimed at informing consumers about the special qualities of the product for which the geographical indication is registered;
- e) other rights defined by the legislation on the legal protection of geographical indications”²⁶.

The use of a registered geographical indication (under Part 3 of Article 17 of the Law) is recognized as: applying it to the goods or on the label; applying it to the packaging of the goods, use in advertising; recording on forms, invoices and other documents accompanying the goods²⁷.

Part 4 of Article 17 states, in particular:

“A registered geographical indication shall be protected from such actions, unless otherwise provided by this Law:

- a) any direct or indirect commercial use of a registered geographical indication for a product that is not covered by the registration of a geographical indication and is similar to the product for which the geographical indication is registered, or if such use leads to abuse of the reputation of a geographical indication, including if such product is used as part of another product;
- b) any misuse or imitation or other embodiment of a registered geographical indication, even if the true place of origin of the goods is indicated or if the registered indication is translated, transcribed or transliterated or accompanied by the words: **style, type,**

25 Про правову охорону ... URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

26 Там само.

27 Там само.

method, produced in, imitation, taste, similar, etc., including if such goods are used as part of another product;

- c) *any other false or misleading information regarding the source of origin, essence or essential qualities of the goods, the use of a geographical indication on the inner or outer packaging, promotional materials or documents relating to the relevant goods, as well as packaging of the goods in containers, which may cause misconception about its origin;*
- d) *any other use which may mislead the consumer as to the true origin of the goods”²⁸.*

According to Art. 25, the courts resolve disputes, in particular, on the legality of the registration of a geographical indication; establishing the fact of use of a geographical indication; violation of rights arising from the registration of a geographical indication; compensation²⁹.

When forming an evidence base on the presence of direct or indirect use of a registered geographical indication, imitation or other embodiment of a registered geographical indication, the possibility of misleading the consumer about the real origin of the goods, etc., it may be necessary for experts to use specific expertise to clarify certain facts and circumstances.

In order to highlight and systematize the main theoretical principles of expertise related to geographical indications as objects of intellectual property, an analysis of court practice in civil and commercial cases was carried out with the involvement of experts who have specific

expertise to establish facts and circumstances regarding the means of individualization of goods and services (trademarks; geographical indications; designations that have not acquired legal protection, etc., since disputes concerning them are quite common). In particular, forensic expert can be tasked with determining whether trademarks or designations that have not acquired legal protection are so similar to geographical indications that they could be confused with them, or whether they mislead consumers as to the source, nature, or essential qualities of the goods.

Let us consider the practice of resolving disputes concerning violations of rights to geographical indications and invalidating protection documents for trademarks (trademarks).

During the consideration of civil case No. 757/57422/20-ц, the plaintiffs (in substantiation of the existence of grounds for invalidation of the certificate of Ukraine No. 263030 dated on August 12, 2019 for the mark for goods and services *Vina Saint Million*) submitted an expert opinion drawn up at their request based on the results of the commission examination of intellectual property objects³⁰. The basis for invalidation of the above certificate, according to the plaintiffs, was, in particular, the similarity of the registered mark with the qualified indication of the origin of *Saint-Emilion* goods, entered in the State Register of Ukraine of Names of Places of Origin of Goods and Rights to Use Registered QIOG (registration number: 1505 dated on 01.01.2016, country of registration: France).

28 Про правову охорону URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

29 Там само.

30 Рішення Печер. райсуду м. Києва від 02.11.2021 р. Справа № 757/57422/20-ц / ЄРДР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/102153554> (date accessed: 12.08.2025).

According to the results of the research, the experts found that the mark for goods and services *Vina Saint Million*:

- is so similar that it can be confused with a qualified indication of the origin of goods (geographical indication) *Saint-Emilion* (in terms of goods of the 33rd class of the International Classification of Goods and Services (hereinafter referred to as the NCL) — in particular: wines; alcoholic beverages, except beer; alcoholic beverages containing fruits, etc.);
- is misleading about certain goods of the 33rd class of the NCL (in particular, anise tincture (liqueur); anise liqueur; brandy; vermouth, whiskey, vodka; cherry vodka; gin; rum; sake; sambuca; sangria; cider, etc.);
- is such that it can mislead the consumer about the product or the person who produces the product, due to the fact that it generates associations in the consumer's mind related to a certain quality, geographical origin of the goods — the geographical indication of *Saint-Emilion*, which is actually not true for certain goods of the 33rd class of the ICGs (in particular, wines; alcoholic beverages, except beer; alcoholic beverages containing fruits, etc.).

The court assessed the conclusion submitted by the plaintiffs in conjunction with the rest of the evidence in the case and did not find any circumstances that would give grounds to argue that the conclusion was unfounded, incorrect or inconsistent with other materials of the case. In such circumstances, the court found the conclusion to be appropriate and admissible evidence in the case, and the certificate

for the mark for goods and services *Vina Saint Million* invalid in its entirety.

In civil case No. 757/44025/21-П³¹ on invalidation of the certificate of Ukraine for the mark for goods and services, *Montelly* needed to resolve the issue of the use of a designation presumably similar to the *Monthelie* geographical indication, or one that could generate associations in the minds of the consumer related to a certain quality, geographical origin of goods, which is actually untrue, as a result of which it could mislead the consumer about the product or the person producing the goods.

The claims are motivated by the fact that the Montelly mark under certificate No. 288452, registered for goods of the 33rd class of the ICGs (alcoholic beverages, except beer; alcoholic beverages containing fruits; wines, etc.), is so similar that it can be confused with the qualified indication of the origin of goods (geographical indication) of *Monthelie*, which is entered in the State Register of Names of Places of Origin of Goods and Rights to Use Registered Qualified Indications of Origin of Goods (registration number of QIOG: 1444 dated on 01.01.2016). The *Monthelie designation* is registered in the EU as a protected indication of the origin of the goods (country of registration: France).

In support of the claims before the commencement of the consideration of the case on the merits, the plaintiff's representative provided an expert opinion based on the results of the commission examination of intellectual property objects, drawn up at the request of the case party.

The experts found out, in particular, that the Montelly mark:

- is so similar that it can be confused with the *Monthelie* geographical indication in the goods of the 33rd

31 Рішення Печер. райсуду м. Києва від 08.08.2022 р. Справа № 757/44025/21-П / ЄРДР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/106563899> (date accessed: 12.08.2025).

class of the ICGs (wines; sparkling wines; pickets (wine from grape squeezes); alcoholic beverages, except beer; alcoholic beverages containing fruits);

- can mislead the consumer about the product or the person who produces the product, due to the fact that it generates associations in the consumer's mind related to a certain quality, geographical origin of the goods, the *Monthelie* geographical indication, which is actually untrue and can mislead consumers about the true origin of the goods under the *Montelly* designation for goods of the 33rd class of the ICGs (wines; sparkling wines; pickets (wine from grape squeezes); alcoholic beverages, except beer; alcoholic beverages containing fruits”).

Court found no circumstances that would give grounds to assert the groundlessness, incorrectness of the conclusion or its contradiction with other materials of the case, and recognized the conclusion as appropriate and admissible evidence in the case. The claim was satisfied, the *Montelly* certificate was declared invalid in its entirety³².

The foregoing indicates that during the consideration of disputes on the invalidation of trademark certificates, the courts see grounds for the appointment of forensic examinations or the involvement of experts by the parties to the case to determine the following facts:

- similarity of certain designations so that they can be confused with geographical indications (name of the place of origin of the goods);

- misleading the consumer about the goods or the person who produces the goods, due to the fact that such a designation generates associations in the consumer's mind related to a certain quality, geographical origin of goods: geographical indication.

An analysis of judicial practice has shown that disputable situations can arise in the case of granting double legal protection to various means of individualization. In particular, this applies when a certain designation is registered as a geographical indication, as well as when it is used in a trademark or in a designation that has not acquired legal protection. Labels of certain goods can also be protected both as trademarks and as industrial designs. Thereby in order to clarify the facts and circumstances of the case, it may be necessary to conduct comprehensive examinations.

Consider the peculiarities of consideration of the dispute on the claim of «Аква-Еко» LLC and «Фірма Т. С. Б.» LLC against «Водолій С. П.» LLC on the recognition of the «Трускавецька» trademark as well-known and the prohibition of the use of the «Трускавецька» trademark³³.

The claim is motivated by the fact that for the first time the designation «Трускавецька» of «Фірма Т. С. Б.» was registered in 1997 for goods of the 32nd class of the ICGs, which is confirmed by the certificate of Ukraine for the mark for goods and services. Since 1999, «Фірма Т. С. Б.» CJSC and «Аква-Еко» LLC have jointly owned the rights to the «Трускавецька» trademark under the certificate of Ukraine No. 8872. According

32 Рішення Печер. райсуду м. Києва від 08.08.2022 р. ... URL: <https://reyestr.court.gov.ua/Review/106563899> (date accessed: 12.08.2025).

33 Рішення госп. суду м. Києва від 28.09.2023 р. Справа № 910/4085/23 / ЄДР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/114113615> (дата звернення: 12.08.2025).

to the plaintiffs, due to the active promotion and expansion of the sales network, «Трускавецька» trademark became well known (for goods of the 32nd class of the NCL: waters [drinks]; mineral waters [drinks]; table waters; carbonated waters). In 2021, in the retail chain «Велмарт», the plaintiffs found a drink labeled as «Трускавецька класична» produced by «Водолій С. П.» LLC³⁴.

The case files include information that the plaintiffs, in addition to the above trademark, own a series of trademarks according to several certificates of Ukraine (No. 34367, 34366, 56547, 59642, 56503, 23291, 23354), in which the dominant and recognizable element is the verbal element «Трускавецька». The designation «Трускавецька» is registered as a qualified indication of the origin of goods (name of the place of origin of the goods) for mineral natural water in relation to «Аква-Еко» LLC (certificate dated 11.05.2010 No. 11/01) and «Фірма Т. С. Б.». CJSC (certificate dated on 11.06.2018 No. 11/02)³⁵.

During consideration of this case, the plaintiffs and defendants provided the court with several expert opinions drawn up at their request (some of them the court did not take into account, motivating its decisions).

Let us consider some of the questions that the respondent asked the experts to resolve:

- *“Is the designation «Трускавецька» that is part of the trademark under the certificate of Ukraine No. 8872, and which is recognized as well known in Ukraine as of 01.01.2008 for goods of class 32 of the NCL “waters [drinks]; mineral waters [drinks]; table waters;*

carbonated waters”, such that it is descriptive when used in relation to these goods 32 or in connection with them, in particular, indicates the geographical origin, place of manufacture of goods?”;

- *“Is the designation «Трускавецька класична» used on the labels of drinking water produced by «Водолій С. П.» LLC so similar that it can be confused with the trademark «Трускавецька» under Ukrainian certificate No. 8872, which is recognized as well known in Ukraine as of January 1, 2008, for goods in class 32 of the International Classification of Goods and Services (NCL) “waters [beverages]; mineral waters [beverages]; table waters; carbonated waters”?”³⁶.*

In his objections, the defendant noted that the designation «Трускавецька» has a weak distinctive ability today, since it does not perform the main distinctive function, that is, it does not distinguish the goods of one manufacturer from the goods of another. The court found the above statement to be an unfounded assumption refuted by the evidence submitted by the plaintiffs (in particular, the expert's conclusion based on the results of the examination of intellectual property objects) and noted that the designation «Трускавецька» has a distinctive ability in relation to the plaintiffs, which it acquired as of 01.01.2008 that is confirmed by the evidence available in the case.

The defendant also referred to the fact that the name «Трускавецька» is a commonly used designation used for certain goods (mineral and drinking water). The court found this statement unfounded,

34 Рішення господар. суду м. Києва ... URL: <https://reyestr.court.gov.ua/Review/114113615> (date accessed: 12.08.2025).

35 Там само.

36 Там само.

since “legal protection of a geographical indication is granted on the basis of their registration in accordance with the procedure established by this Law or in accordance with international treaties of Ukraine” (paragraph 1 of Part 1 of Article 6 of the Law of Ukraine: On Legal Protection of Geographical Indications) ³⁷.

Based on the provisions of the Law: On the Legal Protection of Geographical Indications, the ³⁸ court noted that any geographical indication should be registered by the proper person, that is, entered in the Register of Geographical Indications ³⁹. According to this Register, «Трускавецька» is a registered qualified indication of the origin of goods (name of the place of origin of goods) for mineral natural water ⁴⁰.

According to the decision of the court of first instance, the «Трускавецька» trademark was recognized as well known in Ukraine as of 01.01.2008 for the relevant goods of the 32nd class of the NCL in relation to «Аква-Еко» LLC and «Фірма Т. С. Б.» LLC, and «Водолій С. П.». LLC is prohibited from using the «Трускавецька» trademark in any way (in particular, by using the «Трускавецька класична» designation and other designations similar to the «Трускавецька» trademark so that they can be confused with mineral waters, table waters, drinking water and other goods related to goods

for which the «Трускавецька» trademark is recognized as well known) ⁴¹.

The defendant appealed to the Northern Commercial Court of Appeal, in which he asked to cancel the decision of the court of first instance ⁴² and adopt a new one, which refused to satisfy the plaintiffs' claims.

The panel of judges of the Northern Commercial Court of Appeal disagreed with the decision of the court of first instance and ruled that the local commercial court had incorrectly applied the substantive law and erroneously decided to satisfy the claim in part regarding the recognition of the «Трускавецька» trademark «Трускавецька» as well known in Ukraine as of January 1, 2008, for goods in class 32 of the International Classification of Goods and Services. The court ruling states that since “the protection of rights by prohibiting the Company from using the trademark «Трускавецька»,“ the obligation to cease production, storage for the purpose of offering for sale, including on the Internet, and the sale of drinking water processed with a mark similar to the «Трускавецька» trademark” is possible only as a consequence of and after the satisfaction of the claim for recognition of the trademark as well-known, it is necessary, accordingly, to refuse to satisfy the claim in this part” ⁴³.

The panel of judges referred, in particular, to paragraph 12 of Article 16(6) of

37 Про правову охорону URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text> (date accessed: 12.08.2025).

38 Там само.

39 Реєстр географічних зазначень URL: <https://nipo.gov.ua/reiestr-heohrafichnykh-zaznachen/> (date accessed: 12.08.2025).

40 Там само ; Рішення госп. суду м. Києва URL: <https://reyestr.court.gov.ua/Review/114113615> (date accessed: 12.08.2025).

41 Рішення госп. суду м. Києва URL: <https://reyestr.court.gov.ua/Review/114113615> (дата зверне: 12.08.2025).

42 Там само.

43 Постанова Півн. апеляц. госп. суду від 16.01.2024 р. Справа № 910/4085/23 / ЄРДР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/117171013> (date accessed: 12.08.2025).

the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services,” according to which “the exclusive right of the owner of a trademark certificate containing a geographical indication to prohibit others from using the registered trademark without his consent does not apply to the bona fide use of the relevant geographical name by other persons”⁴⁴. The case files showed that the disputed designation «Трускавецька класична» contains a geographical indication, while the trademark designation «Трускавецька» contains one element that is a geographical indication. Therefore, the plaintiffs do not have the right to prohibit the defendant from using this trademark without their consent, since the case materials do not contain any evidence of unfair use of such a designation (geographical name), given the location of the production facilities of «Водолій С. П.» LLC in the city of Truskavets, Lviv region, and the labeling of goods belonging to class 32 of the International Classification of Goods and Services (water (beverages); mineral waters (beverages); table waters; carbonated waters)⁴⁵.

Under these circumstances, the panel of judges concluded that there were no

grounds for satisfying the claims and overturned the decision of the court of first instance⁴⁶ and refused to satisfy the claim⁴⁷.

Ultimately, the Supreme Court, composed of a panel of judges of the Cassation Economic Court, declared invalid the decisions and resolutions of the courts of first and second instance in relation to the claim to recognize the «Трускавецька» trademark as well-known in Ukraine as of 01.01.2008 in the name of the enterprise with foreign investments, «Аква-Еко» LLC and «Фірма Т. С. Б.» LLC «Фірма Т. С. Б.» and referred the case in this regard to the Economic Court of Kyiv for a new hearing⁴⁸.

Before the case was heard on its merits, the plaintiffs filed a motion to dismiss the claim on the basis of paragraph 5 of Part 1 of Article 226 of Commercial and Procedural Code of Ukraine⁴⁹, which the court granted, and the claims of «Аква-Еко» LLC and Т. С. Б. «Фірма Т. С. Б.»⁵⁰.

Therefore, analysis of literary sources and judicial practice has shown that the consideration of disputes related to the violation of rights to geographical indications, the invalidation and termination of legal protection of geographical indications, the invalidation of trademarks due to

44 Про охорону прав на знаки для товарів і послуг : Закон України від 15.12.1993 р. № 3689-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/3689-12#Text> (date accessed: 12.08.2025) ; Постанова Півн. апеляц. господ. суду ... URL: <https://reyestr.court.gov.ua/Review/117171013> (date accessed: 12.08.2025).

45 Постанова Півн. апеляц. господ. суду ... URL: <https://reyestr.court.gov.ua/Review/117171013> (date accessed: 12.08.2025).

46 Рішення господ. суду м. Києва ... URL: <https://reyestr.court.gov.ua/Review/114113615> (date accessed: 12.08.2025).

47 Постанова Півн. апеляц. господ. суду ... URL: <https://reyestr.court.gov.ua/Review/117171013> (date accessed: 12.08.2025).

48 Постанова Верхов. Суду від 16.07.2024 р. Справа № 910/4085/23 / ЄРДР : вебсайт. URL: <https://reyestr.court.gov.ua/Review/120485335> (date accessed: 12.08.2025).

49 Господарський процесуальний кодекс України від 06.11.1991 р. № 1798-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1798-12#Text> (date accessed: 12.08.2025).

50 Ухвала господ. суду м. Києва від 20.11.2024 р. Справа № 910/4085/23 / Там само. URL: <https://reyestr.court.gov.ua/Review/123155147> (date accessed: 12.08.2025).

misleading information about the special quality, characteristics, and true origin of goods, as well as the use of the reputation of a geographical indication, may require specific expertise application, namely: appointment of forensic examinations.

During examinations related to geographical indications, various objects of intellectual property may be subject to investigation, between which conflicts arise (for example, between a qualified indication of the origin of goods (geographical indication or name of the place of origin of goods) and a registered trademark; a well-known trademark; a commercial (brand) name; designation that has not acquired legal protection; a domain name).

In order to establish the theoretical foundations of intellectual property expertise, we believe that it is essential to formulate a fundamental concept, the definition of the subject matter of the relevant type of forensic examination.

The formulation of the subject of forensic examination in the field of intellectual property (in particular, related to various means of individualization of goods and services) has been repeatedly proposed in scientific and educational and methodological papers.

In particular, at one time we noted that *“the subject of forensic examination in the field of intellectual property is the factual data and circumstances of the case on the properties, features, patterns of creation and use of intellectual property objects, their val-*

*ue, damages caused and economic transactions with respect to these objects, which are important for pre-trial investigation or judicial proceedings and are established by applying specialized knowledge in the manner prescribed by law”*⁵¹.

In the textbook: *Forensic Science Fundamentals* (2016), the subject of forensic expertise in the expert specialty 13.6 “Research related to commercial (brand) names, trademarks (signs for goods and services), geographical indications” is formulated as follows: *“Subject of this type of forensic expertise is the factual data and circumstances of the case on the properties, features, patterns of creation, functioning and use of marks for goods and services, commercial (brand) names, geographical indications and other designations that have not acquired legal protection, which are established by applying specific expertise in the manner prescribed by law”*⁵².

In the educational and methodological publication: *Forensic Examination of Intellectual Property Rights in Ukraine* (2019), which was published after the adoption of the Law “On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Code of Administrative Proceedings of Ukraine and Other Legislative Acts”⁵³, the subject of this type of forensic expertise is set out in the following wording: *“The subject of this type of forensic expertise is the factual data and circumstances of the case on the properties, features, regularities*

51 Кісіль Н. В. Сутність і зміст судово-експертної діяльності у сфері інтелектуальної власності. *Теорія та практика судової експертизи і криміналістики*. 2015. Вип. 15. С. 347. URL: http://nbuv.gov.ua/UJRN/Tpsek_2015_15_47 (date accessed: 12.08.2025).

52 Головченко Л. М., Лозовий А. І., Сімакова-Єфремян Е. Б. та ін. *Основи судової експертизи: навчальний посібник для фахівців, які мають намір отримати або підтвердити кваліфікацію судового експерта*. Харків, 2016. С. 430–431.

53 Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів : Закон України від 03.10.2017 р. № 2147-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2147%D0%B0-19#n2> (date accessed: 12.08.2025).

of the creation, functioning and use of marks for goods and services, commercial (brand) names, geographical indications and other designations that have not acquired legal protection, which are established by applying special knowledge, with the aim of providing an opinion on issues that are or will be the subject of judicial consideration”⁵⁴.

Meanwhile, if we consider the topic of forensic specifically of qualified indications of origin of goods, we consider it appropriate to generalize the above definitions and propose the following interpretation: *“The topic of forensic examination related to geographical indications is the factual data and circumstances of the case on the features of the direct or indirect use of registered geographical indications or their other embodiment; special properties, certain qualities, characteristics and geographical origin of the goods on which this qualified indication of origin of goods is used, which are clarified through the application of special knowledge, in order to provide an opinion on the issues that are or will be the subject of judicial consideration”.*

The performed research provided the basis for identifying *main tasks of expertise in the field of intellectual property, one of the objects of which is a geographical indication, as the establishment of:*

- similarity of certain designations so that they can be confused with geographical indications (name of the place of origin of the goods);
- similarity of studied designations with a geographical indication, which may lead to confusion with the activities of the producer who is granted the right to use a qualified indication of origin of the goods;
- possibility of misleading the consumer as to the source of origin,

nature or essential qualities of the product;

- possibility of misleading consumers about a product or the person who produces it, because a certain designation creates associations in the consumer's mind that are related to a certain quality or geographical origin of the goods: certain geographical indication that does not actually correspond to reality;
- whether a particular label affixed to goods is misleading with regard to certain goods;
- whether a particular indication affixed to a product imitates or embodies a geographical indication.

Conclusions

The research highlights the main principles of legal protection of geographical indications in Ukraine and the theoretical foundations of expertise in the field of intellectual property, where geographical indications are one of the objects under study. It has been determined that geographical indications may give rise to certain conflicts with the following objects: registered and well-known trademarks, domain names, as well as designations that have not acquired legal protection, etc.

It has been proven that in order to form the theoretical basis for expertise related to various means of individualization of goods and services, and to further develop methodological approaches to performing expert tasks, it is necessary to take into account the principles of legal protection of geographical indications in Ukraine and the peculiarities of regulating relations arising in connection with their registration, use and protection.

54 Адлер О. Г., Тимошик Л. П., Ковальова Н. М., Голікова О. В., Чабанець Т. М. та ін. Зазнач. твір.

It has been established that the main tasks of the examination related to geographical indications may include determining: the similarity of certain designations to such an extent that they can be confused with geographical indications; the similarity of the designations under examination to a geographical indication, which may lead to confusion with the activities of the producer who has been granted the right to use the qualified indication of origin of the goods; the possibility of misleading consumers about the product or the person who produces the product, because a certain designation creates associations in the consumer's mind related to a certain quality, geographical origin of goods, certain geographical indication, which in fact does not correspond to reality; whether a certain designation applied to goods is misleading with regard to certain goods, whether a certain designation applied to goods imitates or embodies a geographical indication.

The provisions highlighted in this article can form the basis for developing theoretical and methodological principles for expertise in the field of intellectual property related to geographical indications and for improving methodological approaches to performing expert tasks.

**Географічні зазначення
як об'єкти судової експертизи
у сфері інтелектуальної власності:
теоретичні аспекти й основні завдання**

Наталія Кісіль

Метою статті є дослідження сучасних теоретико-правових засад проведення судових експертиз, пов'язаних із різними засобами індивідуалізації товарів і послуг, у яких одним із досліджуваних об'єктів є географічне зазначення; аналізування принципів правової охорони гео-

графічних зазначень в Україні й особливостей регулювання відносин, що виникають у зв'язку з їх реєстрацією, використанням і захистом; формування орієнтовного переліку основних завдань експертизи, пов'язаної із географічними зазначеннями. Для досягнення поставленої мети застосовано загальнонаукові (аналіз, синтез, узагальнення, опис, систематизацію тощо) і спеціальні методи. Визначено, що конфлікти через географічні зазначення можуть виникати щодо таких об'єктів: зареєстрованих і добре відомих торговельних марок, доменних імен, а також позначень, що не набули правової охорони, тощо. Проаналізовано практику розв'язання спорів щодо таких позначень, сформульовано дефініцію предмета експертизи, пов'язаної із географічними зазначеннями, окреслено перелік її основних завдань. Запропоновані тут положення є підґрунтям для формування теоретико-методологічних засад експертизи у сфері інтелектуальної власності й удосконалення методичних підходів із виконання експертних завдань.

Ключові слова: інтелектуальна власність; судова експертиза; експерт; спеціальні знання; об'єкти інтелектуальної власності; географічні зазначення; назва місця походження товару; торговельні марки; предмет судової експертизи; завдання експертизи.

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Declaration of Competing Interest

The author declares no conflict of interest.

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