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U.C. Berkeley, Oxfirst Limited

2009

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MPRA Paper No. 37039, posted 02 Mar 2012 19:46 UTC

# **Creating the missing link: applying collective marks to create clusters**

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## Abstract

Collective marks guarantee ownership over a community's intangible wealth and in this sense not only reinforce its branding activities, but set up a new structure in which community business can function. Systems of local innovation may thus be developed through the design of an adequate legal infrastructure, paving the way for the solution of policy concerns, such as rural exodus or unemployment.

Cluster theory argues that, if small and medium sized enterprises intensify their degree of interaction to build up networks, this reduces costs, dependence on large firms, provides access to new markets and helps improve the position of the cluster in the market. All these functions can be reinforced through collective marks, which offer a legal context for the cluster's governance structure, its standards and quality controls and system of collaboration. These features are particularly of relevance in a sector like tourism, where cooperation is a prerequisite for success. Empirical evidence suggests a certain sense of confusion on the role of trade mark protection in clusters: Individual marks are used as if they were collective marks, collective marks are used without further consideration of the economic aspects or intellectual property protection is altogether ignored.

In practice the wide range of opportunities provided by collective trademarks remains unexploited. Interdisciplinary approaches to IP may help to bridge a gap, observed both within academia and in practice, and thus join the IP law perspective to the evolving management literature on cluster theory.

## **Providing the missing link**

While there is a rich body of literature assessing the role of IP as a defensive right, less has been written on the enabling opportunities of intellectual property law.<sup>i</sup> This paper proposes a so-far partially tested approach which leverages collective marks to foster clusters in tourism. It discusses how, when and to what extent the use and management of collectively owned trade marks may provide a baseline for creating systems of local small and medium-sized enterprises collaborating for the community's joint economic benefit, a method proven to be beneficial for the promotion of collective undertakings..

This paper seeks to fill the gap between current literature on IP law and cluster management, which is aware of the beneficial role of cluster creation but has yet to recognise the role collective marks play in this context. The take-away for policy makers is that adequately managed IP rights may help to achieve overarching policy goals, such as combating rural exodus and unemployment, by developing and protecting systems of local innovation, thus leveraging the very purpose of the IP system.

## **Ownership rights enable economic activity**

Max Weber's analyses of economy and society provide a useful framework for examining the notion of ownership over property, crucial for the creation of functioning economies:

These types of rules (that is enabling rules) do no more than create the framework for valid agreements which, under conditions of formal freedom, are officially available to all. Actually, however, they are *accessible only to the owners of property* and thus in effect support *their very autonomy and power positions*.<sup>ii</sup>

Josef Schumpeter also stresses that property rights are crucial for successful entrepreneurship.<sup>iii</sup> Hernando de Soto paraphrases Weber and Schumpeter, stating that the existing wealth in developing countries remains largely unexploited because of a lack of respect for property rights. As long as developing countries fail to guarantee owners long-term rights over their assets, commercial transactions cannot thrive: markets can only function if there is a set of minimal guidelines to ensure that current ownership will remain valid in the future,<sup>iv</sup> a thought expressed by Hume as "stability of possession".<sup>v</sup> While none of these thinkers explicitly refers to IP law, it is the notion of guaranteed property rights that makes IP simultaneously a crucial element for the creation of markets and a concept that is subject to intensive critique.

The statement that "law is constitutive for most economic phenomena", holds equally for IP law. As an organic part of commercial activity, IP provides the institutional setting for a particular type of commercial action and determines the overarching governance structure at the macroeconomic level, as well as the management approach of individual businesses".<sup>vi</sup>

By ordering commercial activities, IP law governs the actions of individual economic actors. Thus IP law can promote or block economic activities. In practice, the law and commercial activity generally co-exist if market participants are unaware of the law, the law is not itself implemented or if the rule of law is not respected. Pitkethly for example shows that the vast majority of small and medium-sized enterprises in the UK are not knowledgeable regarding the most basic questions related to IP and their business.<sup>vii</sup> In developing countries too, the existence of a parallel economy suggests that normative arrangements governing commercial transactions, may not necessarily coincide with those officially sanctioned by the state.

## Collective marks can create clusters<sup>viii</sup>

From this perspective, collective marks can be seen as a legal institution with the potential to create a specific set of economic relationships. The definition of a collective mark suggests that it is an appropriate legal structure for the creation of a cluster:

A collective mark is a sign owned by a collective entity, such as an association, a cooperative or a union. In principle, it may only be used by members of the collective entity, while others are excluded from using it. Collective marks may be used at the same time as individual marks at a given good or service. Collective mark must be indicative of the source of the goods and services, and consumers must be able to distinguish it from other marks.<sup>ix</sup>

Collective marks are available for goods and services, depending on the nature of the commercial interaction and the right holders' need for protection. They allow the differentiation of products and services from those of competitors, so as to increase consumer confidence and charge a premium for the products or services that bear them. The collective ownership structure of this form of intellectual property law triggers social arrangements of collaboration and cooperation, allows for the syndication of economic activity and inspires teamwork. A community's intangible assets, its social cohesion, can be fostered through their use since by definition they can be owned collectively by a given community, reinforcing the characteristics of a cluster or community initiative:

Community initiatives are said to occur when groups and individuals identify needs and issues at the grassroots level, take responsibility for them and then are supported and encouraged by local government to resolve issues that arise.<sup>x</sup>

Thus the implicit becomes explicit and the intangible materializes into tangible property rights.

Ray argues that the concept of "competitive territoriality" is being replaced by "co-operative territoriality".:

Rather than portraying territories as fighting to create, maintain and improve their position in the market, this scenario imagines clusters of territories, overlapping in space and by product/service, in ad hoc or longer term arrangements, co-operating in selling each other's products or creating overarching marketing strategies.<sup>xi</sup>

A collective mark provides an incentive for local companies to create these clusters, to promote a joint cultural identity and to increase the quality of collective goods and services needed to make the economy work. Collective marks stand therefore in strong contrast to the typical notion of individual, corporate ownership associated with IP since they foster grass-root initiatives and the joint work of a community. They also stand in contrast to mainstream approaches to IP and sustainable development. Collective marks are a form of IP that is fully accessible to developing countries: they do not require the level of technological sophistication of patents, but provide a means to engage proactively in the creation of the reputation of a community. Since they allow developing countries to take active ownership of their regional, national and international reputation, they have the potential to raise them to competitive parity.<sup>xii</sup>

In terms of standards of quality, each participating company accepts the quality standards and rules defined by the governing authority controlling the mark, receiving in exchange the use of the collective mark on its products and services. This allows consumers to associate those

products with a particular set of standards. Collective marks may thus be viewed as a managerial strategy that rules the commercial operations of firms participating in the cluster. They also serve as an incentive system for local producers, creating a monopolistic context and differentiating products. They also facilitate an increase in prices, which has a direct impact on profits. This in turn generates further incentives for producers to invest in their reputation and maintain the high quality of products and services. Improving access to information through collective marks may however have some drawbacks, if a risk of free-riding arises.<sup>xiii</sup>

Viewed as an organizational principle of economic activity, collective marks may help a community to promote its market position, protect against unfair competition, build its reputation and better organize its collective economic activity. The management of a collective mark reinforces local institutions and promotes the participation of all stakeholders in a democratic way.<sup>xiv</sup>

### **What makes collective marks different?**

No person with property would be able to sleep without fear of being robbed, unless his property was protected by law.<sup>xv</sup>

Adam Smith's statement offers an adequate differentiation between a collective brand and a collective mark. Collective marks protect against interference by third parties and grant cooperative ownership over its assets. They can influence the great variety of economic arrangements, notably in the following four areas: ownership, management, right to income, enforcement, governance structure and strategic management. Collective brands, on the contrary can only fulfil two of these criteria: the right to income and strategic management.<sup>xvi</sup>

Yet various national jurisdictions reflect the strong relationship of collective marks to collective brands. To register a geographically descriptive mark under the national trade mark laws of the US and many other jurisdictions, one needs to demonstrate that the mark has developed secondary meaning, meaning that consumers have come to recognize the mark as a brand for a particular source, not just as an indication of geographic origin. There is an exception, however, for collective and certification marks that qualify for registration as geographical indications without secondary meaning. For certification marks, trade mark law explicitly requires that the use of the mark must be available to anyone who meets the stated criteria. This forms the baseline for an important connection between this requirement and the ability to register geographically descriptive marks as certification marks without secondary meaning.<sup>xvii</sup>

Collective marks differ from certification marks, the owner of which is a third party that neither produces nor owns goods or service. Certification marks are often granted by a governmental body or a body operating with governmental authority. Even without a certification mark, the quality star rating of a hotel may itself be considered a widespread certification standard. An independent body evaluates the overall quality of a hotel, granting the appropriate number of stars. Under a collective mark, however, hoteliers self-designate the quality level of protected goods or service, reinforcing the cooperative nature of tourism. In exchange for their compliance with quality standards and rules defined by the association itself, participants may affix a collective sign to their products and services, enabling consumers to associate those products with a particular set of standards. This is an important feature in sectors such as tourism, where issues such as safety and hygiene can be decisive.<sup>xviii</sup> In the US jurisdiction it is inadvisable to use a geographically descriptive mark as a collective mark; this mechanism may not be allowed and

business operating in a specific community, but not complying with the quality standards set, might not therefore be excluded. This also seems to be the case in Chinese law:

Where a Geographical Indication is registered as a collective mark, any natural person, legal person or other organization whose goods satisfy the conditions under which the geographical indication is used may request the membership of the society, association or any other organization that has the geographical indication registered as a collective mark, and the society, association or any other organization shall accept the membership in accordance with its Articles of association; those who do not request the membership of the society, association or any other organization that has the geographical indication registered as a collective mark may legitimately use the geographical indication, and the society, association or any other organization is not entitled to prohibit such use.<sup>xix</sup>

Collective marks differ from geographical indications (GIs), which are source identifiers and protect the goods of a particular region.

A geographical indication may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities.<sup>xx</sup>

Similarly, TRIPs Article 22 (1) defines GIs as,

indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.<sup>xxi</sup>

At international level the relationship between collective marks and GIs is evolving. The first international agreement to refer to GIs is the TRIPs Agreement, suggesting that the concept is rather recent. Under TRIPs a GI is a negative right to prevent misuse rather than a positive right.<sup>xxii</sup> Protection pertains only to goods and not to services, greater protection being provided for wines and spirits. GIs formally protect the shared knowledge and practices of a specific region by controlling the right to use the name of the geographical source. Collective marks, in contrast, say nothing about the territorial origin of a given product, but inform the consumer of their ownership structure. Unlike collective marks, GIs may not be licensed to market participants outside the protected region. In some jurisdictions, like the United States, GIs are protected through collective marks or certification marks: certification marks that originate in a specific region can most likely be viewed as GIs. Of particular relevance for the creation of clusters is the fact that under US law a geographically descriptive mark qualifies for registration without secondary meaning as collective mark, in which case the principles of openness and non-discrimination apply. Other producers in the specific region may not be explicitly prevented from using the mark, thus inhibiting the concept of cluster creation and its accompanying governance structure. Some other countries offer no protection for GIs or extinguish existing trade mark rights in favour of later-created GIs.<sup>xxiii</sup>

For similar reasons GIs do not currently lend themselves to promote clusters in a sector like tourism. While a region producing GI-protected goods may well attract tourists (the Champagne region in France for example), current levels of international protection do not fully enable the creation of clusters activity in itself. While GIs only serve to protect goods, the tourist sector, being composed of goods and services, receives only partial protection.

## **Tourism Management, Clusters, Competitiveness and IP**

Although the relevance of cluster theory to tourism has been extensively considered,<sup>xxiv</sup> no correlation has been made between clusters and the reinforcement of positive externalities through the assignment of collective marks. Rutten for example states that “ethnic communities are asserting their ownership of intellectual and cultural property through cultural tourism”, yet she ignores IP rights in her argument.<sup>xxv</sup> Sheehan emphasizes that “clusters of microenterprises can intensify the degree of network interaction, reduce the dependence of small firms on large ones and increase independent access to markets and supplies. Entrepreneurs socialize in their neighbourhoods and have a voice in local politics so that social figurations emerge that have similarities in outlook to lifestyle”, but again makes no mention of the legal infrastructure.<sup>xxvi</sup>

The importance of cluster creation has also been reflected by scholars of destination competitiveness, a broad construct encompassing all social, economic and cultural market variables.<sup>xxvii</sup> However, this school of thought ignores the enabling opportunities provided by ownership rights over intangibles. Authors like Paskaleve-Saphira believe that long-term community prosperity may be fostered through the effective promotion of local innovation systems. However the promotion of local innovation systems is by no means put in correlation with the effective management of IP rights.<sup>xxviii</sup>

### **Which tourism do we mean?**

Higgins-Desbiolles argues that the notion of tourism as an industry overshadows other conceptualizations of the tourism phenomenon, rejecting an understanding of tourism as a powerful social force that may serve to promote dialogue between civilizations and raise an understanding of the “other”. She believes that the term “tourism industry”, originating in the 1960s, offers an economic image well suited to various political usages, but ignores an understanding of tourism as a community activity.<sup>xxix</sup>

If the focus shifts from “tourism as an industry” to “tourism as a community enterprise”, issues, such as mass tourism and its accompanying negative side effects are replaced by considerations of local economic and social benefits: these may take the form of natural and cultural capital, such as beautiful beaches, traditional dances or folklore, or the remains of old civilizations, rather than big hotel chains, mass transportation and subsequent environmental degradation.<sup>xxx</sup>

It is preferable to perceive tourism as a “composite good”<sup>xxxi</sup>, where the quality of the outcome depends on the quality level of each factor or intermediate good or service. This definition reinforces the collective work of a community necessary to make tourism work. Cooperation and coordination among stakeholders are crucial. A single enterprise, like a hotel, will have little success, if the context in which it operates—the beaches, neighbouring cafés, shops, restaurants, museums etc.—is of poor quality. However, the success of a single hotel will affect neighbouring businesses. A tourist cluster is an agglomeration of natural, cultural and social resources. In a tourist cluster, small and medium-sized enterprises work in an industrial atmosphere, freely exchanging market information. Their range of local activities can be immense, spanning from arts, folklore and handicrafts, tourist cultural itineraries, traditional healing services, drama and dance or the involvement of tourists in local farming techniques. These externalities can be reinforced by the assignment of collective property rights through collective marks.<sup>xxxii</sup>

Tourists spend their holidays in their leisure time. Richards and Wilson<sup>xxxv</sup> see in tourists co-producers of their own experience, blurring the traditional boundary in economics between

between production and consumption. The narrative of their holiday experience ultimately feeds into their understanding of themselves and their self-perception. Confrontation with the “other” ultimately becomes a confrontation with “the self”. Cultural objects, cities, and regions where one spends one’s holidays fulfil the function of a symbol that anchors an image of the self and defines where one stands with respect to others. The narrative of Middle Eastern tourists in Lebanon, for example, is those of foreigners, who—freed from the social constraints of their home countries—party, go out and gamble, seemingly experiencing western freedom, while remaining in a familiar Arab context.

Balzac differentiates in *Scènes de la Vie de Provence* between Paris and the countryside; “While Paris, the capital is everything, the province is nothing but itself”.<sup>xxxvi</sup> This distinction between rural areas and cities remains valid. While many of the world’s capitals have seen an increasing commodification of their cultural heritage and tourist experiences become interchangeable, places such as rural South Africa and the Philippines offer nothing but genuine exposure to authentic lifestyle and their uniqueness is assured. For rural areas this offers a particular window of opportunity. Essentially cut off from the mainstream discourse of a potential commodification of tourist experiences, rural areas can offer authenticity and genuine creative experiences.<sup>xxxvii</sup>

Rural communities fearing to lose ownership and control over the tourist experience may employ collective marks to counteract this trend. The link of collective marks with tourist clusters secures ownership and guarantees that the cultural and geographic property of a community is experienced by tourists in a context of mutual exchange, as opposed to a hegemonic order. Legally protected through collective marks, they satisfy the tourists’ quest for authenticity, yet allow the owner to moderate the pace at which this takes place.<sup>xxxviii</sup>

## **Empirical evidence**

While there is a solid theoretical argument for the creation of clusters through collective marks, the current use of trade marks in tourism shows the following features:

1. Individual marks have been used as if they were collective marks, as in the examples of St. Moritz and Venice. This has been achieved through the *de facto* collective use of individual marks, providing empirical evidence that commercial settings may not necessarily be bound by the legal framework provided.
2. Individual marks have been used to assure property rights over a tourist destination with brand value. Illustrative examples are the trade marks of Queensland (Australia) (Virginia, the State of New York and New York City (USA)). These examples show awareness of the role IP protection plays in branding, but not of the managerial and strategic potential of IP law.
3. Collective marks have been used to foster community undertakings. While neither particularly profitable nor too well-known, these examples show that clusters have been created with the support of collective marks. Illustrations from the UK’s National Heritage Corridor (a national park) and the Philippines are described below. While the example of the Philippines relates to the collective production and harvesting of sugarcane and bananas, it shows solid development potential for the approach developed in this paper.
4. While tourist clusters have been created and appropriate logos and slogans coined, IP protection has been ignored. South Africa’s “Eastern Cape Parks”. shows a lack of IP awareness.

## Scenario 1: individual marks used as collective marks

*St. Moritz – Top of the World*<sup>xxxix</sup>



St. Moritz has the reputation of an exclusive, high-end winter tourist destination. Early in the 20 century it hosted the ski World Cups. Subsequently well-known personalities spent their winter holidays in St. Moritz. In 1987 St. Moritz started to protect its name, logo, slogan and the design as a trade mark in over 50 countries.

The brain behind this strategy has been Dr Danuser, a native of St. Moritz, who holds a Ph.D. in economics and gained significant marketing experience with the Swiss multinational food and beverage company Nestlé. Before seeking legal protection for the “St. Moritz” brand, Dr Danuser created the trade mark “Heidiland” for the Swiss region of Sarganserland, Walensee and Wartau.<sup>xi</sup> Dr Danuser directed the local tourist association until early 2008, the “Kur und Verkehrsverein”, which owns the “St. Moritz” mark, which oversees its strategic marketing plans, past performance reports and licensing agreements. In St. Moritz, the motto goes “trade mark management is an affair for the C.E.O.”<sup>xli</sup>

St. Moritz has successfully generated revenues through its licensing agreements. In the first ten years of trade mark protection (1988-1998) the

“Kurverein” made a profit of about 600,000 Swiss francs through licensing agreements. Currently, about one third of the tourist association’s capital is generated through licensing agreements. Additionally, the mark generated millions of Swiss francs through its association with events sponsored by third parties (eg the Chopard Big Price of St. Moritz, Chopard World Polo Competition, St. Moritz Gourmet Festival, jointly with Pommery). Licensors of “St. Moritz” are usually high-end consumer goods providers, eg Prada, Dolce Gabbana, Gucci, Calvin Klein and Thierry Mugler. To combat the seasonality of the tourism destination, St. Moritz also created strategic alliances with high-end summer tourist destinations such as Mauritius and Capri. According to Danuser, the main purpose of the mark is however not to foster licensing agreements, which is a legal necessity to maintain trade mark protection, but to assure the quality of the tourist experience, meet tourists’ expectations and use licensing agreements for additional marketing effects. The mark is the unifying symbol to convey “security, quality, trust, continuity, tradition, competence and credibility”<sup>xlii</sup>.

St. Moritz provides significant funds annually to maintain the standards of the mark and actively manage it. The mark’s performance is closely followed and regular “milestone” reports are issued, detailing its achievements and shortcomings. St. Moritz uses the mark on all its advertising campaigns, brochures and on the internet.

The governance structure of the mark resembles the Swiss model of direct democracy. St. Moritz has created a trade mark advisory board, the “Markenrat”, composed of the director of Kur und Verkehrsverein, its presidents, the mayor of St. Moritz, the President of the

municipal council, plus representatives of the Gemeindevorstand and Buergererrat. Thus all the political institutions of St. Moritz delegate a permanent member to the village's trade mark advisory board, which is also the executive organ of the community group "Trade mark St. Moritz", as well as all other citizen and grass root initiatives. This governance structure allows St. Moritz to integrate the entire community into its trade mark management.<sup>xliii</sup>

Issues such as quality control or the politeness of policemen towards tourists are in the subject of regular training seminars, being an inherent element of trade mark management.<sup>xliiv</sup> Clearly, St. Moritz profits from the fact that its trade mark has been in the market for over 20 years but the success of the licensing agreements, as well as the democratic approach towards the management of its mark, suggest that St. Moritz has succeeded in leveraging the cluster effects created by the collective management of its mark.

### *The trade mark of Venice<sup>xlv</sup>*



Like St. Moritz, Venice is a celebrated tourist destination. The Venice trade mark, created in 2003 under the artistic direction of Philippe Starck, is owned by the City of Venice. This mark was created to "foster the social fibre of the city, improve the collaboration between the public and the private sector and promote the cultural heritage of the city". This mark, which exists alongside an existing symbol of the town, was designed "to create a symbol of shared meaning among Venetian business, artisanal and public institutions and to foster collaboration and joint efforts". Further objectives were to take active ownership of the reputation of Venice at international level and to create a legal tool to combat commercial abuse of the city's reputation. Partially funded through the European Union, the Venice trade mark was also intended to promote an innovation-based economy (jointly with the "Venice district for innovation" EU project). Thus, in the context of the creation of the mark, resources were advanced for programmes for the socio-economic revitalization of the city.<sup>xlvi</sup>

In practice, Venice has formed several partnerships with companies that use the trade mark on their products, such as jewellery, handicrafts, glass crafts and accessories, yarns, fabrics and homeliness, granting licences to innovative entrepreneurs at local, national and international levels in the hope that this will contribute to the socio-economic wealth of the city. No publicly available data indicates the profitability of these agreements.<sup>xlvii</sup>

The mark is also associated with cultural events, working as a symbol for the preservation for the cultural heritage of Venice. Restoration work, such as that undertaken on the bacino di San Marco and the Scala d'Oro di Palazzo Ducale", carries the mark. The week of decorative art and respect of the city, "la settimana per il decoro e il rispetto della città", were also associated with it. All Venetian tourist brochures, marketing booklets and web-pages carry the symbol.<sup>xlviii</sup>

The Venice trade mark has not been long in use and the city municipality is still in the process of exploring further ways of using it. So far, the plan has been a success and the city has identified several attractive licensing arrangements, entering various promising alliances. However, for the time being, the trade mark has not assumed the community-building function that its founding fathers and mothers had wanted. Also, the governance structure of the mark does not allow for the typical “grass-roots” initiatives associated with collective marks. Finally, the mark has not made any impact through the introduction of quality controls. It thus remains a good example of a well-designed trade mark that has been associated with general tourism promotion activities while still leaving room for the potential to create clusters and other cooperative arrangements.

## **Scenario 2: individual marks assuring property rights over a tourist destination with brand value**

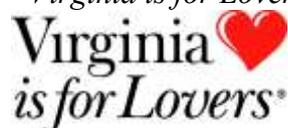
*“Where else but Queensland?”*



The Queensland Tourist and Travel Corporation has registered marks for the various elements of its slogan: “Sun lover Holidays”, “Beautiful One Day, Perfect the Next”, “Live it Up!” and also “Queensland” are registered in various classes both with the Australian IP office and internationally. While this is not a collective mark and shows no licensing agreements worth mentioning—or efforts to create clusters—the case of Queensland illustrates the importance of property rights over intangibles:

Before 1992, we really did not understand the value of intellectual property protection. We had been running our "Beautiful One day, Perfect the Next" campaign for some time and developing other branding, before we came in touch with a trade mark specialist with a patent attorney firm here in Brisbane... Now we know that this valuable asset is our own, states the CEO of the Queensland Tourist and Travel Corporation, Stephen Gregg.<sup>xlix</sup>

*“Virginia is for Lovers”<sup>l</sup>*



In the USA the mark and image “Virginia is for Lovers” is owned by the local tourist association, with no particular indications for its application as a collective sign used for the creation of clusters. Yet the mark has proved durable and has helped to lift the state’s reputation. The mark remains also positively associated with tourist revenues. From 1969 to 2006 travellers’ expenditures accounted for US\$809 million in Virginia. Research conducted in 1992 showed that 75% of US citizens correctly identify the slogan.<sup>li</sup>

These tourist destinations offer good examples of “semi-leverage” of IP protection in tourism. While consideration has been given to the ownership structure and clear policies exist with regard to the use, licensing and application of the mark, these are individual marks and do not

leverage the opportunities provided by collective marks. The trademark owner is however currently exploring opportunities to license the trademark and has hired a trademark manager for that purpose. The state of New York has just recently taken a similar path and introduced the “I love New York” slogan to promote tourist activity. The current legal dispute between New York City & Company, a non-profit tourism and marketing office for New York, and the software company Apple Inc suggests that the use of IP in tourism may lead to confrontation and not be financially rewarding. Apple filed a federal appeal alleging that the logo used for GreeNYC, an initiative promoting energy efficiency and recycling, was too similar to the company’s logo. The outcome of the dispute remains uncertain.<sup>lii</sup>

*The Green New York City logo in question*



### **Scenario 3: collective marks for community undertakings, but lacking an impact on the creation of wealth or reputation**

*The National Heritage Corridor®  
The Derwent Valley Trust (a registered charity)*

While the National Heritage Corridor in the UK may not offer the best example of how to manage a collective mark profitably, it is a good example of how a collective mark has been used to create a system of collaboration. The Derwent Valley Trust gives as its mission, vision and strategic orientation:

... to create a collaborative framework within which mutually interested parties can create partnerships to... promote the preservation, conservation and enhancement of the natural and historic resources of the valley and through interpretation of those resources increase understanding and enjoyment by all its users ... To encourage integrated initiatives, including use of the Trust’s brand... in order to raise public awareness of the rich, diverse and sometimes fragile resources of the Derwent Valley and understanding of the need to preserve sensitive areas and sites.<sup>liii</sup>

Owned by the Derwent Valley Trust, it is intended to protect the park and natural heritage and to foster eco-tourism. The collective mark is used on its marketing brochures and serves as a joint symbol in Derbyshire for the natural park. While the bylaws of the National Heritage Corridor emphasize the collaborative nature of the management of the park, they say nothing about licensing agreements, joint ventures or the economic performance of the park; these possibilities remain unexploited.<sup>liv</sup>

*“Tupi Bongolan” and “PQ Muscovado” collective marks*



The vision of the Philippine Ministry of Industry and Trade is to “translate economic benefits to improve the lives of the people”. With this aim the Ministry helped two different regional communities set up a collective mark for their business. “The Tupi Bongolan” collective mark protects banana crops, the “PQ Muscovado” collective mark sugarcane. Central to both is an alliance with “Ecocert”, which certifies that crops are organically grown. Both banana and sugarcane are important generators of income for the rural population in the Philippines. With the introduction of a collective mark, the Ministry hopes not only to position organic products from the Philippines in international markets but also to “boost local self-confidence, foster collaboration and cohesion and assure quality of production”. While these examples say nothing about tourism, they offer a solid basis for further projects in that context and suggest not only possible community-based approaches to tourism such as “holidays in a banana growing region” or “stay with farmers in the Philippines and experience how to harvest sugarcane”, but also the introduction of this form of IP protection in other sectors of economic relevance for the Philippines.<sup>lv</sup>

#### **Scenario 4: tourist clusters without adequate IP protection**

*“We promise the Earth”*



While the brand, logo and slogan of Eastern Cape Parks appear to be unprotected, they offer a solid basis for the approach developed here. The Eastern Cape Parks in South Africa comprise twelve nature reserves, hosting various indigenous communities and a wide range of biodiversity. Eastern Cape Parks is a public institution, created by the Department of Environment and Tourism, to preserve nature and fight rural poverty.

Designed as a social responsibility project, it seeks to foster grass-root initiatives and to integrate its various communities. It also seeks to foster secondary skills among the people in

the region and to build capacity in the areas of environmental protection, employment and infrastructure. In its strategic vision, the park emphasizes the strong links between indigenous communities and visitors, to relief poverty and to act as a nature and conversation-based tourism destination.

### **Collective marks and clusters: the verdict**

Tourism, defined as a collective endeavour rather than an industry, can help promote local socio-economic systems, both in developed and in developing countries. Collective marks lend themselves well to reinforce the community character of tourism. They foster the notion of clusters, which have been proven to be beneficial in tourism. They also increase a sense of collaboration, create a spirit of collaboration, rather than competition, facilitate quality controls and provide access to the external promotion of a region. The tourist experience depends on the collective engagement of the various stakeholders. Restaurants, hotels, cafes, tourist sights and local authorities need to collaborate to offer tourists a unique holiday experience. For disadvantaged rural areas, this may be a means to create local confidence and to identify common features of how to position themselves. Rather than leaving the creation of their image to others, collective marks allow the active creation of the desired reputation in the international arena. Introducing collective marks in clusters may therefore be a creative and innovative formula to overcome many of the traditional challenges small and medium sized enterprises (SMEs) are facing.

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<sup>i</sup> Roya Ghafele, Ph.D, is an international research scholar at the Haas School of Business, University of California at Berkeley. I would like to thank Washington University, which circulated a note via email on “strategy options for developing countries in the context of collective marks” to friends, colleagues and the interested community, which triggered a range of helpful comments, suggestions and reactions. I would further like to thank Professor Walter Santagata with whom I prepared a discussion note on “collective trademarks and cultural tourism” in 2006, which provided the theoretical underpinning of certain paragraphs of the theoretical part of this article

<sup>ii</sup> M Weber, *Economy and Society: an outline of Interpretive Sociology*. University of California Press [1922] 1978, 730. An excellent overview of Max Weber’s thoughts from the perspective of economic sociology is found in R Swedberg, “The case for an economic sociology of law”. (2003) *Theory and Society* 2, 1-37.

<sup>iii</sup> J Schumpeter, *Theorie der Wirtschaftlichen Entwicklung: Eine Untersuchung über Unternehmensgewinn, Kapital, Kredit, Zins und Konjunkturzyklus*. Duncker und Humblot [1934] 1964.

<sup>iv</sup> H de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Black Swan [2000] 2001.

<sup>v</sup> “The law induces certain relationships and contexts and in this sense is not only prohibitive, but also empowering”: D Hume, *A Treatise on Human Nature*, Oxford University Press [1739-1740] 1978, 496.

<sup>vi</sup> R Swedberg, *ibid*, 11.

<sup>vii</sup> R Pitkethly, *UK Intellectual Property Awareness Survey 2006*, U.K. Intellectual Property Office/ Intellectual Property Institute/ Said School of Business Oxford University Discussion Note 2006.

<sup>viii</sup> For further discussion of collective marks and clusters see: R Ghafele and W Santagata, *Cultural Tourism and Collective Trade marks: The Case of Byblos and Saida, Lebanon*. (2006) Working Paper Dipartimento di Economia “S. Cagnetti de Martiis” Università di Torino 1, 5-7

<sup>ix</sup> WIPO, *About Intellectual Property*, [www.wipo.org](http://www.wipo.org).

<sup>x</sup> J Cave, C Ryan and C Panakera, “Cultural Tourism Product: Pacific Island Migrant perspectives in New Zealand”, (2007) *Journal of Travel Research* 45, 436.

<sup>xi</sup> C. Ray, *Further Ideas about Local Rural Development: Trade, Production and Cultural Capital*, (2000) Working Paper University of Newcastle Upon Tyne, Department of Agricultural Economics and Food Marketing 49, 14.

<sup>xii</sup> R Ghafele and W Santagata, *Cultural Tourism and Collective Trade marks: The Case of Byblos and Saida, Lebanon*. (2006) Working Paper Dipartimento di Economia “S. Cagnetti de Martiis” Università di Torino 1, 8-14

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- <sup>xv</sup> A Smith, *The Wealth of Nations*, Oxford University Press [1776] 1976, 710.
- <sup>xvi</sup> K Gotham, "Marketing Mardi Gras: Commodification, Spectacle and the Political Economy of Tourism in New Orleans", (2002) *Urban Studies* 39/10, 1735-1756.
- <sup>xvii</sup> This comment was provided by Professor Robert Brauneis of George Washington University's Law School. Email exchange from the 5 April 2007.
- <sup>xviii</sup> R Ghafele and W Santagata, *Cultural Tourism and Collective Trade marks: The Case of Byblos and Saida, Lebanon*. (2006) Working Paper Dipartimento di Economia "S. Cagnetti de Martiis" Università di Torino 1, 20,21
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- <sup>xx</sup> WIPO, *About Intellectual Property*, [www.wipo.org](http://www.wipo.org).
- <sup>xxi</sup> C Le Goffic, "Cancellation of a trade mark based on a prior foreign geographical indication related to different products", (2008) *Journal of Intellectual Property Law & Practice* 3/3, 152-154.
- <sup>xxii</sup> I Kireeva and P Vergano, "WTO Negotiations with Respect to Geographical Indications and Russia's Position on the Protection of Appellations of Origin", (2004) *Review of Central and East European Law* 4, 475-496.
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<sup>xxxviii</sup> E Kirtsoglou and D Theodossopoulos, “They are Taking our Culture Away: Tourism and Culture. Commodification in the Garifunal Community of Roatan”, (2004) *Critique of Anthropology* 24, 135-157. While this article stresses the role that community tourism may take to counteract this trend, it ignores the intellectual property aspect of the argument.

<sup>xxxix</sup> R Ghafele, “Leveraging collective marks in tourism. Internal (unpublished) note of Washington University.” January 25 2007. St. Moritz allows to download its logo from its website.

<sup>xl</sup> <http://www.heidiland.ch>

<sup>xli</sup> [http://www.stmoritz.ch/pdf/HPD\\_CV\\_de.pdf](http://www.stmoritz.ch/pdf/HPD_CV_de.pdf)

<sup>xlii</sup> <http://www.suesskind.ch>, <http://www.stmoritz.ch>

<sup>xliii</sup> <http://www.stmoritz.ch/pdf/Marketing-Konzept2003-2006.pdf>

[http://www.stmoritz.ch/pdf/Marke\\_konzept.pdf](http://www.stmoritz.ch/pdf/Marke_konzept.pdf)

[http://www.stmoritz.ch/pdf/030402\\_Strategie.pdf](http://www.stmoritz.ch/pdf/030402_Strategie.pdf)

<sup>xliv</sup> Telephone interview with Dr Danuser, July 2007.

<sup>xlv</sup> Permission to use the logo was granted from the City municipalities of Venice.

<sup>xlvi</sup> <http://www.comune.venezia.it/flex/cm/pages/ServeBLOB.php/L/EN/IDPagina/7318>

<http://www.veniceword.com/venicelogo.html>.

<sup>xlvii</sup> <http://www.comune.venezia.it/flex/cm/pages/ServeBLOB.php/L/EN/IDPagina/7847/GP/5#g>

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<sup>xlix</sup> <http://www.findlaw.com.au/article/6332.htm>.

[http://www.tq.com.au/tqcorp\\_06/fms//tq\\_corporate/destinations/queensland/brand\\_queensland\\_guidelines/Queensland%20logos%203.pdf](http://www.tq.com.au/tqcorp_06/fms//tq_corporate/destinations/queensland/brand_queensland_guidelines/Queensland%20logos%203.pdf).

<sup>l</sup> R Ghafele, “Leveraging collective marks in tourism. Internal (unpublished) note of Washington University.” January 25 2007, permission was given from the trademark owner to use the logo in this publication.

<sup>li</sup> <http://www.vatc.org/pr/factslogan.htm>

<sup>lii</sup> <http://www.ibtimes.com/articles/20080404/apple-geenyc-ipod-iphone.htm>

<sup>liii</sup> <http://www.nationalheritagecorridor.org.uk/collective.htm>

<sup>liv</sup> <http://www.nationalheritagecorridor.org.uk/overview.htm>

<sup>lv</sup> [http://sme12.ph/index.php?option=com\\_content&task=view&id=186&Itemid=67](http://sme12.ph/index.php?option=com_content&task=view&id=186&Itemid=67)

[http://sme12.ph/index.php?option=com\\_content&task=view&id=186&Itemid=67](http://sme12.ph/index.php?option=com_content&task=view&id=186&Itemid=67)