

Can Certification Marks Promote Health Related Goals?

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Date : November 3, 2017

Margaret Chon and Maria Therese Fujiye, *Leveraging Certification Marks for Public Health*, in **The New Intellectual Property of Health** 257 (Alberto Alemanno and Enrico Bonadio eds, 2016), available at [SSRN](#).

In the past months, there have been several interesting new books published on international and comparative intellectual property (IP). One of the books that has interested me the most is *The New Intellectual Property of Health* (Alberto Alemanno and Enrico Bonadio eds, 2016). This book tackles a series of important topics which relate to a variety of intersections between IP and public health. Its various chapters include topics related to plain packaging, investor-state dispute provisions, and the controversial notion of IP as investment. As an author of one of the chapters in the book, I am not providing a review of the book itself, but I would like to commend your attention to the chapter written by [Margaret Chon](#) and Maria Therese Fujiye, *Leveraging Certification Marks for Public Health*. In this chapter, the authors focus on the possibility and the capacity of certification marks (marks that certify that products are made or embody a certain standard) to achieve health-related objectives by promoting healthy products. In particular, the authors analyse the role that certification marks play as carrier of certified information about the products and consider whether this information could be leveraged for health-related goals, by leading consumers to purchase specific products that could be considered “healthier” than others available in the market.

Leveraging Certification Marks for Public Health provides crucial and important guidance to scholars, who are engaged in the exercise of attempting to link distinctive signs (such as marks and geographical indications (GIs)) with public health (or other meritorious objectives). In my own chapter, I conclude that GIs do not necessarily promote the consumption of healthier products, although they can certainly increase the quantity and quality of information related to the products they identify. (GIs are often used to identify products which, when consumed beyond moderate quantities, can be quite harmful to health—such as wines, spirits, cheeses, and cured meats.) Chon and Fujiye, however, explore whether certification marks can be used as complementary, if not as alternative, to products’ mandatory disclosure and labelling requirements since these marks provide precise information to consumers related to the quality and other characteristics of the products.

The authors analyse some of the less explored channels of product regulation and quality control that relate to the governance of trademark law and products’ supply chain from inception to market, and observe how a system of Global Value Networks (GVNs) can be used to provide “smart” information to consumers through certification marks nationally and across multiple jurisdictions. In turn, if a system of GVN can be used to promote smart information for products in general, it could then be leveraged to promote healthy products and health-related goals. In the chapter, the authors focus primarily on examples related to food, an area that has seen increasing attention in recent years, also due to several scandals, such as the sale of adulterated olive oil, fake eggs, and similar schemes.

Yet, while pointing out the promising effects of certification marks, the chapter also highlights the problems related to the current governance structure of certification marks, which includes to what extent consumers properly understand the information encapsulated in the certification marks, or whether this information can have a (positive) impact on consumer purchasing behaviours as a result.

Moreover, as noted also by other scholars, most recently by Jeanne Fromer, *The Unregulated Certification Mark(et)*, the chapter stresses the possible imperfection of the certification trademark system, in particular the lack of full transparency on certification standards and effective quality control of the products.

In particular, it is still not possible to fully rely on certification marks (nor on GIs) for a full disclosure of product ingredients, manufacturing steps, and even actual geographical origin of the products in their entirety. To the contrary, as in the example of the “organic” case study in the chapter, certification marks are at times based on unclear standards. Hence, they have become powerful marketing tools—consumers believe organic products are better and are willing to pay a premium price for them, even though the parameters for organic certification does not necessarily reflect much healthier regulations, and certainly the label “organic” do not always identify healthy food.

Still, unlike other scholars who have criticized certification marks as being subsidies and barriers to entry, while failing to be transparent or effective to promote the information that they are supposed to convey, Chon and Fujive conclude the chapter by emphasizing the potentials of these signs, when correctly leveraged, to promote health-related and other positive objectives. I fully agree with this position. More specifically, the answer to the fact that certification marks (as well as GIs) are today still imperfect tools to carry smart information as part as GVN in the global supply chain does not make these tools less valuable (and certainly these are no more subsidies or barriers to entry than other types of IP are). Instead, we should strive to perfect these tools, and make them more transparent and reliable for consumers. Again, this may not translate to consumers purchasing healthier food, but it can certainly translate to consumers having a larger set of accurate information about products in the market place—and I like that a lot.

Editor's note: Professor Calboli contributed a chapter to *The New Intellectual Property of Health*, but was involved with neither the selection or editing of the chapter she discusses here.

Cite as: Irene Calboli, *Can Certification Marks Promote Health Related Goals?*, JOTWELL (November 3, 2017) (reviewing Margaret Chon and Maria Therese Fujiye, *Leveraging Certification Marks for Public Health*, in **The New Intellectual Property of Health** 257 (Alberto Alemanno and Enrico Bonadio eds., 2016), available at SSRN), <https://intl.jotwell.com/can-certification-marks-promote-health-related-goals/>.