



Protection Of Geographical Indications In Ghana

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INTEGRATED LEGAL CONSULTANTS

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Newsletter

Editor's Note

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, our Practice has introduced the publication of newsletters on legal and economic issues that would be of interest to its clients and equally affect their transactions. This is our 18th edition.

Geographical Indications (GIs) are used to distinguish goods produced or originating from one place/region or country from similar goods produced or originating from another place. GIs are adopted as a way to attest to the quality of goods and production methods attributable to goods emanating from a particular region.

They are protected under different legal regimes based on what is obtainable in each jurisdiction. In Ghana, GIs may be protected as Collective marks under the Trade Mark Act, 2004 (Act 664) as amended or under the Geographical Indications Act, 2003.

This Newsletter looks at the protection of Geographical Indications in Ghana.

In this issue, we have highlighted some key provisions of the GI legal regime in Ghana.

We hope you find it informative and educative. Your feedback is welcome.

Happy Holidays!

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PROTECTION OF GEOGRAPHICAL INDICATIONS IN GHANA

Introduction

Geographical Indications (GIs) are used to distinguish goods produced or originating from one place/region or country from similar goods produced or originating from another place. GIs are adopted as a way to attest to the quality of goods and production methods attributable to goods emanating from a particular region, as a way to distinguish these goods both in the local, regional and international market and as way to drive economic growth of the producers of such goods in the specific place or region to which the GI is applied.

What is a geographical Indication?

According to the World Intellectual Property Organization (WIPO), a GI is a sign applied to products which have a specific geographical origin, and which possess qualities and or a reputation that are due to the origin of such products. (https://www.wipo.int/geo_indications/en/ accessed 9th December 2023)

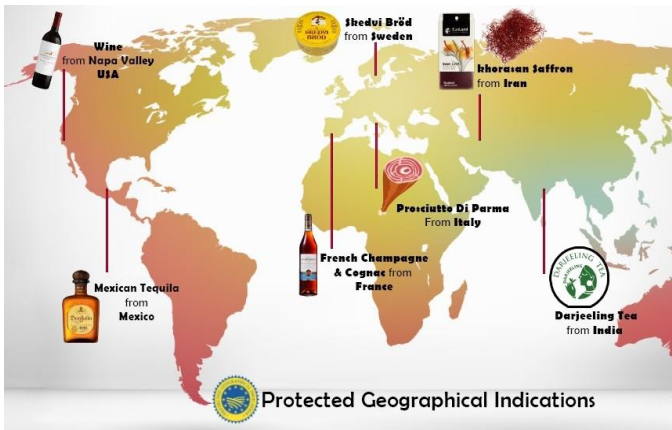
Thus, for a sign or symbol to be used as a GI, it ordinarily should identify the product as originating or emanating from a given place. It is important to add that one key thing about GIs is that the qualities and characteristics of the products to which the GI applies must be due to the place the product originates from. These may include the weather, the type of production methods, the planting or breeding methods from the raw materials used in production. It may also include a given reputation

that has been gained over time regarding specific products emanating from that place thus, the reputation of the products is tied to that origin.

For a sign or symbol to function as a GI, it must identify a product as stemming from a specific place. Thus, there must be a clear link between the product for which the GI is used and the original place the product is produced. Several GIs have been adopted and are being used in respect of different products across the world. Examples include Swiss watches and Gruyere Cheese from Switzerland, Tequila from Mexico, and Cha das Calderas wines from Cabo Verde.

GIs are a unique way for producers to leverage on the unique value of their products from specific origins, to make more economic value from these products and a way to inform consumers about the uniqueness of such products. The benefit of protecting a GI is that it empowers those who have the right to use the specific indication to prevent unauthorized use of the GI on products by any third parties which do not conform with the prescribed standards for products associated with that GI. The right over a GI does not allow the owner to prevent third parties from making a product using the same methods or techniques as those set out for making products for that GI. They can only prevent a GI from being used on products that do not conform to their own standards. GIs, are normally used for agricultural products, wines, foods, spirit drinks, handicrafts and industrial products.

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How are they protected?

Generally, the mode of protection of a GI is determined by the applicable laws in the jurisdiction where registration and protection is sought. GIs are protected by registration of the sign/ GI in relation to a specific product.

There are 4 major methods through which GIs may be protected. These are:

- i. By a sui generis system (this is a special regime in place for protection of GIs).
- ii. By using collective or certification marks under the applicable trademark law.
- iii. Methods that focus on business practices including administrative products approval systems and
- iv. Through unfair competition laws.

The first two methods share similarities, as the protection of GIs focuses on the setting up of rights which promote the collective use of these rights by users who comply with standards that are defined for the use of the GI.

In many jurisdictions, the protection of GIs is based on a combination of methods which have been developed based on the different legal regimes and economic conditions in each of those countries.

Let us take a look at how GIs are protected in Ghana.

Protection of Geographical Indications in Ghana

The primary regulation for protection of Geographical Indications in Ghana is the Geographical Indications Act, 2003 (Act 659) along with the Geographical Indications Regulations 2020 (LI 2414). While Act 659 was passed in 2003, GIs could not be protected under this Act, as the regulations outlining how the GI applications could be filed and processed did not come into force until 2022. Thus, persons interested in protecting the GIs would be left with the option of exploring registration of such signs as trademarks per section 2 of the Trade Marks Act 2004, (Act 664) as collectives marks.

With the coming into effect of LI 2414, the procedure and requirements for registration of GIs in Ghana is clearly spelt out.

Key provisions of the Geographical Indications Act, 2003

Per Act 659, what can be protected as a GI is provided for in section 22 of the Act. Section 22 defines a GI as

“an indication which identifies a good as originating in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin.”

Furthermore, section 22 goes on to define goods as *“ any natural or agricultural product or any product or handicraft or industry and includes Kente”*.



Registration of a GI in Ghana

The LI 2114 makes provisions for the registration of GIs in Ghana and spells out the steps and procedure for registration of a GI.

These steps include the following:

1. Completion of an application form.
2. Payment of official fees.
3. Providing details of the applicant such as name, address and nationality, contact information and email address.
4. Providing evidence of right to use of the GI/ evident of right of applicant to represent the interest of association of persons/ producers of the goods or authority established under relevant law.
5. Providing documentary evidence in support of the explanation as to quality, reputation or other characteristics of the product.
6. A representation and sufficient description of the name of GI being sought to be registered, the area and the goods to which the GI applies.
7. A Power of attorney appointing agent signed and stamped by applicant where the applicant is an entity.
8. Statement of use of the product and an affidavit of use.
9. Explanation of given quality, reputation etc. of product and supporting documentary evidence.
10. A representation and sufficient description of the name of GI being sought to be registered, the area and the goods to which the GI applies.
11. Where it is a foreign GI, the name of country of origin of the GI, conditions stipulated for use of the GI, the products the GI protects and document certifying registration of the GI.
12. The Applicant is also to provide standard bench mark or industry standard for the use of the GI with respect to production, specific quality etc. of the goods which are essentially attributable to the geographical origin of the goods.
13. A document issued by a competent local authority certifying the production activity undertaken by applicant in the given geographical area.
14. A document issued by a competent local authority certifying the product meets all criteria of quality provided for by the relevant legislation in force in the case of food and agricultural products.
15. Geographical coordinates and map of the territory in country of origin of goods showing boundaries of the geographical territory where goods are produced.

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Upon submission of the application and supporting document, where the Registrar requires additional information, this will be communicated to the applicant.

Upon completion of examination, the application will be published and open to opposition for a term of ninety days from publication, after which the GI will be approved for registration and a certificate of registration issued where no opposition is filed.

In conclusion, the above outlines the steps for protection of Geographical Indications in Ghana. Businesses should take advantage of this means of protecting their GIs in Ghana.

By Esohe Olajide

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If you have any inquiries in relation to GIs in Ghana, kindly send an email to ilc@integratedlegalconsultants.com