

The Protection of producers and the products of geographical Indications

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Abstract

Geographical indications products indicate the origin of products having a certain quality, reputations or characteristics from a specific geographical origin. There are two main problems arising concerning with Geographical Indication products when the name is used outside the area (generic or generic term) and expropriation when the Geographical Indication's product has been registered by an actor outside the territory. There are two main legal protection systems such as registration system and non-registration system. Registration is a duty of producers because the producer of Geographical Indications can protect the false or misuse and infringement of Geographical Indication's products against unauthorized producers. Registration products of Geographical Indication's products have exclusive right to use the indications on the products in which it is registered. Although registration is not compulsory, it is prima facie evidence of validity of the indication of products and ownership for producers. Therefore, registration is needed for the protection of producers and products of Geographical Indications effectively.

Keywords: Protection, Producers, Geographical Indications

Introduction

Geographical Indication is an indication that identifies a product. It originates from a definite territory. A geographical indication is defined as a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Geographical Indications of products are indications of quality, reputations or characteristics of the products attributable to with region from which the products originate. Many of Geographical Indication's products have valuable reputations. Geographical Indications of products can be used in agricultural goods, natural goods or manufactured goods or any goods handicraft or goods of industry including food stuffs. Especially, agricultural products typically have qualities that are derived from their place or production.

Two protection systems of geographical indication's products are registration system and non-registration system. And then, a producer of geographical indications is any local person or a legal entity engaged in the production or manufacture of or trade in

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the geographical area. Registration of Geographical Indications' products is encouraged to protect interest of producers. Thus, the producer of Geographical Indication needs to register their Geographical Indication product for preventing the Geographical Indication goods from misleading the public as to the geographical indication of the goods.

Definition of Geographical Indications

A geographical indication is also defined as a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products of geographical indications typically have qualities that derive from their place of production and are influenced by specific local geographical factors, such as climate and soil.

Geographical indications are also used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts and industrial products. Examples of the Geographical indications are "Tuscany" for olive oil produced in a specific area of Italy, or "Roquefort" for cheese produced in that region of France, watches produced in Switzerland.¹

According to the Myanmar Trademark Law, Geographical indication means any indication which identifies goods as originating in the territory of a country, or a region or a locality in that territory, where a given quality, reputation or other characteristics of the goods is essentially attributable to its geographical origin; for example, Myanmar Thanakha, Myanmar Tea Leaf, SeinTaLone,....²

Geographical Indications are more than just a name or symbol. They reflect a reputation strongly linked to geographical areas of varying sizes. A geographical indication's reputation is collective and intangible asset. If not protected the geographical indications product, it could be used without restriction and its value diminished and eventually lost. Thus, geographical indications need to protect.

¹ WIPO, Geographical indications: Introduction, WIPO Publication No.952(E)P.15

² Section 2(f) of the Trademark law, 2019

Products of Geographical indications

The Geographical indications are typically used for agriculture. Therefore, initially GIs were attributed to agricultural goods and foodstuffs but not attributed to industrial goods and handicraft goods. But, nowadays geographical indications' products are not limited to agriculture. Natural goods or manufactured goods or any goods of handicraft or goods of industry, including food stuffs are prescribed as Geographical Indication products. However, in manufacturing products, processing or preparation should take place in that region.³

"Champagne", "tequila", "Darjeeling", "Roquefort", "Chianti", "Pilsen", "Porto", "Sheffield" and "Havana" are some examples of well-known GIs' products' names that are associated with products of a certain nature and quality.⁴

In Myanmar, the first 8 kinds of geographical indications 'products are chosen by Ministry of science and technical such as Ayardaw Thanakha from Sagin, Paw san Hmwey rice from Shwebo, Tea leaf, Coffee seeds from Yaw Ngan, Lecquare from Bagan, Bamboo Umbrella from Pathein, Lotus Fiber from Inlay and Sein Ta Lone Mango.

Problems on Geographical Indications' Products

There are two main problems arising concerning with GIs' products when the name become use outside the area (generation or generic term) and when the GIs' product has been registered by an actor outside the territory (expropriation). These problems demonstrate the importance of geographical indications.⁵

Generalization occurs when an unprotected product is used as a generic term. 'Generic' is a name which, although they denote the place from where a product originates, have become the term customary for such a product.⁶

Spreading of generic resources is an exploding issue in ASIA. Thai experienced the first case of spreading of generic resources when a newly developed hybrid variety under the name **jasmati** was registered in 1997 by the Rice Tec. Corporation at patent and trademark Office of the United States of America. The name contains two rice varieties. Jasmine rice comes from Thai and **basmati** rice comes from the India subcontinent. However, **Jasmati** rice has characteristics other than those of basmati and jasmine rice. The use of the name **Jasmati** rice would therefore mislead rice consumers by making them wrongly believe that **jasmati** rice would have the same characteristics as jasmine

³ International Trade Centre, Marketing Crafts and Visual Arts; The Role of intellectual Property, A practical guide, 2003, p-121

⁴ International Trade Centre, Marketing Crafts and Visual Arts; The Role of intellectual Property, A practical guide, 2003, p-121

⁵ Ibid.

⁶ What is Intellectual property? World Intellectual Property Organization, 2003, p.17

rice from Thai and **basmati** rice from India, even though the rice was not genetically related to the Jasmine rice grown in Thai. This concern was reinforced by the finding of a market survey showing that over half of the consumers in the United States buying **Jasmati** though it were related to Jasmine and **basmati** rice.⁷

So, the Act on GI protection was introduced in 2003 as a tool for protection origin based products from generic term and the registration of a rice patent on its aroma genes was made in the United States in 2008. Therefore, GIs are also potentially useful in protecting against generic term.⁸

Expropriation occurs when the GIs is registered outside the territory before the local legitimate stakeholders have been recognized as such and have obtained protection for their GI. When a GIs is registered outside of the territory, the problem of prior registration by external non-legitimate producers is well illustrated in the "Roobois" case in South Africa. "Roobois" was registered as Trade Mark in the US by Roobois exporter in 2001, giving raise to difficulties for South Africans attempting to export Roobois to the US. Litigating, in which a number of coffee houses participated, concluded reportedly with an out of court settlement at a cost to Roobois industry of about US\$ 1million.⁹

To avoid expropriation or generic use, it may be important to increase public awareness of the GIs product. Conveying the GIs' products as the heritage of a local community, in relation with a specific product and a defined geographical area may support against expropriation or generic use of GI's products.¹⁰

Methods for Protection of Geographical Indications

Geographical Indications is a very useful tool to implement the development of the economics of all over the country .Therefore, it is needed to protect. There are many ways of protecting a geographical indication. The methods of protection of geographical indication have been differed from each country. It can be protected as laws against unfair competition from misleading the public consumers and registering as the geographical indications products.

Registration is one of the important protection system of geographical indication product. Sometime it can be registered as trademark, collective marks and certification marks. Once a geographical indication has been registered as a collective mark, the association that owns it has the right to prohibit its use by persons who are not member of association.¹¹

⁷ Asia Pacific Development Journal, Vol-19, No.2, Dec; 2012, p-99

⁸ Ibid.

⁹ www.wipo.int/ebookshop

¹⁰ Professor Jun klabbers, Helsinki University, The Protection of GIs in the European Community, p.154

¹¹ WIPO, Intellectual Property Handbook, 2nd edition, 2004, p.123

A geographical indication products has been registered as a certification mark, it may be normally be used by everybody whose products comply with the requirements set out in the regulation. In general, the protection of a geographical indication through registration as certification mark is equivalent to that conferred by registration as a collective mark.¹²

A geographical indication registration must be made by a geographical indication association, comprised of interested parties, including producers groups, operators and institutions in a certain geographical area and in relation to a specific type of goods.¹³

Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.¹⁴

A National competent authority grants registration for geographical indications. In some countries the function of geographical indication is carried out by a special body responsible for its protection. In other countries, the national intellectual property office carries out this function.¹⁵

In India, the application must mention the special characteristics of the product and its production procedures or cultivation methods. A statement of case is to be prepared and filed with the application. The uniqueness of the product will decide the qualification of registration. The application will be examined by the GI Registry and may be asked for more clarification and details and fulfill the deficiencies. The consultative group with experts will consider the statement of case and a proper representation from the applicant. The decision will be communicated to the applicant and further appeal can be filed to the IPAB by the applicant. The application will be published and opposition to registration will be accepted. It is the duty of the applicant to file counterstatement and defend his case. Once the application has been accepted by the Registrar, registration will be done and the certificates will be issued.¹⁶

In Myanmar, geographical indications can be register “any legal entity representing the persons who produces goods of natural products or agricultural products or handicrafts and all industrial products of the locality in which the relevant

¹² WIPO, standing committee on the law of Trademarks, industrial design and geographical indications, 6th session, 2001, p.10-11

¹³ <http://www.lexology.com/library/detail>.

¹⁴ Dr.B.L.WADEHRA, Intellectual Property Law Handbook, 2nd Edition, p-498

¹⁵ <http://ipindia.nic.in/girindia/RegistrationProcess.htm>,

¹⁶ K. D. Raju .ShivangiTiwari ,The management of geographical indications: post registration challenges and opportunities, 2015.p.297

good is produced, desirous of registration a geographical indication shall apply to the Intellectual Property Office of Myanmar for registration in conformity with the stipulations.

The application should be accompanied by a specification describing in sufficient details the specific characteristic of the good or quality or its reputation, the link between a specific quality, the reputation or the characteristic of the goods and the geographical origin and the methods of production and other prescribed particulars in the regulations and shall be subject to the payment of the prescribed fees.¹⁷

Geographical indication protection shall be available against another geographical indication which, although literally true as to the territory, region or locality in which the good originates falsely represents to the public that the good originates in another territory.

The registrar shall examine whether the application comply with the qualification and if all the requirement are fulfilled, shall publish the content of the application and specification as prescribed in the regulations. The provisions relating to the opposition of trademarks shall apply mutatis mutandis to the opposition of geographical indications. If no opposition was filed or the opposition was rejected, the geographical indication shall be registered.¹⁸

With respect to the terms of registration of a geographical indication, the terms of registration shall be for a period of ten years. It shall be renewed every ten years in accordance with the stipulations. The applicant for the registration of renewable shall be payment the prescribed fees.¹⁹

An association of persons or producers as a group or any authority should represent the interest of the producers as a whole to file the geographical indication application and they must file an affidavit as to how they claim to be representing the interest.²⁰

Geographical Indications' products may also be protected under the Trademark law or sui generic system. Most ASEAN countries protect sui generics system. Among them, three countries (Philippines, Brunei and Myanmar) protect through collective or certification marks under Trademark law.²¹

In Myanmar, geographical indications are protected in trademark Law which provides a mechanism for the registration. Trademark can be protected the mark not the

¹⁷ Section-54 of the Trademark Law, 2019

¹⁸ Section- 23, Ibid.

¹⁹ Section-34, Ibid.

²⁰ <http://ipindia.nic.in/girindia/RegistrationProcess.htm>,

²¹ Ibid.

product. So, to be effective protect should be promulgated the separate geographical indications law.

GIs may be protected within their statutory recognitions without being registered .Such a protection system for GIs is very similar to protection of copyright Which also does not provide any registrations procedures. Non registering Geographical indications products may be protected through certain laws that focus on business practices, such as laws relating to the repression of unfair competition law, consumer protection laws or laws on the labeling of products or Advertising law or custom law. These laws indirectly protect GIs insofar as they prohibit certain acts that may involve their unauthorized use²².

Geographical Indications' products can also be protected as “Unfair Competition”. “Unfair Competition” means competitive practices by businesses during the business process which cause or may cause damage to consumers.²³

Geographical indications must have acquired the interests of the State or the legitimate rights and interests of other businesses or of a certain reputation or goodwill. In other words, the potential buyers of the products must associate the geographical indications with the place of origin of the goods or services. The use of a certain geographical indications for goods or services not originating from the respective area may be misleading and thus may deceive consumers. An action for unfair competition is depending on the national law, is either based on statutory provisions, as interpreted by court decisions, or on common law can be instituted in order to prevent competitors from resorting, in the course of trade, to such misleading practices.²⁴

Geographical Indications can also be protected accordance with international laws as multilateral agreements, regional agreements and bilateral agreements. The scope of protection is provided for geographical indications under the Paris Convention, the Madrid Agreement on Indications of Source, the Lisbon Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).²⁵

Geographical indications' products have a limited products as the place of origin and quality which know to consumers to choose goods which indicates geographical name in the market .In order to safe health of consumers, the geographical indications of the products should be registered by the respective laws .The registration of GIs protects the false or misuse and infringement of products reputation. Geographical indications were protected by Paris Conventions 1883, Madrid agreement (1891), and Lisbon agreement (1958).Now Geographical indications were protected by (TRIPS) Agreement (1994).In the false and misuse of GIs of a country, it can be punished with damages or

²² Vadim Mantrov, Eu law on Indications of Geographical Origin, p-279

²³ Section-2(e)(h) of the Competition Law, 2015

²⁴ WIPO, Intellectual Property Handbook, 2nd edition, 2004, p.124

²⁵ <http://www.wipo.int/geo-indications/en/faq-geogr>

fine, or, in serious cases, imprisonment. The Union of Myanmar is a member country of TRIPS Agreements. But there is no case relating to GIs in Myanmar. Under the TRIPS Agreement the registration of trademark is very important to protect false or misuse of products. There is no specific statutory law on geographical indication in Myanmar. However, Myanmar has been providing protection to the general public against the deceptive use of geographical indications by unfair trader for many years. So the registration of the trademark of a product is the production of GIs in Myanmar.

Findings

In order to protect the producers and the products of Geographical Indications, there are two main legal protection systems. They are the registration system and non-registration system. Among them, registration system can get more advantages not only for product and producer from unfair competition but also in increased export opportunities. Registration of Geographical Indications system can get more reputation for added values to a product. In Myanmar, geographical indications can be register “any legal entity representing the persons who produces goods of natural products or agricultural products or handicrafts and all industrial products of the locality in which the relevant good is produced, desirous of registration a geographical indication shall apply to the Intellectual Property Office of Myanmar for registration in conformity with the stipulations.

Conclusion

Geographical Indications is an important content of intellectual property legal system. GIs is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics. Geographical Indications perform a variety of economic and other functions. The product of Geography Indications includes the name of the place or origin of the goods. Geography Indications products are known by consumers to denote the origin and the quality of products. GIs products are valuable assets.

Geographical Indication’ products are protected in different countries and region through different registrations systems. Most of the countries implemented registration system for protection of geographical indications products. Non-registration system is indirectly protection system is the best way for protection for geographical indications products and producers. Registration is important for producers because only the

registrar can protect the false or misuse and infringement of Geographical Indications' products from unauthorized producers.

Registration system can get advantages not only to product from unfair competition for producers but also in increased export opportunities. Registration of Geographical Indications can get more reputation for added values to a product. The false and misuse of Geographical Indications' product from unauthorized producers of a country can be punished with damages or fine, or in serious cases, in imprisonment for criminal action. The civil action could be injunction or damages. Geographical Indications' products are protected under the Trade Mark Law in Myanmar. In order to protect Geographical Indication's products and to prevent the infringement, the special law and effective sanction system is needed first.

Acknowledgement

We would like to express our heartfelt gratitude to Pro Rectors Dr. Si Si Khin and Dr. Tint Moe Thu Zar, Yadanabon University, for their interest and encouragement to do this research. We particularly want to thank Dr. Wai Wai Myint, Professor and Head, Department of Law, Yadanabon University for her invaluable advices and suggestions on our research.

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