



Geographical Indication Manual

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Introduction

The Jamaica Intellectual Property Office (JIPO) was established on February 1, 2002 by the Jamaica Intellectual Property Office Act. The mandate of the Office is to administer the intellectual property (IP) laws of Jamaica. Our mission is to *establish and administer a modern and effective IP rights system that will act as a catalyst for international competitiveness, facilitating economic growth and national development.*

Geographical Indications (GIs) are invaluable tools to aid producers and manufacturers of agricultural and agricultural-based products to protect and take advantage of the distinctive characteristics and reputation of their products which are derived from the geographical area or region where they are grown or produced. The purpose of this manual is to assist the public in a succinct way to better understand GIs, which is a relatively new area of IP for Jamaica and to guide persons and organizations who are considering how to file an application at JIPO to register a GI. We hope we have met those goals with this publication and look forward to your feedback as we seek to improve the services we offer to the public.



What is a Geographical Indication?

According to the Protection of Geographical Indications Act, 2004 (Jamaica), a “*geographical indication*” is “*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 characteristic of the good is essentially attributable to its geographical origin.*”

A GI offers protection to producers of certain goods based on where they were produced and/or the method of production used. This creates a link between the standard of quality and the place of origin of a product. When the geographical name is attached to a particular product whose special characteristics are specifically due to the geographical environment in which it is produced, it is termed an appellation of origin. It is this special connection between a geographical location and a product that makes it important to protect GIs as the reputation of the good is acquired and maintained due to the connection to the geographical location.

Difference between a trade mark and a GI

Very often one may confuse a trade mark with a GI due to the similarity in meaning. However, the distinguishing feature is the use. With a trade mark, only the trade mark holder is permitted to use the mark once it is registered. On the other hand, all who produce the GI product within the specifications set out in the GI registration are entitled to use the GI on their products, provided they produce the products within procedural and quality



standards as indicated by the standards and practices agreed by the local industry (usually reflected in the Code of Practice and Control Manual discussed below). Such standards usually include the specific geographic limitation where the goods must be produced and how they must be produced.

Several local agencies have focused on utilizing the trade mark process to register certification and collective trade marks. Examples are the Coffee Industry Board's "Blue Mountain Coffee" certification mark, the Bureau of Standard's "Jamaica-made" certification mark and the Jamaica Exporters' Association's "Jamaica's finest" certification mark for Jamaican ackee, honey, jerk sauces and scotch bonnet peppers. Like GIs, certification marks serve to ensure compliance with a stipulated level of quality. However in addition to controlling quality standards, GIs are protected against the use of misleading terms like "Jamaica-style", "Jamaica-kind" and "Jamaica-type". GIs therefore enjoy stronger protection than certification marks as they must maintain that characteristic link to the country or other geographic origin.

The Protection of Geographical Indications Act makes special provisions as it relates to trade marks. Where a trade mark consists of a GI that is connected to a good which does not originate in the territory indicated by the GI, if the use of the indication in the trade mark for the product in Jamaica is likely to mislead as to the true place of origin of the product, then the Registrar will refuse to register the trade mark or revoke the



registration along with the requisite notification. As it relates to trade marks with GIs for wines or spirits that do not originate from the location that the indication identifies, the Registrar can refuse to register the trade mark or revoke its registration.

Benefits of GI protection

GIs aid consumers in determining the quality of a good or the production process involved. Consumers' perception is key in the decision-making process and many consumers look to a product's origin when determining the quality and reasonableness of the purchase price. According to a large-scale EU study of 20,000 consumers in 1999, it was discovered that many consumers were willing to pay more for GI products than for non-GI products. This shows the benefit to the producers of goods that are protected by GIs. This is also one of the reasons why Jamaica has moved to protect the country name "Jamaica" nationally and internationally. Once a product garners the protection offered by the GI status, it can positively differentiate itself from other similar products in the market which do not have that reputational link to a geographic location.

GIs also benefit geographical regions by recognizing their unique characteristics and aid in the promotion of regional tourism thereby encouraging producers to maintain high quality levels in order to foster increased production and sales. This allows many micro, small and medium-sized enterprises (MSMEs) which produce GI goods to develop a competitive advantage in international markets.



Jamaica-Switzerland GI Project

In May 2008 JIPO launched a GI capacity building project in partnership with the Swiss Federal Intellectual Property Institute (IPI) to aid in the development of Jamaican GI products on an international scale. Various initiatives were implemented such as public education training for producers and government officials involved in the implementation of the Act and assistance in the preparation of product specifications. At that time, the products identified for protected GI status were Blue Mountain Coffee, Jamaica Rum and Jamaica Jerk. Since then, several other products have been identified for protected GI status.

What are the Control Manual and the Code of Practice (pre-registration processes) & the purpose?

The Control Manual seeks to provide all relevant information to those interested in registering a GI. The first major step to obtaining a GI is to identify a link between the products and the geographical area it is produced in. Of importance is the need to determine how the geographical area assists in creating a unique and superior product, such as the influence of climate, soils, specialized local knowledge etc. One should be able to discern the uniqueness of the product visually, by taste or symbolically. It will then be essential to determine how viable it will be to pursue GI status for the product and this will be done by determining who the main stakeholders will be, their level of interest in participating in the process, discussing the market and basic analysis to determine possible costs.



After this is done, a Producers' Association should be formed as a means of organizing the production of the good. Group management of the GI process will be easier than individual small-scale producers trying to navigate through the technical IP system to protect their good. The association should comprise of representatives from the government and various persons involved directly in production. The Producers' Association will need to come together and develop a long-term strategic plan that will oversee all pre- and post registration actions as it relates to the GI.

An essential element of the strategic plan is the development of a Code of Conduct, which will contain relevant information setting out the criteria for a product to qualify for GI status. The overarching rationale behind the criteria will be to develop a link between the unique characteristics of the product and the geographical location that it is produced in. Partnership with external organizations such as the Bureau of Standards and JIPO is key as such organizations provide support by laying out the legal framework for the protection of a GI and work with the producers to ensure quality standards are being maintained.

Especially as it relates to agricultural products, there will need to be several control methods put in place to ensure quality maintenance. There needs to be at the top level, a mechanism for control by the producers. Internal systems will need to be put in place to ensure that what is being produced meets the standards set out by the association.



At the next level, the Producers' Association will need to implement controls by way of inspection systems to make sure the products that carry their name meet their requirements. This requires participation from all stakeholders involved to ensure the highest quality product is presented in the market.

An external body will also need to be involved to ensure that the product being placed in the local and international market meets international standards. The external body and the Producers' Association will work together to develop the controls such as how many producers will be controlled, how often the control mechanisms will be implemented on an annual basis, testing of products etc.

Process for registering a GI at JIPO

It is important to note that the Act does offer protection for unregistered Geographical Indications but creates a system to ensure conformity with industry standards.

The Act stipulates that any producer or group of producers linked to a specific geographical area or any legally recognized association of persons may apply to the Registrar of Industrial Property at JIPO to have the GI registered. The application should state relevant information such as the name, address and nationality of the applicant, the nature of the application which entails describing what the GI is being sought for and details of the geographical area that the application applies to. The applicant must also provide details of the quality, reputation or



any other characteristic which distinguishes the product from others based on geography.

When the requisite application fee has been paid the Registrar will examine the application for compliance with Protection of Geographical Indications Act and Regulations to determine whether the correct applicant has made the application; that the application does not conflict with public morality and the indication being sought meets the definition of a geographical indication.

If upon examination the application is accepted by JIPO, it will then be published in the Jamaica Gazette or JIPO's Intellectual Property Journal to facilitate notice to the world and the opportunity for third parties to oppose the application. If after publication there is no opposition within two months, the GI will be registered.

The next phase will be the registration of users. This will designate all those persons/groups who are permitted to use the GI. These persons will have to apply to the Registrar of Industrial Property at JIPO by submitting a written application accompanied by a Statement of Case and an affidavit of how they fall within the designated producer category. A letter of consent from the registered proprietor of the GI should also be included. The application is then examined and published in the same manner as the application for registration of the GI.



The following are the key steps to registering and protecting the GI in Jamaica:

- 1. Identify a link between the products and the geographical area it is produced in. Of importance is the need to determine how the geographical area lends to creating a unique and superior product, such as the influence of climate, soils and specialized local knowledge. One should be able to discern the uniqueness of the product visually, by taste, or symbolically.*
- 2. Determine how viable it will be to pursue GI status for the product by determining who the main stakeholders are, their level of interest in participating in the process, discussing the market and basic analysis to determine possible costs.*
- 3. Establish a producers' association to organize and manage the GI process.*
- 4. Develop a long-term strategy plan that involves the development of a Code of Practice - which will contain relevant information setting out the criteria for a product to qualify for GI status – and a Control Manual – which will set out the steps required for the goods produced under the GI to be inspected for standards compliance and quality assurance.*
- 5. Complete and submit the application form with application fee for GI registration to JIPO, along with the Code of Practice and the Control Manual.*
- 6. Encourage intended users of the GI to also register as users*



7. *Ensure that only the authorized users of the GI use the GI and that they use it in accordance with the agreed criteria and standards.*

GI Management and Licensing

As it regards penalties, the Act stipulates a variety of penalties ranging from 12 months imprisonment and/or a fine of up to \$1 million JMD in the lower courts, all the way up to 5 years imprisonment and/or a fine to be determined by the court in the Supreme Court. Pecuniary damages may be awarded if the offender has benefited from the improper use of the GI.

The right to licence a Geographical Indication lies with the proprietor of the GI. In order for the GI to be licenced to use the GI, he/she must apply and indicate how they intend to use the GI, as well as provide information to designate that the product they intend to be represented by the GI will meet the strict standards set out by the Producers' Association. A licencing fee will be charged to the user which will need to be maintained on whatever time basis the Producers' Association deems sufficient, be it annually etc.

The licencing period will need to be of such a time as to allow the product to enter the market with enough time to adequately measure how the product is performing within the market to determine whether the product consistently meets the standards to be permitted to bear the mark of the Producers' Association.



A licencing period of one year is a sufficient starting point and renewals can be automatic once the user meets certain targets set out by the Producers' Association.

Should a user fail to use the mark of the producers' association in an honest and authorized manner that will negatively effect the reputation of the GI, the licencing agreement will be automatically terminated and any items that bear the mark of the Producers' Association must be destroyed by said association and all marketing products linking that product with the association must be returned to the association for destruction. Should a dispute arise, the first body of contact will be the Producers' Association. If it cannot be resolved at that level, the user can appeal to JIPO, provided they give the association notice.

Also essential is creating provisions that will allow the proprietor to have access to the production area to inspect from time to time and to sample the product. Once the licencing agreement has been entered into the proprietor will need to keep a register of all the persons utilizing the GI. The Producers' Association mark will then be able to be placed on the product to certify that it has met the requirements set out in terms of quality etc. as part of the licencing agreement.

The user will need to provide regular reports on sales etc. to determine how the product is performing in the marketplace as well as how the user is managing the GI status of their product. It is this first-hand knowledge of the use that will provide key



information to the Producers' Association to learn how effective the GI management system is.

Traceability

It is very important to be able to trace where a product originates from once it enters the marketplace. Once the GI is formally registered, producers will be able to use the national GI Logo that was launched by the Ministry of Industry, Investment and Commerce (MIIC) during JIPO's IP Week in April 2015, along with their individual trade mark(s). Systems will need to be put in place so that information such as the producer, quantity and origin of all batches of a product, as well as information about where the product is distributed, is clearly displayed.

Conclusion

GIs are a very important way of leveraging the goodwill of Brand Jamaica and protecting the reputation that distinctive Jamaican products enjoy locally and internationally. Knowing what a GI is, how to identify potential GIs and how to register a GI, are critical to being able to take advantage of this form of IP. JIPO remains open and available to assist all groups of producers who wish to embark on the necessary steps towards GI protection and registration. JIPO may be contacted at:







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