WIPO ToT Programme – Trinidad and Tobago IPO

Dr. Wendy Hollingsworth | Virtual | August 4, 2020
Session 2: Trademark and GIs - Establishing Identity and Adding Value

Topic 1: Geographical Indications
What is being covered

• Definition of key terms
• Protecting Origin-linked products (OLPs)
• Value Chains
• GI Application process
• Managing a GI system
• GIs and business model
Origin-Linked Product

• Specific qualities based on unique characteristics of the region the OLP originates from
Indications of Source:

• Any expression or sign used to indicate that a product or a service originates in a country, region or a specific place

• No reference to special quality or reputation

• E.g. Product of Trinidad and Tobago, Made in Trinidad
Geographical Indication

- A sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

Jamaica Blue Mountain Coffee

“Montserrat Hills” PGI logo
Geographical Indication

• “……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..”

• Source: Trinidad and Tobago, Geographical Indications Act Chapter 82:78
Key Terms

Appellation of Origin

• “the geographical name of a country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors” Source: www.iprhelpdesk.eu

• Special kind of GI implying a stronger link with the place of origin
Key Terms

Appellation of Origin

- E.g.
- *Prosciutto di Parma* or Parma ham
- Reputation linked to place of origin
- Plus – quality and characteristics

Key Terms

Protected Denomination of Origin

• Products which are produced, processed and prepared in a specified geographical area

• Have qualities and characteristics a result of the place of origin and other natural and human factors.

Key Terms

Protected Geographical Indication

• Products for which at least one of the production, processing or preparation stages takes place in the specified region

• The qualities or characteristics are due to the place of origin

• The raw materials used in production do not have to come from the specific region.

Key Terms

Several tools available:

- National Geographical Indications legislations
- International systems
- Collective marks
- Certification marks
Protecting OLPs: National systems

• National *Sui Generis systems* – explain the main provisions in national law and the scope of protection

• The level of detail will depend on the audience and the training outcomes

• For producers who may wish to use the system be as practical as possible – definition of GI and what they will need to do to file an application; explain the forms in the regulations
Protecting OLPs: National systems

• Explain that not all OPLs will be, or can be, protected by GIs system

• It is also important to address the tools of the trademark system –
  • Certification Marks
  • Collective marks
Protecting OLPs: National systems

You may also want to briefly address:

- **Unfair competition**
  - Provides protection with a remedy against unlawful and dishonest business practices from competitors

- **Passing off**
  - Legal remedy under common law where the goods or services of one party are misrepresented as those of another resulting in the lost of customers because customers were led to believe they were buying the plaintiff’s goods
Protecting OLPs: National systems

Consumer protection

• It is also good to explain what protection may be provided under national consumer legislation

What about the CARIFORUM-EU EPA?
Depending on the level of the training being implemented the following may be good to refer to:

- **Madrid Agreement** for the Repression of False or Deceptive Indications of Source of Goods –

  - ....all goods bearing a false or deceptive indication by which one of the countries to which the Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries....
Protecting OLPs: International Context

• Depending on the level of the training being implemented the following may be good to refer to:
  • **Lisbon Agreement** for the Protection of Appellations of Origin and their International Registration -
    • establishes an international system of protection for appellations of origin which are already protected under the national law of one of the States party to that Agreement
Protecting OLPs: International Context

• Depending on the level of the training being implemented the following may be good to refer to:

  • WTO TRIPS Agreement
Protecting OLPs: Key Characteristics of a GI

GIs can be characterized by one or more of the following:

• **Material characteristics**: making them special – no other product exist with similar characteristics

• **Specificity of resources**: used in the production process

• **Historical/traditional know-how**: linked to the process

• **Collective dimensions**: and locally shared knowledge
Protecting OLPs: Value Chains

- Important to convey that OLPs are generally produced by a group of persons within the designated area

- Collective action is key

- Value chain analysis will give a good idea of who are to be included in the collective group who can use the GI designation
Protecting OLPS: Value Chains

- Producers/farmers, harvesters, processors, storage entities, marketers…etc.

- Decision must be made as to the scope of entities in the value chain to be included

- E.g. Jamaica Jerk seasoning – includes farmers and processors
Protecting OLPs: Registering a GI

Key steps at the national level include:

• Recognition of the value of the OLP
  • OLPs have unique characteristics which can offer a commercial advantage

• Identifying producer groups and other stakeholders key to the production and commercialization of the OLP
  • Establish producers’ group
  • Ensure they have the capacity and are sustainable
Key steps at the national level include:

- Developing product **specifications** – collective consensus
  - Science-based evidence, evidence of reputation, evidence of human factor in evolution of the OLP etc.

- Agreeing on the **name** for the GI
  - Consensus
  - Avoid the use of generic names
Protecting OLPs: Registering a GI

Key steps at the national level include:

• Preparing and filing the GI application
  • Is there a manual of procedures both internally and for applicants?
  • What forms are required?
  • Fees?
  • Is there a model application?
  • This will also be a good time to again discuss international registration systems
Protecting OLPs: Registering a GI

Key steps at the national level include: Case of Montserrat Cocoa Farmers Coop

• Effectively using the GI as a branding tool
  • Once the GI has been registered it must be used
  • E.g. *Trinidad Montserrat Hills Cocoa*
• Recall the purpose for obtaining IP protection for the OLP
• The benefits to OLP value chain actors
• Use the GI designation on approved products
Protecting OLPs: Registering a GI

Key steps at the national level include:

- Effectively using the GI as a branding tool
  - Use it in marketing and promotion
  - The aim is to further enhance the reputation of the product
  - Have consumers connect a specific OLPs with the GI
Protecting OLPs: Registering a GI

Key steps at the national level include:

- Monitoring & Enforcement
  - It is important to convey the necessity to establish a system for overall management of the GI system established by the group for the GI
  - Monitoring infringement is an essential part of the GI system
  - May be difficult and costly
Protecting OLPs: Registering a GI

Key steps at the national level include:

• Monitoring & Enforcement

oriGIn: (https://www.origin-gi.com/activities/policy-and-advocacy/item/8586-support-to-individual-members.html)

• Member based - cost for different Levels of membership
• Provides its members with information concerning the laws and procedures to register GIs in foreign jurisdictions.
• Helps its members reduce monitoring costs in foreign markets and reach out to policy makers in case of abuse.
• Members send information concerning potential infringements taking place in their regions, and oriGIn acts to stop them through public campaigns and legal advice.
Topic 3: Product Specifications and Standards
Product Specifications and Standards

• Specifications are critical for developing a GI or certification system

• Producers must develop product specifications when preparing a GI application

• These provide the basis for which the quality of the product is maintained among a group of producers
Product Specifications and Standards

GI Specifications/Code of Practice:

• Specifications – links the quality of the GI to the region

• The code of practice is the document which sets out the rules for use of the GI. Sometimes also referred to as the specifications

• First step in developing the voluntary standards which stakeholders using the GI must comply
Product Specifications and Standards

Provides guidelines for development:

- Must form the basis for offering a guarantee of the specific quality of the OLP
- Must be easily understood and implemented by all stakeholders
- Must be shared with all relevant stakeholders
- Must be focused, need not be complex

Source: FAO.org
Product Specifications and Standards

• Defines the specific quality of the product and the terms of use of the GI

• Voluntary standard

• Collectively derived through a participatory process

• Articulated in a document e.g. control manual
Product Specifications and Standards

• Producers must collectively elaborate the specifications and rules for the GI system

• Must be easy to enforce and control

• Must have a system of sanctions and rewards
Product Specifications and Standards

Serves as a tool

- For internal coordination by setting collective rules for those using the GI designation

- External trust – recognition by value chain users (controls – control manual should be a public document)
Product Specifications and Standards

Consensus - Negotiation

- Time is critical – allow for stakeholders to define the rules

- Consider
  - The pros and cons of each aspect of the rules
  - How heterogenous are the different aspects of the product
  - The aims and agenda of different actors
  - The cost requirements
Product Specifications and Standards

Collaboration:

• To define the technical specifications of the product
• Bring as many minds together to understand the product
• Gather as much information as possible
• Not all information will be used in developing the specifications or included in the CoP
• It is an opportunity to understand the product along all stages from production to consumption
GI Specifications: Basic information to be provided

• Name
  • Only the proposed name
  • Show proof of use in commerce or common language prior to the application (linguistics, history)

• Country in which the product is produced
Product Specifications and Standards

• **Description of the Product**
  • Specific Product Quality
  • What distinguishes the OLP?
    • Raw materials
    • Physical features – appearance, shape
    • Presentation – fresh, dried, preserved
    • Chemical – additives
    • Organoleptic – flavour, texture, aroma

Source: Faoo.org
Product Specifications and Standards

GI Specifications: Basic information to be provided

Specific steps in production that must take place in the identified geographical area

• Briefly list all the steps, from sourcing the raw material through to the final product, which must take place
• Which producers are involved in each step
• Have producers work in groups to identify and agree these steps
Product Specifications and Standards

GI Specifications: Basic information to be provided

Specific rules concerning slicing, grating, packaging, etc. of the product the registered name refers to

• If packaging must take place within the defined area state it here. The justification of this restriction must also be explained here.
Product Specifications and Standards

GI Specifications: Basic information to be provided

CONCISE DEFINITION OF THE GEOGRAPHICAL AREA

• Delimitation
  • Ecological – agronomic & physical conditions
  • Know-how, traditional practices
  • History of production
Product Specifications and Standards

GI Specifications: Basic information to be provided

CONCISE DEFINITION OF THE GEOGRAPHICAL AREA

- Delimitation
  - Production – key stakeholders localisation
  - Social network – main GI group with capacity to manage the GI management system
  - Existing zoning – geographic or administrative geographic limits
  - Inclusion of maps
Product Specifications and Standards

GI Specifications: Basic information to be provided

LINK WITH THE GEOGRAPHICAL AREA

- In what way are the product’s characteristics due to the geographical area

- What are the significant natural, human & other elements

- How the method of production is superior and how it imparts the unique characteristics to the product
GI Specifications: Basic information to be provided

LINK WITH THE GEOGRAPHICAL AREA

- Reference to publication of the specification
- Reputation of the products – how is it known (what proof?)
Topic 3: Product Specifications and Standards: Local guarantee system
Product Specifications and Standards

• It is critical to convey the importance of establishing and maintain the GI guarantee system

• For authenticity
Local Guarantee System – certification

• Assures consumers re product & producer conformity to the GI code of practice

• Conformity based on
  • Raw materials and processes
  • Traceability – does product originate from the delimited area
  • Final product – labelling, taste, appearance
  • Trust building

Source: Fao.org
Local Guarantee System – certification

• Should be equitable – small scale actors should be able to afford the process

• The I-PO manages the internal controls as per the control plan

• Imposing sanctions

Source: Fao.org
Internal Control Systems

- Must reflect the organization's ability to serve and monitor producers
- Articulating the CoP will give guidance as to the areas where capacity must be built
- Internal Compliance Manual
- A Compliance Officer - oversees and monitors the Internal Control System

Source: Fao.org
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<td>Revision history</td>
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