

Registering and Protecting Geographical Indications in Myanmar:

10 noteworthy points

Geographical Indication (GI) holds significant importance in safeguarding the unique identity and quality of goods originating from specific regions or territories. A Geographical Indication is defined under Section 2 of Myanmar's Trademark Law as an indication which identifies any goods as originating from a particular country, territory or a region, where a given quality, reputation or other distinguishing characteristics of the goods is indicative of its geographical origin. The primary objective of GI protection in Myanmar is to preserve the distinctiveness and reputation of goods linked to specific geographic areas, ensuring consumers can trust the authenticity and unique attributes of these products. This article delves into the key aspects of the registration and protection process of GIs in Myanmar.

1. Eligibility for GI Registration

The eligibility criteria for organizations seeking the registration of GIs is provided under Section 53 of Myanmar's Trademark Law. To apply for GI registration, the organization must be legally formed and represent specific categories of individuals involved in the production of goods within the relevant geographic area. These categories include manufacturers using natural products or resources, producers of agricultural products, manufacturers of handicrafts or industrial products, and relevant government authorities representing the aforementioned categories.

2. Application Requirements for GI Registration

Applicants for GI registration in Myanmar must comply with the stipulations under Section 54 when applying for the registration of a GI. The application must include the applicant organization or representative's name, nationality, and address, along with details of the geographical indication, region of origin, and the goods associated with it. The application must be accompanied by information on the distinguishing characteristics, quality, reputation of the goods, their defined quality, origin, production process, and any other matters as stipulated. Additionally, the application must be submitted along with the specified registration fee.

3. Grounds for Ineligibility of GI Registration

The conditions under which a geographical indication is ineligible for registration are provided under Section 55. These include situations where the GI does not conform to the definition provided in subsection (o) of Section 2 of Myanmar's Trademark Law, or if the goods for which the GI is used have become common usage or customary in Myanmar. Further, a GI that goes against public order, morale, or public policy cannot be registered.

4. Grounds for Invalidation or Cancellation of GI Registration

Any stakeholder, relevant department, or organization may apply to the Registrar to invalidate or cancel the registration of a GI under Section 56. These grounds include situations where the GI does not conform to the definition provided in subsection (o) of section 2, or if there is a failure to comply with the requirements outlined in subsection (b) of Section 54. Additionally, registration may be invalidated or canceled if the GI is a foreign one that is not protected or no longer used in its country of origin, or if it contradicts public order, morale, or public policy.

5. Use and Protection of Registered GI

As provided under Section 57, the registered GI may only be used in trade by producers operating within the registered region for the goods specified in the registration records. Protection for homonyms in GIs is granted if there is a significant difference between the already registered GI and a later registered one to treat producers fairly and avoid consumer confusion. The right holder of a GI indication is entitled to prohibit certain actions to prevent misuse and unfair competition. Misleading use of GI is not permitted.

6. Examination and Registration Process for GIs

The process for the Registrar to examine and register GIs is provided under Section 58. The Registrar must ensure that the application complies with the provisions of Sections 53, 54, and 55. If all requirements are fulfilled, the Registrar must publicize the information and facts contained in the application as prescribed.

Provisions regarding the objection of registration of a mark shall be applied as necessary to the objection of registration of a GI. The Registrar must register a GI if no objection is received or if he refuses such objection.

7. Treatment of Conflicting Registrations: Geographical Indications vs. Trademarks

The treatment of conflicting registrations between GIs and trademarks are provided under Section 60. If the registration of a trademark is applied for after the application for the registration of a GI has been submitted, the Registrar must refuse the trademark registration application if it violates Section 57 or if the trademark will be used for an identical good. Registered marks that fulfill these conditions shall be announced as invalid. However, a mark registered or applied for in good faith before the submission of a GI application may continue to be used even if it violates Section 57, provided it does not contravene the provisions in Chapter XV. In such cases, the Registrar shall allow the use of the GI as if it were the use of the mark related to it.

8. Supervision of Protected GI

The supervision of protected geographical indications is provided under Section 61. The relevant departments and organizations shall supervise the protected geographical indications, and they may assign some of the supervision work to another person. Supervision includes ensuring consistency between the descriptions of the registered products and the actual products in the market. Stakeholders are required to pay the expenses for supervision to ensure conformity with the product descriptions.

9. Term of Protection for Registered GI

The term of protection for a registered GI is provided under Section 59. It states that a registered geographical indication shall receive protection under this Law as long as its distinguishing characteristics, quality, or reputation, for which protection was initially granted, exist.

10. Taking Action against Violation of GI Rights

Section 62 addresses the actions to be taken against the violation of geographical indication rights. It states that actions must be taken in accordance with the provisions on taking action against the violation of rights of a mark if the stipulations, in addition to the provisions in this Law, are violated. This implies that the enforcement procedures and remedies available for trademark rights violations may be applied to address violations of geographical indication rights.

A bottom line

As Myanmar seeks to strengthen its position in the global market and protect its unique heritage, the registration and protection of Geographical Indications play a pivotal role in empowering local communities, enhancing product differentiation, and fostering sustainable economic development. Understanding the legal provisions and procedures involved in this domain is crucial for both producers and consumers, as it upholds the integrity and authenticity of goods originating from the diverse and culturally rich regions of Myanmar.

**By Nguyen Vu QUAN
Partner & IP Attorney**

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com