

# **ARTICLE**

## **GEOGRAPHICAL INDICATIONS – THE NIGERIAN EXPERIENCE**

Following the changed economic and socio-political environment in Nigeria since May 29, 1999, there has been an increasing consciousness for the protection of intellectual properties under the new and more investor -friendly atmosphere. It has, therefore, become necessary to consider a hitherto obscure aspect of our trademark jurisprudence. Marks with geographical indications have received very little attention under Nigerian law and an attempt has been made herein to explore the scope and nature of the protection afforded such marks under our law.

Section 9 of the Trademarks Act, Chapter 436, Laws of the Federation of Nigeria 1990 (“Trade Marks Act”) which defines the essential features of a trademark, can best be described as having provided the basis for the consideration of the topic -geographical indications.

Section 9(d) of the Trade Marks Act is relevant here and provides as follows:-

*“ 9(d) - a word or words having no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or a surname.”*

Undoubtedly, we see that the topic - geographical indications - has to do with place or location of goods or services.

It is commonplace today to observe many terms used on products of commerce, which have geographical significance, although the usage of these words may differ in context.

It is however clear that the way a term is used is important in determining whether the (geographical) term is a geographical indication, generic term or a trademark. We will not attempt a treatise of all these three terms but will primarily concern our focus on geographical indications.

A geographical indication can simply be defined as an expression with a “place-goods” connection, which permits the producers of products or offerers of service of a certain geographical region to claim a right in such term to indicate that the products come from such region. It is thus a broad terms, which refers to any type of expression that connotes a geographical origin of a particular product.

A geographical indication can encompass information on the origin of the good or service (indication of source) and a subset of special qualities (more often referred to as appellations of origin).

An **indication of source**, merely seeks to relate the goods to their origin or place of source. On the other hand, an appellation of origin (albeit a specialized term) refers to a subset of indications of source where particular qualities and characteristics of a product are peculiar to that particular region.

The new standard global definition of Geographical indications is found in the WTO TRIPs Agreement (1994) Article 22(1) which states: -

*“Geographical indications are, for the purpose of this Agreement, indications which identify a good as originating in the territory of a Member, 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.”*

This Article 22(1) presents the criteria for determining whether a term is a geographical indication: -

- i. Origin in a territory (that is, a current geographical place);
- ii. Quality, reputation or characteristic; and
- iii. Essentially attributable to a geographical origin.

In more recent times, this definition has been severely criticized which has led to calls for its amendment.

Article 23 of the WTO TRIPs Agreement also provides additional protection for geographical indications for wines and spirits.

Also worthy of note are other principal global treaties that include references to geographical indications. These include: -

- i. Paris Convention;
- ii. The Madrid Agreement for Repression of False or Deceptive Indication of source of goods;
- iii. The Lisbon Agreement on the Protection of Appellations of origin and their registration.

## **PROTECTION**

The principal methods for protecting geographical indications are under national law, bilateral treaties and global treaties.

References to Geographical Origin are basically not distinctive. They convey to the consumer an association with the geographical name, whether as an

indication of source or as an appellation of origin. For such an association to be conveyed to the consumer, the geographical location referred to must at least be familiar to him. In other words, signs referring to practically unknown localities are therefore distinctive. References to areas where nobody would expect the goods concerned to be manufactured are also distinctive.

However, many countries which do not register geographical indications protect the owner from misleading or deceptive uses of a geographical indication under the principles of unfair competition or consumer protection law, or as collective or certification marks under Trademark law.

Under Nigerian law, there are no statutes that provide specifically for the protection of unfair competition. There is also no active regime of consumer protection laws. Intellectual Property Practitioners in Nigeria are therefore left with no option than to adopt the trademark law approach to the protection of geographical indications. This is by the registration of Certification marks.

Section 43 Trademarks Act defines a Certification mark. It provides as follows: -

“A Certification mark is a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, method of manufacture, quality, accuracy or other characteristic, from goods not so certified”.

Section 43 (3) Trade Marks Act further provides that the registration of a proprietor of a certification trademark in respect of any goods shall, if valid, give to that person the exclusive right to the use of the trademark in relation to those goods.

Worthy of mention is the fact that Nigeria is yet to fully comply with the terms of the WTO TRIPs Agreement and therefore the extent of protection available under TRIPs cannot be taken to apply in Nigeria. It is our hope that the draft Intellectual Property Bill currently being debated before the House, when passed, will introduce a new regime of Intellectual property Protection into our existing laws.

**- Olufunke Oluwole (Mrs.) -**