

THE OFFICIAL GAZETTE 6TH JULY, 2005
LEGAL SUPPLEMENT – C

BILL No. 12 of 2005

Wednesday 6th July, 2005

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

6th July, 2005.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 12 of 2005

GEOGRAPHICAL INDICATIONS BILL 2005

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**A BILL
Intituled**

AN ACT to provide for the protection of geographical indications in order to fulfill the obligations of Guyana under the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organisation and related matters.

A.D. 2005

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Geographical Indications Act 2005 and shall come into operation on such date as the Minister may, by order, appoint.

Interpretation.

2. In this Act -

- (a) "Court" means the High Court;
- (b) "geographical indication" means an indication which identifies goods 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 goods is essentially attributable to its geographical origin;
- (c) "goods" means any natural or agricultural product or any product of handicraft or industry;
- (d) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised;
- (e) "producer" means -
 - (i) any producer of agricultural products or any other person exploiting natural products;
 - (ii) any industry or manufacturer of products of handicraft; and
 - (iii) any trader dealing in goods;

Cap. 90:01

- (f) "the Registrar and the Registrar of Deeds" have the same meanings as in the Trade Marks Act;
- (g) "regulations" means the regulations made under section 26.

PART II
PROTECTION OF GEOGRAPHICAL INDICATIONS

Availability of protection regardless of registration; presumption.

3. (1) Protection under this Act shall be accorded to geographical indications, regardless of whether or not they are registered.

(2) Notwithstanding subsection (1), geographical indications which although literally true as to the territory, region or locality, in which the goods originate, falsely represent to the public that the goods originate in another territory are not protected by this Act.

(3) The registration of a geographical indication under Part III shall in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of section 2.

Homonymous geographical indications for wines.

4. (1) In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to section 3(2).

(2) In cases of permitted concurrent use of such homonymous geographical indications, the Registrar shall determine the practical conditions under which indications will be differentiated from each other.

(3) For the purposes of subsection (2) the Registrar shall have regard to the need -

- (a) to ensure equitable treatment of the producers concerned; and
- (b) to ensure that consumers are not misled.

Exclusion from protection.

5. The following shall not be protected as geographical indications -

- (a) indications which do not correspond to the definition in section 2 (b);
- (b) indications which are contrary to public order or morality;

- (c) geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

Protection against improper use of geographical indications.

6. No person shall -

- (a) in the designation or presentation of goods by any means, indicate or suggest that the goods in question originate in a geographical area other than the true place of origin in a manner that misleads the public as to the geographical origin of the goods;
- (b) use a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like;
- (c) "engage in conduct which constitutes an act of unfair competition within the meaning of Article 10b of the Paris Convention.

Civil remedies.

7. (1) Any interested person or group of producers or consumers may institute proceedings in the Court to prevent, in respect of geographical indications, any act referred to in section 6.

(2) In proceedings under subsection (1), the Court may, in addition to issuing an injunction, award damages and grant any other civil remedy or relief as the Court thinks fit.

Offences.

8. Any person who knowingly and with intent to deceive, performs any of the acts referred to in section 6 shall be guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years.

PART III REGISTRATION OF GEOGRAPHICAL INDICATIONS

Application for registration.

9. The application for registration of a geographical indication shall be filed with the Registrar.

Right to file application.

10. (1) The following may make an application to the Registrar for the registration of a geographical indication -

- (a) any person or group of persons carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in the application; or
- (b) consumers and groups of consumers.

(2) Where an applicant's ordinary residence or principal place of business is outside Guyana, he shall be represented by an attorney-at-law who is resident and practising as an attorney-at-law in Guyana.

Contents of application.

11. The application for the registration of a geographical indication shall specify -

- (a) the name, address and nationality of the person making the application, and the capacity in which the applicant is applying for registration;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;
- (d) the goods for which the geographical indication applies;
- (e) the quality, reputation or other characteristic of the goods in respect of which the geographical indication is used, and shall be accompanied by the prescribed fee.

Examination and publication of application.

12. (1) The Registrar shall examine every application to ascertain if it complies with the requirements of sections 5 (b), 10, 11 and the regulations.

(2) Where the Registrar is satisfied that the conditions referred to in subsection (1) are fulfilled, he shall cause the application to be published in the prescribed manner.

Objection to registration.

13. (1) Any interested person may, within the prescribed period and in the prescribed manner, give notice to the Registrar of an objection to the registration of the geographical indication on the grounds that it does not comply with the requirements of sections 5(b), 10, 11 and the regulations.

(2) The Registrar shall send a copy of the notice to the applicant.

(3) Upon receipt of the copy of the notice referred to in subsection (2), the applicant shall within the prescribed period and in the prescribed manner, send to the Registrar a counter-statement of the grounds on which he relies for his application; if he does not do so, he shall be deemed to have abandoned the application.

(4) If the applicant sends a counter-statement, the Registrar shall furnish a copy thereof to the objector and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, the Registrar shall decide whether the geographical indication should be registered.

Registration.

14. (1) Where the Registrar finds that the conditions referred to in section 12 (1) are fulfilled, and either -

- (a) there has been no objection to the registration of the geographical indication within the prescribed period; or
- (b) there has been an objection to the registration of the geographical indication and the objection has been decided in the applicant's favour, the Registrar shall register the geographical indication and issue to the applicant a certificate of registration and publish a notice of the registration in the Gazette.

(2) Where, as a result of an objection made under this section or for any other reason, the Registrar is satisfied that the application for registration of a geographical indication does not comply with the requirements of section 12 (1) or the regulations, the Registrar shall refuse the application.

Right of use.

15. Only producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristic specified in the Register.

Cancellation and rectification of registration.

16. (1) Any interested person may apply to the Court for -

- (a) the cancellation of a registration of a geographical indication on the ground that it does not qualify for protection as such having regard to section 5;
- (b) the rectification of a registration of a geographical indication on the grounds that -

- (i) the geographical area specified in the registration does not correspond to the geographical indication, or
- (ii) that the indication of the products in respect of which the geographical indication is intended to apply or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

(2) In any proceedings under this section, notice of the request for cancellation or rectification -

- (a) shall be served on the person who filed the application for registration of the geographical indication or his successor in title; and
- (b) shall, by a publication in prescribed manner, be given to all persons having the right to use the geographical indication under section 15.

(3) The persons referred to in subsection (2) and any other interested person may, within a period which shall be specified by the Court in the said notice and publication, apply to join in the proceedings.

Correction of errors.

17. The Registrar may, subject to the regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registrar or in any matter recorded pursuant this Act or the regulations.

Extension of time.

18. If the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceedings under this Act or the regulations, upon notice to parties concerned and upon such terms as he may direct notwithstanding that the time for doing the act or taking the proceedings has expired.

Exercise of discretionary powers.

19. The Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely against that party any discretionary power vested in him by this Act or the regulations.

Register.

20.(1) The Registrar shall maintain a Register of Geographical Indications in which he shall record all matters required by this Act to be recorded.

(2) The Register shall be open for inspection by the public during normal working hours and any person may obtain extracts therefrom or make copies of such extracts in the manner and under the conditions prescribed.

Publication. 21. The Registrar shall publish in the Gazette and in a newspaper published daily in Guyana, everything required to be published under this Act.

Jurisdiction of Court; appeals. 22. (1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act and in matters which under this Act are to be referred to the Court.

(2) Any party aggrieved by a decision taken by the Registrar may within two months after the date of the decision, appeal against the decision to the Court.

**PART IV
SPECIAL PROVISIONS CONCERNING MARKS; EXCEPTIONS**

Misleading marks. 23. The Registrar shall, *ex officio* or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in Guyana is of such a nature as to mislead the public as to the true place of origin.

Marks conflicting with a geographical indication for wines and spirits. 24. The registration of -

(a) a trademark for wines that contains or consists of a geographical indication identifying wines; or

(b) a trademark for spirits that contains or consists of a geographical indication identifying spirits, shall be refused or invalidated by the Registrar *ex officio* or at the request of an interested party, with respect to such wines or spirits that do not originate in the territory indicated.

Exceptions regarding prior users. 25. (1) Nothing in this Act shall prevent continued and similar use in Guyana of a particular geographical indication of another country identifying wines or spirits in connection with goods or services by any citizens, permanent residents or domiciliaries of Guyana who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of Guyana either -

- (a) for a period of at least ten years immediately preceding 15th April, 1994; or
- (b) in good faith prior to that date.

(2) Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either -