

PROTECTING GEOGRAPHICAL INDICATIONS – AT LAST!

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In an article printed in this newspaper almost two years ago, I commented as follows:

“Perhaps somewhat lost amid the mayhem dominating the news recently was reports on the launch of a project of immense importance to Jamaica. The Geographical Indications Project between Jamaica and Switzerland was launched on May 28, 2008 with the signing of a Memorandum of Understanding between the Jamaica Intellectual Property Office (JIPO) and the Swiss Federal Institute of Intellectual Property (IPI) with the stated objective “to assist Jamaica in establishing a functional and effective system for Geographical Indications (GIs) in order to contribute to a better positioning of Jamaican quality products on national and international markets using distinctive signs”.

History repeats itself. The fulfillment of the primary aim of that project, the effecting of the Protection of Geographical Indications Act 2004 by the passing of supporting regulations, has been overlooked it appears amidst the overriding concerns regarding our economy, Air Jamaica, crime, etc. The irony is that the protecting of Jamaican GIs has enormous potential to help lift this country out of its current economic malaise.

A GI is an Intellectual Property Right (IPR) referring to a sign used on goods that have a precise geographical origin and qualities or a reputation deriving in large part from that place of origin. Numerous local examples that could qualify come readily to mind: Blue Mountain Coffee, Jamaican ginger, pimento, rum, jerk seasonings, to name a few. Any well-thinking Jamaican needs no explanation on the importance of protecting for our exclusive use any rights we may have in relation these products and not have producers in other countries “pass off” their competing products under the brand “Jamaica”.

We are all painfully aware of the proliferation of sauces and seasonings labeled “Jamaican Jerk” not only here, but on supermarket shelves and specialist retail stores all over the world. There are also reports that the best selling coffee in Europe is “Blue Mountain Coffee” - from Kenya! To

support their use of our brand, the Kenyan producers allege that their trees are grown from beans originating in the Jamaican Blue Mountains.

The Protection of Geographical Indications Act is a rare piece of IP legislation in that (unlike some other specie of industrial IP such as patents, trade marks and industrial designs) it is hardly ever accused of being burdensome and inhibitive of the development of developing and least-developed countries. GIs are embraced by countries whose farmers and primary producers often lack the resources to protect their products in wider markets.

In fact, GIs are of particular interest from a developmental angle to the nearly 150 members of the World Trade Organization (WTO) who as signatories to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) are required to implement protective legislation. Protecting GIs prevents the misappropriating of the reputation and goodwill of specific indications often to the great economic advantage of pirates and the detriment of the economies from which the indications originate. Apart from the loss of revenue, wrongful use invariably results in the tarnishing of reputations for quality, reduced prices and loss of market share for the legitimate product. GIs allow for:

1. a right of exclusion against unlawful users;
2. an advantage of premium, the right of exclusion often attaching a correlating premium value to legitimate products;
3. consumer and producer protection against illegitimate products making false or misleading claims as to origin or reputation.

Effective GI protection will ensure the continuation of the quality and standards of our premier products by stopping illegitimate users who wish to free ride thereby diluting our reputation and value.

Jamaica is probably the first country in the Caribbean to have a working GI register. We are indebted to the Swiss not only for their monetary support but also for their technical assistance in establishing a competent system of protection and enforcement by the establishing of registration procedures and a GI registry pursuant to the recently passed rules.

It is now up to our producers of coffee, rum, pimento, ginger, tobacco, and even jerk seasonings to seize the opportunity afforded by the legislation and take advantage of its protection. The law presents a further opportunity for new, developing and perhaps overlooked products. One important aim must be to identify Jamaican products that have the potential to be protected as GIs.

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