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GEOGRAPHICAL INDICATIONS ACT

CHAPTER 147

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CHAPTER 147**GEOGRAPHICAL INDICATIONS ACT**

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CHAPTER 147

GEOGRAPHICAL INDICATIONS ACT

An Act to provide for the protection of Geographical Indications and related matters.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows.

[Act No. 24 of 2004.]

[Date of commencement: 30th November, 2004.]

PART I

*Preliminary***1. Short title and commencement**

This Act may be cited as the Geographical Indications Act, 2004, and shall come into operation on such date as the Governor General may, by proclamation in the *Gazette*, appoint.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Court**” means the High Court;

“**Geographical Indication**” means 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;

“**good**” means any natural or agricultural product or any product of handicraft or industry;

“**Minister**” means the Minister responsible for legal affairs;

“**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of 20 March, 1883, as last revised;

“**producer**” means—

- (a) any producer of agricultural products or any other person exploiting natural products;
- (b) any manufacturer of products of handicraft, or industry; and
- (c) any trader dealing in the products mentioned in paragraphs (a) and (b);

“**Register**” means the Register of Geographical Indications;

“**Registrar**” means the Registrar of the Commerce and Intellectual Property Office, and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar.

PART II

Protection of Geographical Indications

3. Application of Act

(1) Protection under this Act is accorded to geographical indications whether or not they are registered.

(2) Notwithstanding subsection (1), geographical indications which although literally true as to the 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) For the purposes of this section, registration of a geographical indication under Part III of this Act shall, in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of section 2.

4. Homonymous geographical indications for wines

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

(2) The Registrar, in cases of permitted concurrent use of such indications, shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

5. Exclusion from protection

The following shall not be protected as geographical indications—

- (a) indications which do not correspond to the definition in section 2;
- (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.

6. Offences

(1) No person shall—

- (a) in the designation or presentation of goods, by any means, indicate or suggest that the goods 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, being an act of competition contrary to honest practices in industrial or commercial matters including—
- (i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor,
 - (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor,
 - (iii) indications or allegations, the use of which in the course of trade, is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for two years, or to both such fine and imprisonment.

7. Civil remedies

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

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

PART III

Registration of Geographical Indications

8. Application for registration

(1) An application for the registration of a geographical indication shall be filed with the Registrar.

(2) The following shall have the right to file an application—

- (a) 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, as well as groups of such persons;
- (b) groups of consumers;
- (c) any marketing organisation incorporated under the Companies Act or established under any other enactment; and
- (d) any competent authority.

[Chapter 143.]

(3) Where an applicant's ordinary residence or principal place of business is outside of Saint Vincent and the Grenadines, he shall be represented by a barrister-at-law or solicitor, authorised to practise in Saint Vincent and the Grenadines.

9. Contents of application

An application for the registration of a geographical indication shall specify—

- (a) the name, address and nationality of the natural person or legal entity filing 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 areas 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 for which the geographical indication is used.

10. Examination, etc.

(1) The Registrar shall examine the application to ascertain whether it complies with the requirements of sections 5, 8 and 9 and any Regulations pertaining thereto.

(2) Where the Registrar finds that the conditions referred to in subsection (1) are met, he shall cause the application, as accepted, to be published in the prescribed manner.

(3) Any interested person or competent authority may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition to the registration of the geographical indication on the grounds that one or more of the requirements of sections 5, 8 and 9 are not met.

(4) The Registrar shall send a copy of the notice to the applicant, and, within the prescribed period and in the prescribed manner, the applicant shall 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.

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

(6) Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled, and either—

- (a) the registration of the geographical indication has not been opposed within the prescribed time limit; or
- (b) the registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour,

he shall, on payment of the prescribed fee, register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration.

(7) Where the Registrar finds that the conditions referred to in subsection (1) and subsection (6)(a) or (b) are not met, he shall refuse the application.

11. Right of use

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.

12. Cancellation and rectification of registration

(1) Any interested person or any competent authority may apply to the Court for—

- (a) the cancellation of the registration of a geographical indication on the ground that it does not qualify for protection having regard to section 5; or
- (b) the rectification of the registration of an appellation of origin on the ground that the geographical area specified in the registration does not correspond to the geographical indication, or that the indication of the products for which the geographical indication is used 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 the prescribed manner, be given to all persons having the right to use the geographical indication under section 11.

(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.

(4) The Registrar of the Court shall notify the Registrar of the decision of the Court or the decision on any appeal therefrom and the Registrar shall record it and publish a reference thereto as soon as possible.

13. Register

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

(2) The Register may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.

(3) The Registrar shall publish in the prescribed manner all the publications provided for in this Act.

14. Correction of errors, etc.

(1) The Registrar may, subject to Regulations made under this Act, 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 to this Act or the Regulations.

(2) 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 proceeding under this Act and 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 proceeding has expired.

15. Exercise of discretionary powers

The Registrar shall, before exercising any discretionary power vested in him by this Act adversely to any party to a proceeding before him give that party an opportunity to be heard.

16. Competence of Court

(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 decision taken by the Registrar under this Act may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within two months of the date of the decision.

PART IV

Special Provisions Concerning Marks; Exceptions

17. Misleading marks

The Registrar shall, on his own motion or at the request of an interested party, refuse or invalidate the registration of a trade mark 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 trade mark for such goods in Saint Vincent and the Grenadines is of such a nature as to mislead the public as to the true place of origin.

18. Marks conflicting with a geographical indication for wines and spirits

The registration of a trade mark for wines which contains or consists of a geographical indication identifying wines or of a trade mark for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated by the Registrar on his own motion or at the request of an interested party, with respect to such wines or spirits not having this origin.

19. Exceptions regarding prior users

(1) Nothing in this Act shall prevent continued and similar use of a particular geographical indication of another country identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that country either—

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

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

- (a) before the date of entry into force of this Act; or
- (b) before the geographical indication is protected in its country of origin, this Act shall not prejudice the registrability of or the validity of the registration of a trade mark, or the right to use a trade mark, on the basis that such a trade mark is identical with, or similar to, a geographical indication.

(3) Nothing in this Act shall apply in respect of a geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in Saint Vincent and the Grenadines or in respect of a geographical indication of any other country with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in Saint Vincent and the Grenadines as of 1st January, 1995.

(4) Any request for relief made under Part II of this Act in connection with the use or registration of a trade mark must be presented within five years after the adverse use of the protected indication has become generally known in Saint Vincent and the Grenadines or after the date of registration of the trade mark in Saint Vincent and the Grenadines, provided that the trade mark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in Saint Vincent and the Grenadines and provided that the geographical indication is not used or registered in bad faith.

(5) This Act shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

PART V

Miscellaneous

20. Regulations

The Minister may make Regulations prescribing all matters that are required or permitted by this Act to be prescribed, for giving effect to the purposes of this Act.
