

GEOGRAPHICAL INDICATIONS

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Legislation

Ghana

The Geographical Indications Act, 2003 (Act 659) (GIA) was adopted on December 31, 2003. The purpose of the GIA was to provide for the protection of geographical indications. A violation under the GIA is punishable by a fine not exceeding 2000 penalty units (currently, a penalty unit is GHC 12.00; the maximum fine would be GHC 24,000) or up to two years imprisonment or to both. At the discretion of the High Court, any goods related to any offense under the GIA may be forfeited to The Republic of Ghana.

International

Ghana is a member of or has ratified the following international agreements regarding GIAs:

- [The Convention Establishing the World Intellectual Property Organization \(WIPO\);](#)
- [The Paris Convention for the Protection of Industrial Property \(Paris Convention\);](#)
- [World Trade Organization \(WTO\) Agreement on the Trade-Related Aspects of Intellectual Property Rights \(TRIPS\);](#) and
- [The African Regional Intellectual Property Organization \(ARIPO\).](#)

Coverage – What is Protected?

Under the GIA, a “geographical indication”(GI) means an indication which identifies a good as originating in the territory of a country, a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical region. Only producers carrying on activity in the geographical area specified in the register maintained by the Registrar-General’s Department (RGD) have the right to use a registered GI in the course of trade with respect to products specified in the register, provided that the products possess the quality, reputation or other characteristic specified in the register. Examples of a GI might be “Champagne” for sparkling wines from the Champagne region of France or “Bordeaux” for red wines originating in the Bordeaux region of France. The GIA does not preclude the right of a person, or a person’s predecessor in

business, to use his or her own name in the course of trade, except where the name is used in a manner that misleads or is likely to mislead the public.

The following are *not* protected under the GIA:

- Indications that do not meet the definition of a GI under the GIA;
- Indications that are contrary to public order or morality; or
- Indications that are not or have ceased to be protected in their country of origin, or that have fallen into disuse in that country.

Registration

Registration under the GIA is not required for protection of a GI in Ghana. Nevertheless, registration creates the presumption that the indication is a GI under the GIA, and interested parties are encouraged to register. The RGD maintains the registry of GIs. The registry is public, and any person may consult or obtain extracts from the registry, subject to certain regulations. As of April 2011, no party has applied to register a GI in Ghana.

Any application for registration of a geographical indication is filed with the RGD. An application may be filed by either:

- A person or group of persons carrying on an activity as a producer in a geographical area specified in the application, with respect to the goods specified in the application;
- A group of consumers; or
- A competent authority.

Set out below are the general steps for applying for registration of a GI in Ghana. Applicants should be aware that there are currently not any regulations on GIs, and no previous regulations that attorneys or officials look to for guidance. The steps set out below are those indicated in the GIA, but should be confirmed with the RGD upon application. There is no timeline indicated; officials may look to other regulations, such as the Trademarks Act for guidance on the procedure. Applicants should confirm the timeline upon application. Applicants may wish to consult with local counsel on the status of any regulations prior to application. We recommend that you check the RGD website regularly for updates and current information. <http://rgd.gov.gh/>.

Step One: Obtain Qualified Counsel

When the applicant's ordinary residence or principal place of business is outside of Ghana, the applicant must be represented by a legal practitioner resident and practicing in Ghana. Applicants are encouraged to seek out firms that have an attorney on staff with experience in Ghanaian IP law.

Step Two: Prepare and Submit the Application

The contents of the application shall contain:

- The name, address and nationality of the person or legal entity filing the application and the capacity in which the applicant is applying for registration;
- The geographical indication for which registration is sought;
- The geographical areas to which the geographical indication applies;
- The goods to which the geographical indication applies; and
- The quality, reputation or other characteristic of the goods for which the geographical indication is used.

The application shall also include the payment of the current application fee.

Step Three: Examination and Publication

Once the RGD determines the application satisfies the requirements of the GIA, the application is published. During the application period, an interested person or competent authority may oppose the registration. If an objection is filed, the RGD sends a notice of the objection to the applicant, after which the applicant has an opportunity to file a counter-objection. If a counter-objection is not filed, the application is regarded as abandoned. If the applicant files a counter-objection, the RGD sends such counter-objection to the interested person who lodged the initial objection.

Step Four: Granting Registration

If there is no objection within the publication period, the RGD issues the applicant a certificate of registration. A certificate of registration will also be issued where the RGD decides in favor of the applicant where the registration of the GI was opposed upon publication. Anyone who is denied registration of a GI may appeal to the High Court.

Enforcement Approaches

Criminal Enforcement

The Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) – Ghana Police Service

For infringing goods that are suspected of having been produced in Ghana or have been imported into Ghana, rights-holders may approach the Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) of the Ghana Police Service.

The majority of the CCU's investigations into IP violations originate from tips from either rights-holders or from informants. Under Ghanaian law, there is a reward for information that leads to the discovery of infringing goods and conviction of the infringer; certain enterprising individuals make their living as professional informants. Upon receiving a tip about infringing goods, the CCU will investigate and upon confirmation that the goods are

infringing, is empowered to seize the infringing goods and to arrest any persons in possession of infringing goods. The CCU may allow rights-holders to participate in raids.

The Preventive Unit of CID has a Rapid Response Unit (RRU) that has the capacity to prevent the often quick dissemination of infringing goods. The RRU is used when it is known to a high degree of certainty the location and means by which a shipment of infringing or otherwise illicit products are entering the country. A court order is usually required before the RRU will investigate possible IPR violations.

Criminal Prosecution

The Criminal Code 1960 (Code) defines a list of types of fraud, including intellectual property fraud. While most often IP fraud is prosecuted under the relevant IP law, upon occasion a charge may be brought under the Code for fraud or fraudulent representation, if the authorities deem it more relevant. If charges are brought under the Code rather than under IPR laws, a rights-holder may elect to pursue damages under the Unfair Competition Act. Anyone found guilty of infringement under the GIA may be sentenced to a maximum of two years imprisonment.

Criminal prosecution can better deter violators from repeating their crimes. Many individuals may commit intellectual property crimes not only because they can be relatively easy to commit, but also because the perpetrators believe that they will not be prosecuted. Criminal prosecution plays an important role in establishing public expectations of right and wrong, and in educating the public about intellectual property rights. If you believe that you are a victim of intellectual property theft, we recommend that you document all investigative steps, preserve evidence and contact the relevant authorities right away. Intellectual property crimes may be reported to the relevant offices (*e.g.*, the RGD) and to either the Customs Division of the Ghana Revenue Authority (formerly the Customs, Excise and Preventive Service (CEPS) (Customs), Chief Collector, Preventative OPS - Headquarters (for import and export of infringing goods) at +233 (0)302 686106/684363 or +233 (0)244 364 642 or via email at pr@ghanacustoms.gov.gh or the Commercial Crime Unit of the Central Investigation Department of the Ghana Police Services at +233 (0)302 76 17 34.

You may also submit a tip through the Ghana Police Service website at <http://www.ghanapolice.info/>

Administrative Enforcement

Cancellation of Trademark

The RGD, on its own or on the motion of an interested party, shall refuse or cancel registration of a trademark which contains or consists of a GI with respect to goods not originating in the territory indicated, if the use of the GI in the trademark misleads or is likely to mislead the public as to the true place of origin of the goods. Wines and spirits that contain a GI in their trademark (*e.g.*, "Champagne" or "Bordeaux") also may be refused registration or have their registration cancelled by an interested party. Certain exceptions apply with regard to wines and spirits, trademarks that were used in good faith

prior to April 15, 1984 or that were registered in good faith prior to the GIA or prior to protection of the GI in its home country may still be used in trade. Grape varieties do not qualify for protection under the GIA.

A request by an interested party for cancellation of a trademark under the GIA must be presented either:

- within five years after the adverse use of the protected indication has become generally known in Ghana; or
- after the date of registration of the trademark in Ghana, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in the country, and the GI is not used or registered in bad faith.

The Customs Division of the Ghana Revenue Authority

One of the agencies that rights-holders may approach for assistance in combating infringement is the Customs Division of the Ghana Revenue Authority (formerly known as the Customs, Excise and Preventive Service (CEPS)) (Customs).

Businesses exporting products that carry a high risk of being infringed are encouraged to work directly with Customs. The Preventive Department within Customs is chiefly responsible for blocking infringing goods and otherwise illicit material from entering the country. Businesses that export high risk products should supply the Preventive Department of Customs with a detailed description and sample of their product.

Infringing products are known to enter Ghana from its ports and multiple borders. Customs recommends that if a rights-holder believes that infringing products are entering the country from multiple entry points that the rights-holder hold an informational workshop. Customs officers from around the country attend workshops in which producers and rights-holders describe and supply prototype authentic and infringing goods. The more detailed the information and training provided by the rights-holder, the more likely Customs officers are to stop infringing goods at the ports and borders.

If a Customs agent believes that a shipment of products contains infringing goods, the agent can stop the shipment at the border. When infringing goods have entered the country and are being warehoused, distributed or retailed, Customs officers are authorized to enter a warehouse, factory or store and take an account of the excisable goods in the custody or possession of the seller. Customs officers are further authorized to take samples of goods suspected of being infringing, to the extent that the usual price of goods is paid. When the Commissioner of the Customs Division of the Ghana Revenue Authority (Commissioner) is satisfied by information and samples that there is reasonable cause to suspect that infringing goods are harbored, kept, or concealed in any premises, the Commissioner may issue a written order authorizing an officer to enter and search the premises, and to seize and take away any of the infringing goods. In addition to seizure of

any infringing goods, Customs officers may also arrest any person in whose possession and under whose control the infringing goods are found.

The law provides for a reward for any person whose "tip-off" leads to the confiscation of counterfeit goods and the arrest of anyone dealing in counterfeits. Customs regularly benefits from tip-offs from private citizens in addition to receiving information from rights-holders and discovery of infringing goods by members of the Customs units themselves.

Rights-holders with the requisite evidence may submit a written request of detention to Customs independent of any Customs investigation or action. The request must provide evidence that demonstrates a high likelihood that infringement is occurring and that injunctive action is necessary to avoid further damage; such request may or may not require a court order. Rights-holders should also provide evidence of ownership of the ID.

In discussions, Customs indicated that a bond is normally only required in situations where the goods themselves are "gray market", that is, authentic, but sold outside an authorized sales territory or by an unauthorized dealer in an authorized sales territory. Under these circumstances, the goods are impounded and a bond paid until the parties have reached an agreement on the goods or a court has determined the outcome of the dispute.

Upon occasion, Customs will allow rights-holders more direct participation beyond informing the Preventive Department that infringement is occurring. In order for a rights-holder to participate more directly in Customs anti-counterfeiting investigations and procedures, Customs requires the producer to demonstrate in writing reasonable grounds for suspecting that infringing products are entering or being sold within the country.

It is recommended that rights-holders pay a courtesy call to Customs officials upon entering the Ghanaian market, provide Customs with copies of originals and hints on how to spot pirated goods and to establish a relationship with Customs on an ongoing basis, providing information, intelligence and training and support. Face-to-face interaction with enforcement officials may be a more effective means of communication than phone or email.

Civil Enforcement

Civil Litigation

At the request of the rights-holder, the High Court may grant an injunction to prevent infringement or imminent infringement, award damages and grant any other relief provided for in the general law. There are three types of High courts in Ghana: the standard High Courts, the "fast track" High Courts and the commercial High Courts. While each offers its own advantages, judges on the commercial courts tend to be more IP-savvy, many having completed IP training. Under the rules of civil procedure, the High Court may grant an award of damages to a rights-holder if it is determined that infringement has occurred. Burden of proof for an award of damages is on the rights-holder, and the amount of damages is determined by the High Court.

Protection under the GIA is available even if the GI is not registered, although registration creates the presumption that the GI is protectable under the GIA. The chief advantage of pursuing IPR claims in civil litigation is that unlike administrative or criminal proceedings, they may be initiated directly by the rights-holder. Claims under the GIA are often combined with claims under the Protection Against Unfair Competition Act, 200 (Act 589). Rights-holders are advised to engage local counsel experienced in IPR issues in the event of any litigation.

Other Measures

NGOs and Professional Organizations

Several non-governmental organizations in Ghana play important roles in helping enforce IPR, including participating in public information campaigns, reporting suspected infringements and training government personnel. Rights-holders are encouraged to seek out such NGOs for information and support. These organizations include:

- Business Coalition Against Counterfeiting and Illicit Trade (CACIT)
<http://bcacit.com/home/index.php>
- Ghana Employers' Association (GEA)
<http://www.ghanaemployers.com/>
- Institute of Packaging Ghana
<http://www.iopg.org.gh/>
- The Association of Ghanaian Industries
<http://www.agighana.org/>
- The Consumers' Association of Ghana
Tel: +233 (0)302 784461; +233 (0)30 2238042

Rights-holders may find it useful to work with one or more of these organizations in protecting their IPR.

FAQ

1. Does a GIA have to be registered to enjoy protection in Ghana?

No. Registration, however, creates a presumption that the indication qualifies as a GI under the GIA and qualifies for protection.

2. If I want to register a GI in Ghana, where do I go?

Registration is made with the Registrar-General's Department. You may contact them outside of Ghana at +233 (0)302 664 691-93 or visit their website at <http://rgd.gov.gh/>.

3. What if a product claims to be made "in the style of" a registered GI, even though it comes from another region?

Only wines and spirits are protected from "like" and "style of" labeling under the GIA. Wines and spirits that indicate "kind", "style" or "imitation of" wines and spirits that do enjoy GIA protection are in violation of the GIA, and producers, importers, exporters or salespersons may be enjoined from labeling their wines and spirits in this manner.

4. Someone else has registered a trademark that incorporates elements of or indicates our GI. Is there any way to have that trademark cancelled?

Yes. The RGD may, on its own or at the motion of an interested party, refuse or cancel the registration of a trademark that contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if the use of the indication in the trademarks for the goods in the country is of a nature that misleads or is likely to mislead the public as to the true place of origin. Certain exceptions exist for long-time unregistered marks or marks registered in good faith prior to the GIA.

5. What are the penalties for GI infringement in Ghana?

A violation under the GIA is punishable by a fine not exceeding 2000 penalty units (currently, a penalty unit is GHC 12.00; the maximum fine would be GHC 24,000) or up to two years imprisonment or to both. At the discretion of the High Court, any goods related to any offense under the GIA may be forfeited to The Republic of Ghana.

We strongly emphasize that the information provided in this Toolkit does not constitute legal advice and should not be a substitute for advice of legal counsel. Its intended purpose is to provide an overview of Ghana's IPR environment, available enforcement mechanisms and Ghanaian government offices sharing jurisdiction over IPR protection and enforcement. We recommend that U.S. companies seeking to do business in Ghana or facing IPR infringement issues in Ghana seek qualified U.S. and/or Ghanaian legal counsel in pursuing their rights through Ghana's IPR enforcement regime. The U.S. Government, the U.S. Department of State, the U.S. Department of Commerce, their employees and contractors assume no legal liability for the accuracy or completeness or usefulness of any information, resource or process contained disclosed herein.