ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER G4

GEOGRAPHICAL INDICATIONS ACT

Showing the Law as at 15 December 2002

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 6/2002, in force 12 August 2002

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GEOGRAPHICAL INDICATIONS ACT

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GEOGRAPHICAL INDICATIONS ACT

PART 1

PRELIMINARY

Definitions

1. In this Act—

"Court" means the Eastern Caribbean Supreme Court;

"geographical indication" means an indication which identifies a product 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 product is essentially attributable to its geographical origin;

"producer" means—

(a) any producer of agricultural products or any other person exploiting natural products;

(b) any manufacturer of products of handicraft, or industry; or

(c) any trader dealing in the said products;

"product" means any natural or agricultural product or any product of handicraft or industry;

"Register" means the Register of Geographical Indications;

"Registrar" means the Registrar of Companies.

PART 2

PROTECTION OF GEOGRAPHICAL INDICATIONS

Civil proceedings

2. Any interested person and any interested group of producers may institute proceedings in the Court to prevent, in respect of a geographical indication—

(a) the use of any means in the designation or presentation of a product that indicates or suggests that the product in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the product;

(b) any use which constitutes an act of unfair competition within the meaning of the Protection Against Unfair Competition Act;

(c) use of 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 products is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like;

and in proceedings under this section, the Court may, in addition to issuing an injunction, award damages and grant any other remedy or relief as it may deem fit.

Availability of protection

3. Protection under this Act shall be available—

(a) regardless of whether a geographical indication has been registered; however registration of a geographical indication under Part 3 shall, in any proceedings under this Act, raise a presumption that such indication is a geographical indication within the meaning of section 1;

(b) against a geographical indication which, although literally true as to the territory, region or locality in which the products originate, falsely represents to the public that the products originate in another territory.

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(b).

(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.

Exclusion from protection

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

(a) indications which do not correspond to the definition in section 1;

(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.

Offences

6. Any person who knowingly and with intent to deceive performs any of the acts referred to in section 2 commits an offence and is liable to a fine of $10,000 or to imprisonment for a term of 1 year or to both.

PART 3

REGISTRATION OF GEOGRAPHICAL INDICATIONS

Application for registration

7. (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 products specified in the application, as well as groups of such persons;

(b) groups of consumers.

(3) Where an applicant's ordinary residence or principal place of business is outside Anguilla, he shall be represented by a legal practitioner resident and practising in Anguilla.

Contents of application

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

(a) the name, address and nationality of the person 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 products for which the geographical indication applies;

(e) the quality, reputation or other characteristic of the products for which the geographical indication is used;

and shall be subject to the payment of the prescribed fee.

Examination; opposition; registration

9. (1) The Registrar shall examine the application to ascertain whether it complies with the requirements of sections 5(b), 7 and 8 and the Regulations pertaining thereto.

(2) Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled, 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, 7 and 8 are not fulfilled.

(4) The Registrar shall send a copy of such a 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 register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise he shall refuse the application.

Right of use

10. 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; publication

11. (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 as such having regard to section 5; or

(b) the rectification of the registration of a geographical indication 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 10.

(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.

Register; publication

12. (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, on payment of the prescribed fee.

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

Correction of errors; extension of time

13. (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, the Registrar may grant an extension of time.

Exercise of discretionary powers

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

Competence of Court; appeals

15. (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 2 months of the date of the decision.

PART 4

SPECIAL PROVISIONS CONCERNING MARKS; EXCEPTIONS

Misleading marks

16. The Registrar shall, on his own motion 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 products not originating in the territory indicated, if use of the indication in the trademark for such products in Anguilla 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

17. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or of a trademark 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.

Exceptions regarding prior users

18. (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 products 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 products or services in the territory of that country either—

(a) for at least 10 years preceding April 15, 1994; or

(b) in good faith preceding April 15, 1994.

(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—

(a) before 12th August 2002; 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 trademark, or the right to use a trademark, on the basis that such a trademark 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 products or services for which the relevant indication is identical with the term customary in common language as the common name for such products or services in Anguilla 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 Anguilla as of January 1, 1995.

(4) Any request for relief made under Part 2 of this Act in connection with the use or registration of a trademark must be presented within 5 years after the adverse use of the protected indication has become generally known in Anguilla or after the date of registration of the trademark in Anguilla, 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 Anguilla 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 5

REGULATIONS

Regulations

19. The Governor in Council may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

PART 6

CITATION

Citation

20. This Act may be cited as the Geographical Indications Act, Revised Statutes of Anguilla, Chapter G4.