

10 PROTECTION REGIME FOR WELL-KNOWN LOCAL PRODUCTS IN VIET NAM

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ABSTRACT

Intellectual property rights are one of the means used to protect local innovation and to preserve traditional knowledge. Countries can apply different forms of intellectual property protection for well-known local products such as collective marks or certification marks and geographical indications. The choice will depend on the nature of these intellectual property right instruments and the trade customs of each country. Viet Nam, a country with diversified agriculture commodities, is home to a wide variety of well-known local products. Viet Nam has built a legal framework for the protection of these products and accepted both systems for the protection of well-known local products. However, these activities have resulted in limited outcomes. This paper provides a definition of 'well-known local product' and how it is protected in trade. It suggests that geographical indications are the most suitable form of protection. The experience of Viet Nam illustrates that this instrument presents some notable challenges for both producers and consumers. Improving approaches to geographical indications in Viet Nam, and perhaps learning from the trademark systems in other countries, could further the development and protection of local products.

Keywords: Viet Nam, well-known local product, intellectual property, geographical indication, certification mark, collective mark

I. INTRODUCTION

In an era of trade liberalization, consumers are increasingly concerned about a product's origin.¹ The production of well-known local products has been represented in many studies in developed countries as a tool for producing differentiation, increasing sector competitiveness and a way to help small-scale farmers reach new markets.² Well-known local products are widely recognized not only by quality, but also by the intrinsic value of their traditional knowledge, also known as 'a sense of place'. The latter results in increased consumer demand for local products at both national and international levels. However, such products have been traded as low quality and low economic value goods in developing countries.³ Additionally, new competitors in this market cater to consumer demand by imitating and reproducing local products, leading to a decline in the profit of the owner of local products and impacting negatively on their reputation, which causes significant injury to the region.

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¹ Robert D Schooler, 'Product Bias in Central American Common Market' 2 *Journal of Marketing Research* 394; Jean Claude Usunier, 'Relevance in Business Research: The Case of Country-of-Origin Research in Marketing' 3 *European Management Review* 60. See also Antonio Berenguer, 'Protection of Geographical indications' (Paper for the International Workshop Global Reach, Local Products, 2007).

² Daniele Giovannucci, Elizabeth Barham, Rich Pirog, 'Defining and Marketing "Local" Foods: Geographical Indications for US Products' (2009) *Journal of World Intellectual Property*, special issue on Geographical Indications 6.

³ Thomas DeCarlo, Rich Pirog, and Veronica Franck, *Consumer Perceptions of Place-Based Foods, Food Chain Profit Distribution, and Family Farms* (Leopold Centre for Sustainable Agriculture 2005).

Intellectual property rights can be used to protect local innovation and to preserve traditional knowledge.⁴ Countries can apply different forms of intellectual property protection for well-known local products such as collective marks, certification marks and geographical indications. The choice depends on the nature of these intellectual property instruments and the trade customs of each country.

Viet Nam is a country with diversified agriculture commodities, being home to a wide variety of well-known local products. Viet Nam has built a legal framework for the protection of these products and accepted both systems for the protection of well-known local products. These activities, however, have resulted in limited outcomes.

Global consumption trends demonstrate the potential development of well-known local products. Nowadays, trust and a product's origins shape the buying decisions of consumers throughout the world, including in Viet Nam. Consumers in Europe and the United States, a country well-known for its fast food and convenience food, are reducing their consumption of industrial fast food products and returning to traditional ones.⁵ A survey of US consumers in 2005⁶ showed that 72 per cent of respondents considered that geographical features such as land and climate influence the taste and quality of foods and 56 per cent of respondents indicated that they were willing to pay prices between 10 to 30 per cent higher for local specialties. In addition, a mid-2008 survey⁷ showed that nearly nine out of ten consumers (89 per cent), indicated that they would prefer supermarkets to sell fruits from local farms and over two thirds (69 per cent) said that they were willing to pay more to buy such products.

The results of these surveys indicate that consumption trends of agricultural products originating from localities are increasing. Similarly, manufacturers and enterprises also tend to encourage consumers to buy these items. WalMart, the global supermarket chain, reserved a section on its website to advertise traditional local products, especially food, fruit and vegetable products. Likewise, Tesco Corporation (UK) has recently launched a carbon labelling scheme to encourage consumers to buy products deriving from localities.⁸

According to the results of one published study on 'the new consumption trends'⁹, the major consumption trend in Viet Nam is the use of traditional and customary foods, which means that consumers tend to seek food of high quality and guaranteed origin at localities. The quality and origin of goods are the primary concern of people in big cities such as Hanoi city (94 per cent).¹⁰

⁴ George Giraud, 'Les produits alimentaires regionaux ont-ils une place au sein de la globalisation: une approche de marketing pour l'Europe' (1999) 8 *Agroalimentaria* 29.

⁵ Daniele Giovannucci, Elizabeth Barham, Rich Pirog (n 3) 8-10.

⁶ Thomas DeCarlo, Rich Pirog, and Veronica Franck (n 4).

⁷ Deloitte Development, *Deloitte Food Safety Survey* (Deloitte Development 2008).

⁸ Weatherall et al., 'In Search of the Concerned Consumer: UK Public Perception of Food, Farming and Buying Local' (2003) *Journal of Rural Study* 233.

⁹ The Viet Nam Business Studies and Assistance Centre (BSA) conducted the study on consumption trends on 17 April 2009.

¹⁰ Research by AC Nielsen company in Viet Nam on Vietnamese consumption habits (AC Nielsen Viet Nam 2009). Available online at: <<http://www.nielsen.com/intl/vn/news-insights/reports.html>>

During the study, the author conducted a quick consumer opinion interview focusing on food shopping habits by direct interview method.¹¹ Nearly 90 per cent of respondents indicated that specialty products (having reputation) of localities were invariably their first choice when buying food. However, most of the respondents also expressed concern over the true origin of products. Consumption trends indicate increasing consumer concern with the less tangible aspects of products such as reputation and origin.

II. DEFINING WELL-KNOWN LOCAL PRODUCTS

Researchers assessing local food systems use or record a number of different definitions of a well-known local product. One of the more widely circulated and popular defining parameters is the concept of 'specialty product'. This general term is used to indicate products and commodities of specific quality due to natural conditions, people and traditions of places of origin.

A 'well-known local product' differs from a 'specialty product' in the sense that a 'well-known local product' is not only manufactured in the locality¹², but must also have dominant features determined by geographical conditions of production places. This concept is similar to the concept of 'typical local product' as discussed by Angela Tregear¹³, the concept 'Terroir' represented by Tim Josling¹⁴ or a popular term *dac san* in Viet Nam. In this paper, well-known local products indicate products originating from a specific area and having a quality or specific characteristics compared with other products of the same kind, which are essentially linked to natural conditions, traditions, culture and people in the production and manufacture areas.

To define characteristics of well-known local products, the author of this paper conducted a simple study asking consumers why they chose well-known local products. The consumers were able to reply on the basis of multiple choice answers.¹⁵ A well-known local product is defined by some characteristics based on this survey's results as follows:

Special quality: well-known local products have a very special taste or special characteristic that differs from products of the same kind originating from other geographical areas. These products have generally been cultivated in the areas for a long time and adapted to the geographical conditions. For some special products, their quality is unique. The case of *Thanh Ha* lychee¹⁶ is the best illustration of a unique taste that is 'perfumed, authentic and difficult to be explained by word'.¹⁷

¹¹ The interviewees were mainly women who undertake housework in families. Locations of interview were markets, trade centres, supermarkets in five big cities in Viet Nam (Hanoi, Haiphong, Thanh Hoa, Hochiminh city and Phan Thiet) with a total of 146 consumers.

¹² Local, for the purposes of this paper, is defined as community or a region.

¹³ Angela Tregear, 'From Stilton to Vimto: Using Food History to Rethink Typical Products in Rural Development' (2003) 43 *Sociologia Ruralis* 91.

¹⁴ Tim Josling, 'The War on *Terroir*: Geographical Indications as a Transatlantic Trade Conflict' (2006) 57 *Journal of Agricultural Economics* 337.

¹⁵ To define characteristics of well-known local products, the author of this paper conducted a simple study by asking consumers why they chose well-known local products based on multiple choice answers. The answers were as follows: recognized reputation (98 per cent); specific quality (96 per cent); geographical origin (87 per cent); traditional and cultural (81 per cent); and specific characteristics (75 per cent).

¹⁶ *Thieu Lychee* from Thanh Ha is a well-known local fruit in the North of Viet Nam.

¹⁷ This is a well-known Vietnamese local idiom.

Recognized reputation: these products have been well-known for such a long time that reputation is one of the criteria to identify well-known local products. Their reputation is handed down from generation to generation among the common people from the old days. Examples include *Tam Xoan Hai Hau* fragrant rice¹⁸ that is 'very famous all over the Tonkin', *Thanh Ha* lychee associated with 'products to the Chinese King' and *Phu Quoc* fish sauce associated with the 'national spirit of the nation'.¹⁹

Geographical origin: the best way to distinguish well-known local products from others of the same kind is the link of these products with specific geographical origins. Thus, most of Viet Nam's well-known local products are origin-based products.

Cultural identity: these products with a long tradition and history often blend the benefits of the location and authenticity of production expertise that could represent an identity, culture or symbol of the region. When consumers buy the product, they feel the representation of the culture or the spiritual value of the region.

Taking into consideration the above, consumers all over the world tend to return to well-known local products.²⁰ Owing to the commercial benefits of these products, they are often counterfeited, which negatively affects the product quality, reputation and characteristics.

Viet Nam is a country with a rich history and huge potential for high quality specialty products with a good reputation. MALICA research (Markets and Agriculture Linkages for Cities in Asia) lists 265 specialties that are voted by consumers and reach standards of prestige and specificity. According to recent statistics from the Viet Nam National Office of Intellectual Property (NOIP), based on each locality's reports on well-known local products, Viet Nam has 220 specialty products with place names nationwide, ranging from food to consumer products such as ceramics and handicrafts.²¹ This paper is based on data provided by the NOIP of Viet Nam.

III. ANALYSING CURRENT PROTECTION REGIMES OF WELL-KNOWN LOCAL PRODUCTS IN VIET NAM

As stated above, well-known local products are sought after by consumers because of their high quality and value. Owing to economic features, these items are easily sold in the market and counterfeited to cheat consumers. One solution to prevent counterfeiting is to establish a stronger foothold in the market; manufacturers' rights must be afforded proper legal protection, which requires the registration of intellectual property right protection for these specialty products. Vietnamese law allows the registration of local specialty product protection in the form of geographical indications and trademarks (collective trademarks and certification trademarks).

A. REGISTRATION AS A GEOGRAPHICAL INDICATION:

A geographical indication shall be protected if it meets the following conditions:
(i) the product bearing the geographical indication originates from the territory,

¹⁸ *Tam Xoan Hai Hau* is a well-known type of rice from the North of Viet Nam.

¹⁹ These are well known Vietnamese local idioms.

²⁰ Babcock, Bruce and Roxanne Clemens, 'Geographical Indications and Property Rights: Protecting Value-Added Agricultural Products' (Midwest Agribusiness Trade Research and Information Centre Briefing Paper 04-MBP, Iowa State University 2004).

²¹ Viet Nam NOIP, *Protecting Geographical Names for Specialty Products* Hanoi 2007 p 4.

locality or country indicated by such geographical indication; (ii) the product bearing the geographical indication, of which the reputation, or characteristic qualities are due essentially to the geographical environment of the territory, locality or country indicated by such geographical indication.²²

This provision is consistent with the TRIPS Agreement.²³ Apart from direct geographical names such as *Buon Ma Thuot*²⁴, *Binh Thuan*²⁵, *Tan Cuong*²⁶, other signs such as the *Shan Tuyet*, the name of a variety of tea²⁷, *Phu Quoc*²⁸, the name of an island, or *Cho Dao*²⁹, the name of a fair, or images and symbols, may be considered geographical indications. Vietnamese law also stipulates that only visible signs may be registered as geographical indications. Signs such as sound, colour or taste are not regarded as geographical indications.³⁰

The relationship among quality characteristics, product reputation and geographical origin is crucial for well-known local products. The reputation of a product bearing a geographical indication shall be determined by the degree of consumer trust in the product, which is reflected by the extent of the wideness for which it is known and selected by consumers. The quality and characteristics of the product bearing a geographical indication shall be defined by one or several qualitative, quantitative or physical, chemical, and microbiological perceptible norms that shall be testable by technical means or experts with appropriate testing methods.³¹

Geographical conditions relevant to geographical indications shall include natural and human factors attributable to the reputation, quality and characteristics of the product bearing the geographical indication. Natural factors consist of climate, hydrograph, geology, terrain, ecological systems and other natural conditions. Human factors consist of skills and expertise of producers, along with traditional production processes of the locality.³²

However, the registration files concerning geographical indications in Viet Nam that include quality description that are more qualitative than quantitative fail to fully represent information regarding product characteristics. In fact, most descriptions of geographical indications lack convincing evidence as to which element of the geographical area determines the product's characteristics. Almost all the product descriptions of natural features fail to present the connection between geographical conditions and product characteristics.³³

²² Viet Nam Intellectual Property Law 2005, Article 79.

²³ Le Thi Thu Ha, *Protection of Geographical Indications in Vietnam, in the Context of Vietnam's International Economic Integration* (Information and Communication Publishing House 2011) p 28.

²⁴ *Buon Ma Thuot* is a Vietnamese geographical indication for coffee.

²⁵ *Binh Thuan* is a Vietnamese geographical indication for dragon fruits.

²⁶ *Tan Cuong* is a Vietnamese geographical indication for green tea.

²⁷ *Shan Tuyet Moc Chau* is a Vietnamese geographical indication for green tea.

²⁸ *Phu Quoc* is a Vietnamese geographical indication for fish sauce.

²⁹ *Cho Dao* is a Vietnamese geographical indication for rice.

³⁰ Article 45.2, Circular No. 01/2007 of the Ministry of Science and Technology dated 14 February 2007 guides the implementation of Decree No. 103, stipulating and instructing the execution of some articles of the Law on Intellectual Property in detail.

³¹ Viet Nam Intellectual Property Law 2005, Article 81.

³² Viet Nam Intellectual Property Law 2005, Article 82.

³³ Interview with experts from the Department of Geographical Indications – NOIP of Viet Nam.

One salient aspect of Vietnamese law is that the right to file an application for a geographical indication shall belong to the State. The State may allow organizations and individuals manufacturing the product bearing the geographical indication, collective organizations representing such organizations and individuals, or the administrative authorities of the locality indicated by the geographical indication to exercise the right to file an application for the geographical indication. Persons who exercise such right shall not become the owners of the geographical indication.³⁴

Under this provision, it is challenging for organizations or individuals to decide who has the right to apply for a geographical indication. Well-known local products in Viet Nam are mainly agricultural or handicraft products manufactured and traded by individual households on a small-scale basis. Producers in European countries have hundreds of years of experience in developing geographical indications. Moreover, they play an important role in actively establishing the professional organization and investing time, effort and money in developing geographical indications. It is extremely problematic determining which organization may register and take responsibility for managing a geographical indication. State administrative authorities that have no rights attached to the manufacture and trade of the products exercise the right of registration of geographical indications.³⁵ This is why the incorrect implementation of protection for geographical indications does not bring the expected results.

The criterion to check and build the control system also presents obstacles as the specific criteria determination phase has not been completed. The specific criteria strongly influence a product's market. In assessing whether a product is a counterfeit of a geographical indication or an imitating good, the Vietnamese authorities have no concrete basis to differentiate counterfeits from products bearing real geographical indications.³⁶ Moreover, a quality control process has not been set up, and the criteria of usage for geographical indications have not been properly established.

The non-issuance of certificates of usage rights means that geographical indications are not actually protected in the market. Although geographical indications are legally defined, they are not protected in the market. Therefore, national registration is merely name recognition. No appropriate authority controls the attachment of signs and production places to products. This lack of control is problematic for the management and development of geographical indications in the market and is largely ineffective for the protection of geographical indications.

As of June 2012, 57 applications for the registration of geographical indications protection were submitted to the Viet Nam NOIP, of which 30 geographical indications (26 Vietnamese ones and four foreign ones) have been registered.³⁷ Though geographical indications are a relatively new concept in Viet Nam, the protection of well-known local products in the form of geographical indications has posed many problems.

³⁴ Viet Nam Intellectual Property Law 2005, Article 88.

³⁵ In the cases of Coffee *Buon Me Thuot*, grape fruit *Doan Hung*, anise *Lang Son*, fish sauce *Phan Thiet*, orange *Vinh*, and tea *Tan Cuong*, *ShanTuyet Moc Chau*.

³⁶ Phu Quoc v Tuong Lai Co Ltd. Available online at: <<http://www.honghanh.com.vn/vi-vn/chuyenmuc-736-tin-tuc-tintuc-5042-bao-ho-cach-nao.aspx>> accessed 10 June 2012.

³⁷ Statistics published by Viet Nam NOIP. Available online at: <http://www.noip.gov.vn/web/noip/home/vn?proxyUrl=/noip/cms_vn.nsf/%28agntDisplayContent%29?OpenAgent&UNID=A622377900F694A4472578E8004E9901> accessed 2 October 2012.

B. REGISTRATION AS A TRADEMARK

In accordance with international law (Article 15.1 of the TRIPS Agreement), Vietnamese law provides for the registration of signs indicating the geographical origin of goods as trademarks if the signs have been widely used and recognized in the name of trademarks or registered as collective or certification marks.³⁸

1. Registration as a normal trademark

Products bearing place names shall be protected in the form of trademarks if the signs have been widely used and recognized.³⁹ Since 2005, there have been a number of trademark applications for products bearing place names in Viet Nam, however, most were rejected to avoid indications of source becoming private property.⁴⁰ The NOIP also recommends local authorities to disallow the registration of place names as trademarks.⁴¹ Besides, the NOIP has also investigated and listed place names used to designate local products and actively refuses the registration of trademarks containing place names for products of the same kind.⁴²

Thus although in principle Vietnamese law allows the registration of trademarks using place names (Article 74.2), the above recommendation of the NOIP has rendered this provision ineffective in practice.

2. Registration as a collective mark

The registration for the protection of geographical indications seemingly requires meticulous and costly preparation to build up a scientific basis in order to determine the given characteristics and specific quality features. Many localities have therefore chosen the option of registering well-known local products as collective marks and certification marks.

A collective mark is a mark used to distinguish the goods or services of members of an organization from those of non-member entities.⁴³ A geographical sign shall be registrable as a collective mark if it is a visible sign and capable of distinguishing goods or services of the trademark owner from those of others.⁴⁴ Under this provision, traditional services such as a cultural or tourism service may be protected as collective marks and certification marks.

Essentially, collective marks are considered a legal 'rescue' measure for well-known local products to avoid widespread usage that can damage their reputations as well as quality. Since trademark management is mainly performed by collective organizations, and State management agencies no longer have responsibility after registration, a product's reputation and quality will be negatively impacted if collective organizations fail to perform this role effectively. In particular, the

³⁸ Viet Nam Intellectual Property Law 2005, Article 74.2(e).

³⁹ Viet Nam Intellectual Property Law 2005, Article 74.2(e).

⁴⁰ In fact, many trademarks that are Vietnamese place names have been registered for protection before the Law on Intellectual Property 2005 came into force such as Hanoi beer, Sai Gon beer, Da Lat wine, Ben Tre coconut candy, Sa Dec shrimp chips, Dong Trieu pottery, and Yen Phu sticky rice wine.

⁴¹ Viet Nam NOIP, *Protecting Geographical Names for Specialty Products* (n 19) 14.

⁴² *ibid* 22.

⁴³ Viet Nam Intellectual Property Law 2005, Article 4.17.

⁴⁴ Viet Nam Intellectual Property Law 2005, Article 72.

management and exploitation of collective marks in Viet Nam still suffer from the following shortcomings.

Firstly, like geographical indications, there are difficulties in determining which collective organizations may register the names and manage collective marks. This is because well-known local products bearing collective marks are mainly agricultural or handicraft products produced and traded by individual households on a small scale. In addition, goods bearing collective marks are produced by various facilities with different manufacturing and processing methods in areas of different climate and soil characteristics, sometimes with inhomogeneous and degenerate varieties. As a result, the quality of the goods may vary extensively.

Secondly, the nature and quality of products bearing collective marks have not been scientifically determined. Therefore, it is difficult to define criteria and processes to control collective mark usage. The definition of characteristics in the regulation on the use of trademarks lacks sufficient scientific basis for distinguishing between goods from different geographical areas. Moreover, since collective organizations have not focused on promotional activities providing information on collective marks and warnings of imitative products bearing collective marks in the mass media, products not originating from those places are still commercialized as collective marks.

This highlights the greatest inadequacy in managing collective marks bearing place names. The function of a collective mark is to inform the public of the product's quality and characteristics and to protect consumers. However, Vietnamese management organizations' use and control of collective marks does not fulfil the quality assurance function. This lack of management can eventually lead to the loss of meaning of that place name and eventually the loss of the inherent quality of products bearing that place name.

Thirdly, quality and other requirements for products applied by collective organizations may not truly reflect the specific quality of products. The limited number of users influences the ability to register and use a collective mark.

In short, the collective mark registration and protection mechanism in Viet Nam is not appropriate for specialty products of all kinds because it fails to guarantee the nature and specific quality of products. The mechanism of collective mark usage management is also unsuitable for the purpose of ensuring and maintaining product characteristics. Hence, collective mark registration for specialty products is ineffective in producing the desired effects in Viet Nam.

At present, there have been some 100 applications for the protection of products bearing place names as collective marks and 50 products, including processed food, vegetables, roots, fruits and handicrafts, are registered.⁴⁵

3. Registration as certification marks

A certification mark is a mark that is authorized by the owner to other organizations or individuals for use of their goods or services in order to certify characteristics in respect of origin, materials, method or mode of goods manufacture, or service provision, quality, accuracy, safety or other definable characteristics of the goods or services bearing that mark.⁴⁶

⁴⁵ Viet Nam NOIP, Annual report 2011.

⁴⁶ Viet Nam Intellectual Property Law 2005, Article 4.18.

The main difference between collective marks and certification marks is that users of a collective mark form a 'club', consequently leading to the power abuse of organizations or some individuals in the organizations.⁴⁷ Certification marks may be used by anybody who complies with the defined standards. The usage is voluntary and based on the ability to satisfy the requirements for origin criteria and product characteristics. Certification mark owners and users are independent in terms of economic benefits, which correspondingly avoids a restriction on competition as seen with the use of collective marks.

An important requirement for the registration of a certification mark is that the entity which applies for registration is 'competent to certify' the products concerned. Thus, the owner of a certification mark must be the representative of the products to which the certification mark applies. This serves as an important safeguard for the protection of the public against misleading practices. As an effective legal form of the protection of product origin indications, it should be encouraged.

In addition, for the application for registration of certification marks as geographical origin, the approval of appropriate State authorities is needed.⁴⁸ Although this regulation relates to the State management of the place name usage, this is a substantial obstacle in terms of procedures, resulting in an 'application-approval' mechanism in the registration of trademarks. This also limits the number of organizations and individuals registering certification marks.

A major limitation of certification marks is that the quality and other requirements for products bearing trademarks are set up and applied by certification mark owners. The quality and other requirements set up and applied by the mark owners might not represent the specific quality of local products. The control and certification of products' characteristics are not carried out synchronously from the phase of production to the phase of product launch. The certification of product characteristics and quality is only based on the results of probable testing. As of June 2012, according to the list of certification marks that were granted protection degrees by the NOIP, Viet Nam issued 19 certification mark protection degrees for specialty products.⁴⁹

What are the factors determining the success of these regimes in the protection of well-known local products in Viet Nam? Through research on the practical protection of well-known Vietnamese local products and comparison with the experiences of geographical indications of the European Union and certification mark protection of the United States⁵⁰, the following general conclusions may be drawn.

Firstly, the most vital element to the success of a well-known local product is the capacity of collective management organizations. According to Viet Nam's Law on Intellectual Property, the applicants for registration and the managers of well-known local products must be organizations,

⁴⁷ *WIPO Intellectual Property Handbook: Policy, Law and Use*. Available online at: <<http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch2.pdf>>

⁴⁸ Article 37.7, Circular No. 01/2007 stipulates that '[f]or a mark certifying a geographical origin, in addition to the mark use regulation and necessary documents evidencing the right of mark registration, the application must also be enclosed with the local administration's permission for the applicant to register a certification mark containing signs indicating a geographical origin (geographical name, symbol or map of the area or locality) for goods and services bearing the mark'.

⁴⁹ Viet Nam NOIP, Annual report 2011 (n 42).

⁵⁰ Le Thi Thu Ha (n 20) pp 264-298.

associations or enterprises established by local governments or appropriate State authorities representative of the collective and individual manufacturing and trading of local specialty products.

In principle, collective organizations must be strong and prestigious enough to undertake the responsibility to manage and operate the collective brand, and must have the rights attached to the manufacture and trading of brand products. In addition, collective organizations must master the product's production and trading, have a good command of the market and knowledge of organizing and managing the business.⁵¹ Such an organization is rarely found in most Vietnamese localities.

Well-known Vietnamese local products are often registered first by local authorities, and then collective organizations are established to manage, inspect and control local products. The determination of rights and obligations of members entitled to use collective marks is also difficult. Since the manufacturing and trading process of products is spontaneous and individual, the profits members earn before joining the group vary extensively. Participation in a unified organization leads to conflicting interests among the members; it is hard to find a common voice, which turns out to be problematic in collective brand usage management. The activities of brand management organizations are ineffective; therefore, members clearly do not see the benefits of brand use, which leads to involuntary participation and non-compliance with brand use regulations.⁵²

Secondly, it is necessary to define the nature and quality of products and the relationship between products and geographical areas, in order to formulate standards and processes controlling brand use. This is also the basis for the selection of product protection forms.

The identification of the above factors not only requires professional experience and perceptible recognition, but also requires the skill of analysing and applying science to technical standards before registration. The specific descriptions of well-known Vietnamese local products are mainly represented with perceptible norms that fail to express the specific qualities of the products. In fact, apart from the certification of products originating from a named area, the management of geographical indications and collective and certification marks has not produced a mechanism to ensure the specific quality of products bearing trademarks. The consequence is that consumers and even management agencies can hardly distinguish between branded products and other ones. This is also extremely detrimental to owners since they have spent a lot of effort and costs to obtain intellectual property protection that then must drop out of the market because of the impossibility of management and inspection.

⁵¹ Amy Cotton and David Morfesi, 'Key Ingredients for Geographical Indications: Collectivization and Control' available online at:

<http://www.uspto.gov/web/offices/dcom/olia/globalip/gi_protection_wipo.htm>

M G Coerper, 'The Protection of Geographical Indications in the United States of America, with Particular Reference to Certifications Marks'. Available online at: <<http://www.iprsonline.org/ictsd/docs>> See also OECD, 'Appellations d'origine et indications géographiques dans les pays membres de l'OECD: implications économiques et juridiques', Working Party on Agricultural Policies and Markets of the Committee for Agriculture Joint Working Party of the Committee for Agriculture and the Trade Committee, COM/AGR/APM/TD/WP (2000) 15/FINA.

⁵² Viet Nam NOIP, 'Registration, Management and Exploitation of Collective Marks for Well-Known Local Products', Workshop on the Management of Collective Marks', Hanoi 2008.

IV. RECOMMENDATIONS

Based on the characteristics of the three forms of protection mentioned above, the protection form suitable for each product category and characteristics of each locality is described below.

A. CONDITIONS FOR PROTECTION AS CERTIFICATION MARKS

For products protected as certification marks, products in a market with potential development and many manufacturers and entrepreneurs in the same area with uncontrolled quality, trademarks and designs are required. This kind of certification mark is particularly suitable for well-known local products, whose reputation and prestige are declining and are susceptible to counterfeiting and imitating.

Most manufacturers and traders of products using certification marks are unaware of the necessity to preserve the prestige and quality of products from their locality. These manufacturers often encounter difficulties in finding manufacturers who are willing to build up the general trademark for a certain product to ensure the standards and requirements for techniques and quality, along with raising funds for the joint development of general brands.

With this form of protection, the preparation for the conditions for implementation is not as complicated, costly or dependent on specialized units as the protection form of collective marks and geographical indications. The time required is shorter in comparison with geographical indications. It is possible to manage the origin and quality of products through the control of trademark use and the inspection of characteristics of branded products.

To avoid a monopoly and to control the ability to certify trademark owners, new regulations should be added. If certification agencies do not comply with given standards or refuse the use of a certification mark of an organization or an individual meeting the standards without legitimate reasons, the organization or individual concerned should be able to file an objection or request to revoke certification marks.⁵³

B. CONDITIONS FOR PROTECTION AS COLLECTIVE MARKS

The types of products protected as collective marks are relatively similar to those protected as certification marks. However, unlike certification marks, manufacturers and traders of products, whose products are protected as collective marks, are aware of the necessity to preserve the prestige and quality of products from their localities. They voluntarily take part in building general brands for products to ensure certain characteristics (such as origin, standards, requirements for technique and quality) and contribute funds to jointly set up and develop general trademarks.

The procedures and preparation for applying for protection of well-known local products in the form of collective marks are not overly complicated and costly. In addition, the preparation and application time required is short. State agencies do not participate extensively in the management of this form of protection; rather, the collective organizations that own the mark take the responsibility.

⁵³ Amy Cotton, David Morfesi (n 48).

C. CONDITIONS FOR PROTECTION AS GEOGRAPHICAL INDICATIONS

It can be said that this is the highest protection form for well-known local products. This form of protection requires the cooperation, participation and coordination of many management and professional agencies, along with the active cooperation of manufacturers and traders of products bearing geographical indications. This form of protection guarantees the ability to entitle the usage to all subjects capable of using geographical indications, which creates the premise for the quality and origin management of products bearing geographical indications.

For well-known local products protected as geographical indications, certain compulsory conditions exist. In addition to the conditions relating to certification and collective marks mentioned above, products must have a reputation or specific quality arising from natural and human conditions of named production places, and a long tradition.

Furthermore, the conditions relating to this form of protection demand manufacturers' awareness of the necessity to preserve the prestige and quality of their local products. Manufacturers must also be capable of gathering other manufacturers to voluntarily build up geographical indications for local products, and mobilizing funds to jointly set up and develop geographical indications. In addition, local governments or collective organizations representing the State⁵⁴ should manage geographical indications to control the product quality of local manufacturers. They must invest in building the geographical indication management system and establish product development policy, and also be willing to support the construction and development of geographical indications in terms of expertise and funds.

Thus, although the registration for intellectual property protection of local specialties as geographical indications will require much time, money and preparation effort, and demand the participation of both local governments and manufacturers, it is the highest protection form for local specialty products.

V. CONCLUSION

This study has shown that Viet Nam is rich in well-known local products that are highly appreciated by consumers. This represents considerable potential for agricultural and rural development in Viet Nam. However, the trading of these products is threatened on account of ineffective management. Intellectual property protection could be effective in maintaining a product's quality and developing its reputation.

Well-known local products in Viet Nam could be registered for protection as collective marks, certification marks or geographical indications. Each of these forms of protection has different advantages and disadvantages. The success of a well-known local product primarily depends on the capacity of collective management organizations. As well-known local products are agricultural or handicraft products manufactured and traded by individual households on a small scale, producers need guidance from local authorities on the management of collective brands. Furthermore, government policies should be implemented supporting specific programmes and projects, and producers need enhanced awareness to help them actively partake in the development of well-known

⁵⁴ The State shall not directly execute its power to administer geographical indications but empower such authority to a local government or a collective organization acting as a representative for the interests of all other organizations and individuals that are authorized users of the geographical indication.

local products. An in-depth study focusing on marketing collective brands should be undertaken as part of an effective strategy to commercialize these products in Viet Nam.

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