

Law on Appellations of Origin and Geographical Indications of Goods

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Purpose of the Law

1. This Law regulates the relations formed in connection with registration, protection and use of appellations of origin and geographical indications of goods (services).

Definitions Used in the Law

2. The definitions used in the Law have the following meaning:

(a) Sakpatenti – National Intellectual Property Center of Georgia – a legal entity governed by the public law responsible for procedures necessary for acquisition of the rights of natural persons and legal entities in the field of intellectual property.

(b) State Register of the Appellations of Origin and Geographical Indications of Goods (“the Register”) – data on the registered appellations of origin and geographical indications and the natural persons or legal entities entitled to use the appellations of origins and geographical indications.

(c) Application – documents necessary for registration of an appellation of origin and geographical indication, or for acquiring of the right to use the appellation of origin or geographical indication.

(d) Applicant – a natural person, legal entity or voluntary association of the producers in spite of their organizational-legal status, claiming for the registration of the appellation of

origin or the geographical indication or for the right to use the appellation of origin or geographical indication.

(e) Organoleptic characteristics – the characteristics of goods, the evaluation of which is carried out by means of human sense organs.

Appellation of Origin and Geographical Indication

3.—(1) An appellation of origin is a modern or historical name of a geographical place, region or, in exceptional cases, a name of a country (hereinafter “geographical area”), used to designate the goods:

(a) originating within the given geographical area;

(b) the specific quality and features of which are essentially or exclusively due to a particular geographical environment and human factors;

(c) production, processing and preparation of which take place within the geographical area.

(2) Geographical indication is the name or any other sign, which indicates a geographical area and is used to designate the goods:

(a) originating in that geographical area;

(b) specific quality, reputation, or other characteristics of which are attributable to that geographical area;

(c) production or processing or preparation of which takes place in the geographical area.

(3) If a traditional geographical or non-geographical name conveys an impression that goods originate from given geographical area, and the requirements of paragraph (1) are fulfilled, said name may be considered as an appellation of origin of goods.

(4) By way of derogation from paragraph (1), as an appellation of origin may be considered the name of a geographical area where raw materials of the goods come from the area larger than or different from said geographical area, if:

– the different boundaries of the geographical area and conditions for raw material production are determined;

– there are inspection arrangements to ensure that those conditions are adhered to.

(5) For the purposes of paragraph (4), only live animals, meat and milk may be considered as raw materials.

Protection of Appellations of Origin and Geographical Indications

4.—(1) Appellations of origin and geographical indications shall be protected by registration at Sakpatenti or on the basis of an international agreement.

(2) Appellations of origin and geographical indications of another country shall be protected on the basis of an international agreement.

(3) The appellation of origin and geographical indication protected under the international agreement shall be registered at Sakpatenti.

Grounds for Refusal of Appellations of Origin and Geographical Indications Registration

5. As an appellation of origin or a geographical indication shall not be registered the name or any other sign, which:

- (a) does not comply with the requirements of Article 3;
- (b) has become a generic name, although it relates to the geographical area where the goods were produced, processed or prepared;
- (c) is likely to mislead the public as to the true origin of the goods;
- (d) is contrary to the national dignity, religion, traditions and morality;
- (e) is identical to the name of a plant variety or an animal breed, that is likely to mislead the public as to the true origin of the goods.

Protection of Homonymous Appellations of Origin and Geographical Indications

6. If an appellation of origin or geographical indication registered in Georgia, or any name of the geographical area of Georgia is identical to an appellation of origin and geographical indication protected in another country, conditions of protection and use of said indication in Georgia shall be determined by the respective international agreement.

Application for Registration of an Appellation of Origin or Geographical Indication

7.—(1) An application for registration of an appellation of origin or geographical indication shall be filed with Sakpatenti by an applicant.

- (2) The application shall refer to one appellation of origin or geographical indication.
- (3) The application shall be in Georgian language.
- (4) The application shall include:
 - (a) a request for registration of an appellation of origin or geographical indication;
 - (b) full name and legal address of the applicant;
 - (c) appellation of origin or geographical indication;
 - (d) name of the goods for which the registration of the appellation of origin or geographical indication is requested;
 - (e) description of the goods and the raw material, with the indication of their chemical, physical, microbiological and/or organoleptic and other characteristics;
 - (f) description of location of the geographical area indicating its exact boundaries;
 - (g) document issued by the local administrative body confirming that the goods originate from that geographical area;
 - (h) the description of production technology and conditions and methods of production specific for the relevant geographical area, in the case of their existence;
 - (i) documents confirming, that specific quality or features of the goods are essentially or exclusively due to a particular geographical environment with its inherent natural and

human factors, or specific quality, reputation or characteristics of the goods are attributable to the geographical area;

(j) document confirming payment of the examination fee;

(k) power of attorney issued by an applicant in the name of his representative, if the application is filed by the representative;

(l) signature of the applicant or his representative.

(5) The documents and data provided for in subparagraphs (e), (f), (h) and (i) of paragraph (4) shall be prepared and confirmed in accordance with the legislation of Georgia.

Examination, Publication, Registration

8.—(1) Sakpatenti shall check whether the application complies with the requirements of Article 7, whether there exist the grounds for refusal provided for in subparagraphs (b), (c), (d), (e) Article 5 and shall perform the search on the databases of trademarks, appellations of origin and geographical indications.

(2) If the grounds for refusal provided for in subparagraphs (b), (c), (d), (e) Article 5 exist, Sakpatenti shall take the decision not to continue examination of the application.

(3) If the application does not comply with the requirements of subparagraphs (e), (f), (h) and (i) of paragraph (4) Article 7, the application shall be sent to the Ministry of relevant field for additional consideration.

(4) If the application complies with the requirements of Article 7 and the grounds for refusal provided for in paragraphs (b), (c), (d), (e) of Article 5 do not exist, Sakpatenti shall publish the application materials in the Official Bulletin of the Industrial Property of Georgia (hereinafter “the Bulletin”), in one central and one local newspaper.

(5) If within three months after publication of the application materials additional information is presented to Sakpatenti, this information shall be sent for consideration to the Ministry of relevant field.

(6) If no information is presented within three months from the publication of the application materials, Sakpatenti shall take the decision on registration of the appellation of origin or geographical indication, shall enter its data in the Register and shall publish the data in the Bulletin.

(7) The following data shall be published in the Bulletin:

(a) the appellation of origin or geographical indication;

(b) name of goods for which the registration of the appellation of origin or geographical indication is requested and description of its specific features;

(c) description of location of the geographical area, showing the exact boundaries thereof;

(d) full name and legal address of the applicant.

(8) Registration of the appellation of origin or geographical indication shall be perpetual.

Fees

9. Fees fixed under the legislation of Georgia shall be paid for examination of an application for registration of an appellation of origin or geographical indication, entering changes in the Register, publication, issuing of the extract from the Register, also for other legal actions regarding the protection of an appellation of origin and geographical indication.

Registration of an Appellation of Origin and Geographical Indication Abroad

10. Legal entities and natural persons of Georgia shall be entitled to request the registration of an appellation of origin and geographical indication in other countries only after their registration in Georgia.

Scope of Protection of Appellations of Origin and Geographical Indications

11.—(1) Registered appellations of origin and geographical indications shall be protected against the following:

(a) any direct or indirect commercial use of an appellation of origin or geographical indication in respect to the goods not covered by the registration, insofar as those goods are similar to the goods registered under the appellation of origin or geographical indication or insofar as using the appellation of origin or geographical indication exploits its reputation;

(b) any use of the appellation of origin or geographical indication, which literally correctly designates the place of production of goods, processing or preparing of the raw material, but is likely to mislead the public as to the true origin of the goods; or

(c) any use of such a name or any other sign, which is an imitation of appellation of origin or geographical indication, even in translation, or accompanied with such words as “type”, “style”, “similar”, “as produced in”, “method”, etc.

(d) any use of an indication, which is misleading as to the origin, essential quality or features of the goods on the packaging, on an advertising material, or on documents relating to the goods.

(e) any packaging or presentation of goods which may convey false impression as to its origin.

(2) Where an appellation of origin or geographical indication contains the generic name of goods, use of that generic name shall not fall within the scope of Article 11.

(3) The protected appellation of origin or geographical indication may not become generic.

Use of Appellation of Origin and Geographical Indication

12.—(1) Any natural person or legal entity, which prepares and/or processes and/or produces the goods in the geographical area respective to the appellation of origin or geographical indication and the specific quality, features and reputation of the produced goods are essentially or exclusively due to, or attributable to this geographical area, may file the application with Sakpatenti for acquisition of the right to use the appellation of origin or geographical indication.

(2) Sakpatenti shall enter the information on the natural person or legal entity entitled to use the appellation of origin or geographical indication in the Register.

(3) The right may be revised on the basis of inspection. The rule and periodicity of inspection shall be determined by the legislation of Georgia.

(4) Use of the appellation of origin or geographical indication by the natural person or legal entity, which is not registered as a holder of the right, shall be prohibited.

Cancellation of Registration of an Appellation of Origin or Geographical Indication

13.—(1) Registration of an appellation of origin or geographical indication may be cancelled if:

(a) it has been registered in violation of the Law;

(b) due to changing or disappearing of natural or human factors, specific for the given geographical area, becomes impossible to produce such goods which would have the quality and features indicated in the Register.

(2) Protection of the appellation of origin or geographical indication of a foreign country shall be terminated under the conditions of the international agreement.

Relationship Between an Appellation of Origin or Geographical Indication and a Trademark

14.—(1) If after filing with Sakpatenti of an application for registration of an appellation of origin or geographical indication, an application for registration of a trademark is filed with Sakpatenti and in result of the registration of the appellation of origin or geographical indication there will exist one of the conditions provided for in Article 11, pending of the application for trademark shall be retained until the decision on registration of the appellation of origin or geographical indication is taken.

(2) If at the date of filing of the application for registration of an appellation of origin or geographical indication with Sakpatenti, the application for registration of a trademark has been already filed, but the decision on registration of this trademark has not been taken yet and in result of the registration of the appellation of origin or geographical indication there will exist one of the conditions provided for in Article 11, pending of the application for registration of trademark shall be retained until the decision on registration of the appellation of origin or geographical indication is taken.

(3) If Sakpatenti takes the decision to refuse an application for registration of the appellation of origin or geographical indication, the examination of the trademark application retained under paragraphs (1) and (2) shall be continued, preserving the filing date.

(4) If the use or registration of a trademark violates one of the conditions provided for in Article 11, action may be brought within 5 years from the day of the infringement of the rights in the appellation of origin or geographical indication or from the date of registration of the trademark, provided that by that day the trademark has been already published and that date is earlier than the date of recognition of the rights infringement.

(5) If violation of one of the conditions provided for in Article 11 takes place by using of the trademark registered before the registration of the appellation of origin or geographical indication, the interested party may bring action claiming to cease the use of such a trademark within 5 years from the day of recognition of the infringement of the appellation of origin or

geographical indication. In the case of disagreement among the parties the use of the registered trademark may be continued temporarily, but no longer than duration of the registration.

(6) If the trademark is registered in breach of the requirements of paragraphs (1) or (2) of this Article, the registration of such a trademark shall be cancelled on the basis of court decision.

(7) The registration of the trademark and its fair use shall not be terminated, if the registration took place before protection has been granted to the appellation of origin or geographical indication in the country of origin or before enactment of this Law, provided that coexistence of the trademark and appellation of origin or geographical indication does not lead the public into confusion as to the origin of the goods.

(8) Article 11 shall not apply to the trademark used in a continuous manner for at least 10 years preceding April 15, 1994.

(9) Taking into account the reputation of the registered trademark, its renown and duration of use, the appellation of origin or geographical indication shall not be registered, if such a registration leads the public into confusion as to the true origin of the goods.

Responsibilities for Infringement of the Rights Resulting from Registration of Appellation of Origin or Geographical Indication

15. Infringement of the rights resulting from registration of an appellation of origin or geographical indication shall cause civil, administrative or criminal responsibilities under the legislation of Georgia.

Claims in Action

16. A natural person or legal entity entitled to use an appellation of origin or geographical indication, shall be authorized to bring an action against infringing party and require:

- (a) to stop an infringement;
- (b) compensation of damages;
- (c) seizure and destruction of illegally produced goods and the equipment used directly for production of said goods;
- (d) destruction of all those labels, drawings, imprints, packaging, packaging materials and advertisements bearing the appellation of origin or geographical indication.

Transitional Provisions

17.—(1) Within three months after enacting of this Law Sakpatenti shall draft and approve under the established rule the “Instruction on Procedures Relating to the Filing of the Application for the Registration of an Appellation of Origin and Geographical Indication with Sakpatenti, Its Examination and Registration”.

(2) Sakpatenti together with the relevant Ministries and other offices shall draft and before October 1, 1999 submit to the President of Georgia for approval the Regulations on Determining of Geographical Area Boundaries Respective to the Appellation of Origin and Geographical Indication of Goods, on Studying, Determining and Control of the Link of the Respective Characteristics of Goods with the Geographical Area.

(3) Sakpatenti together with the relevant Ministries and other offices shall draft and before October 1, 1999 submit to the President of Georgia for approval the preliminary list of appellations of origin and geographical indications of goods produced in Georgia.

Final Provisions

18. This Law shall enter into force from November 1, 1999.
