

# Procedures for challenging and enforcing rights to appellations of origin and geographical indications in Côte d'Ivoire

*Information received on March 13, 2023*

The procedures for challenging and enforcing rights to geographical indications in Côte d'Ivoire are governed by the Bangui Agreement Instituting an African Intellectual Property Organization, Act of December 14, 2015<sup>1</sup> (the Bangui Agreement), and by rules 101 to 107 of its implementing regulations.<sup>2</sup>

The relevant provisions contained in Annex VI (on geographical indications) of the Bangui Agreement, to which Côte d'Ivoire is party, are presented below.

## **Article 6: Rights conferred by the registration of a geographical indication**

(1) Registration of a geographical indication confers on the producers referred to in Article 1 above, who perform their activities in the geographical area indicated in the register, the right to use for commercial purposes the registered geographical indication in respect of the product enumerated in the register, provided that such products possess the essential characteristics recorded in the register.

(2) Where the products have been put into circulation in the conditions set forth in paragraph (1) above under a registered geographical indication, any person may use the geographical indication for those products.

(3) Aside from the instances provided for in paragraphs (1) and (2) above, it shall be illegal to make any use of the registered geographical indication or a similar appellation for products listed in the register or similar products, even if the real origin of the product is stated, or if the geographical indication is used in translation, or accompanied by expressions such as sort, type, way, imitation or similar expressions.

(4) It shall be illegal to use in the designation or presentation of a product any device that indicates or suggests that the product in question originates from a geographical region other than the actual place of origin, in a manner that misleads the public as to the geographical origin of the product.

(5) The owner of a prior identical or similar mark to a geographical indication may continue to use his mark, save where the mark concerns agricultural, natural or craft products.

## **Article 12: Opposition**

(1) Any person may oppose the registration of a geographical indication by sending to the Organization, within three months of the publication mentioned in Article 10 above, a written statement setting out the reasons for his opposition, which reasons must be based on an infringement either of the provisions of Articles 1, 3, 5 and 7 of this Annex, or of a prior registered right belonging to the opposing party.

---

<sup>1</sup> [http://www.oapi.int/Ressources/accord\\_bangui/2020/anglais.pdf](http://www.oapi.int/Ressources/accord_bangui/2020/anglais.pdf)

<sup>2</sup> [http://www.oapi.int/Ressources/reglement\\_application/Reglement\\_appllication.pdf](http://www.oapi.int/Ressources/reglement_application/Reglement_appllication.pdf)

- (2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may submit a reasoned reply within three months, renewable once on request. The reply shall be forwarded to the opponent or his agent.
- (3) Before ruling on the opposition, the Organization shall hear the parties or their agents on request.
- (4) The Organization's ruling shall be appealable before the High Commission of Appeal within 60 days of receipt of the notification of the ruling to the parties concerned.
- (5) If the opposition is well-founded, the Organization shall reject the application for registration.
- (6) The final forfeiture ruling shall be published in the Official Bulletin of the Organization.

#### **Article 21: Invalidity and amendment of the registration**

- (1) Any person or the Ministry responsible may request the competent domestic court to order the following:
  - (a) cancellation of the registration of a geographical indication on the grounds that, having regard to Article 5, the registration as such may not be afforded such protection;
  - (b) amendment of the registration of a geographical indication on the grounds that the geographical region named in the registration does not correspond to the geographical indication, or that the names of the products for which the geographical indication is used or the statement of quality, reputation or other specification of the products in question is defective or unjustified;
  - (c) amendment of the specifications.
- (2) For any action brought under this article, notice of the application for invalidity or amendment shall be given to the person who filed the application for registration of the geographical indication or his successor in title and shall be communicated, by publication in the manner prescribed by the implementing regulations of this Annex, to all persons entitled to use the geographical indication in accordance with Article 6 above.
- (3) The persons mentioned in paragraph (2) above and any other person may make a request to intervene within the time limit fixed by the court of a Member State in the above-mentioned notice and publication.
- (4) When the decision finding the registration null and void becomes final, it shall be communicated by the most diligent party to the Organization, which shall enter it into the special registry of geographical indications and publish a notice to that effect.
- (5) Invalidity shall be published in the formats prescribed by the implementing regulations. The registration shall be considered null and void with effect from the date of the registration.

#### **Article 22: Other civil action**

- (1) Any interested person or group of producers or consumers may bring the action provided for in paragraph (2) against unlawful use of a registered geographical indication and against persons contributing to such use within the meaning of Article 6(3) and 6(4).

(2) Without prejudice to paragraph (3), the action shall be intended to end the unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication, or to prohibit such use where it is imminent, and to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication may require compensation from the person making unlawful use of the indication and persons who have contributed to such use.

(4) In determining the damages, the competent domestic court shall take into account the adverse financial effects, including loss of earnings, suffered by the injured party, the profits made by the counterfeiter and the moral damage caused to the owner of the rights as a result of the infringement.

### **Article 23: Criminal action**

Any person intentionally making unlawful use, within the meaning of Article 6(3) and 6(4), of a registered geographical indication shall be punishable by a term of imprisonment of three months at least and one year at most and to a fine ranging from 5,000,000 to 30,000,000 CFA francs, or one only of these penalties.

### **Article 24: Penalties in aggravating circumstances**

(1) The penalties stipulated in Article 23 above shall be doubled in the following cases:

- (a) recidivism;
- (b) where the defendant is a member of the group representing the geographical indication;
- (c) if the defendant is an employee of such group.

(2) Recidivism occurs where an offender has been convicted of one of the offenses provided for in this Annex within the five previous years.