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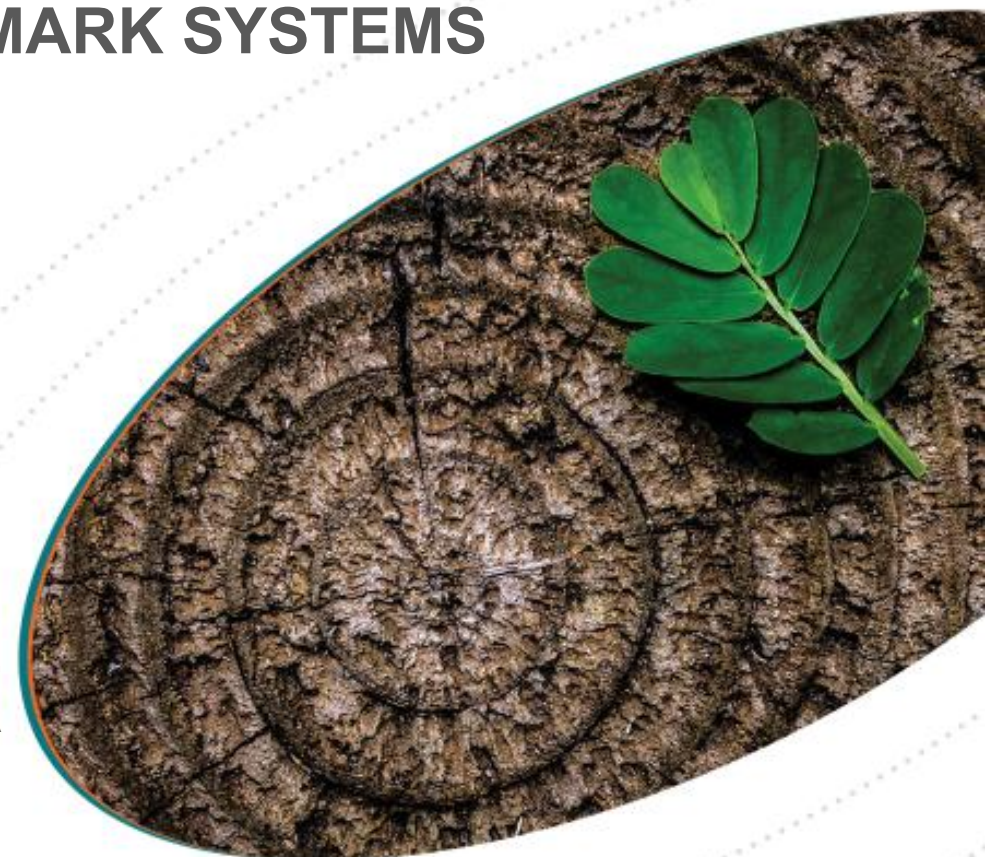
INFORMATION SESSION ON GEOGRAPHICAL INDICATIONS

EXAMINATION OF GEOGRAPHICAL INDICATIONS IN *SUI GENERIS* SYSTEMS AND TRADE MARK SYSTEMS

SOUTH AFRICA

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STATUTORY PROTECTION (1)

LIQUOR PRODUCTS ACT (ACT 60 OF 1989)

Sui generis system for protection of geographical indications relating to wines and certain spirits.

Official Wine of Origin scheme established in 1972.

Scheme not only protects wines of origin, but also wines made from a specific cultivar or vintage.

South Africa's Wine of Origin certification scheme was officially instituted in 1973, in accordance with the Wine, Other Fermented Beverages and Spirits Act (Act 25 of 1957).

In accordance with the provisions of the Liquor Products Act the control function regarding wine of origin, cultivar, vintage, estate brandy and integrated production of wine, fall under the Wine and Spirit Board.

The Board's primary functions are:-

- Running and administering the schemes for Wine of Origin, Estate Brandy and Integrated Production of Wine.
- Advising and making recommendations to the Minister of DALRRD on any matter relating to the Liquor Products Act and its subordinate legislation.

STATUTORY PROTECTION (2)

AGRICULTURAL PRODUCT STANDARDS ACT (ACT 119 OF 1990)

Sui generis system for protection of geographical indications relating to agricultural products.

GI regulations under the APS Act came into effect on 22 September 2019.

Definition of “*agricultural products*” in GI regulations:

“..... any primary or processed product regulated in terms of sections 3(1) and 15 of the APS Act, but does not include a liquor product as defined under the Liquor Products Act, 1989 (Act No. 60 of 1989).”

Scope of GI regulations:-

- Applies to the use of registered GI's on agricultural products falling within the definition for a GI only.
- Which are intended for sale in the Republic of South Africa.
- Takes into account international agreements regarding the protection of foreign GI's in the Republic of South Africa (e.g. EU-SADC EPA).

Scope of protection:-

Any direct or indirect commercial use of a registered GI is prohibited on –

- Similar agricultural products which are not covered by the registration; and
- Dissimilar agricultural products where such use exploits the reputation of the protected name

The prohibition applies in particular –

- Where the registered name is imitated/alluded/translated;
- Where the registered name is accompanied by words or expressions such as *inter alia* “kind”, “type”, “style”, “imitation”, “as produced in”;
- Where the agricultural product is used as an ingredient in the manufacture of another foodstuff/s.

STATUTORY PROTECTION (2)

AGRICULTURAL PRODUCT STANDARDS ACT (ACT 119 OF 1990)

APPLICATION PROCESS

Who may apply:-

- Group of SA producers/processors
- Group of foreign producers/processors via competent authority
- Foreign GI's forming part of international agreements

Application for registration to consist of:-

- Details of group
- GI name
- Product specification
- Nomination of qualified auditor (SA producers) or certification body (foreign producers)
- Summary of critical elements of control

Evaluation of application information by Executive Officer (60 days)

Publish notice of intention to register in Government Gazette

- Objection period of 60 months

If no **objection** received – name entered in GI Register

If objection received – applicant group to furnish counter-statement within 30 days

- Applicant group has opportunity to be heard in person
- Executive Officer may consult with or obtain advice from persons with specialised knowledge or experience
- Executive Officer will take final decision on whether to register or reject GI application

STATUTORY PROTECTION (2)

AGRICULTURAL PRODUCT STANDARDS ACT (ACT 119 OF 1990)

PRODUCTS CURRENTLY REGULATED ON THE LOCAL MARKET

Fresh Fruit	Fresh Vegetables	Agronomy Products	Processed Products	Animal products
Apples	Garlic	Canola	Canned fruit & vegetables	Dairy & Imitation dairy products
Apricots	Onions & Shallots	Dry beans	Canned mushrooms & pasta	Edible Ices
Avocados	Potatoes	Groundnuts	Coffee, chicory & related products	Eggs
Bananas	Tomatoes	Maize & Maize products	Dried fruit	Mohair
Citrus Fruit	Various other vegetables (asparagus, carrots, ginger, etc.)	Malting Barley	Fat spreads	Poultry meat
Grapes		Rice	Fruit juices and fruit drink products	Processed meat products
Litchis		Soya Beans	Frozen fruit & vegetables	Red meat (beef, sheep, goat, pork)
Peaches & Nectarines		Sorghum	Honey	
Pears		Sunflower	Jam, Jelly & Marmalade	
Plums & Prunes		Wheat & Wheat products	Mayonnaise & salad dressings	
			Rooibos	
			Table olives	
			Tea and related products	
			Vinegar	

STATUTORY PROTECTION (3)

TRADE MARKS ACT (ACT 194 OF 1993)

CERTIFICATION TRADE MARKS

In terms of the Trade Marks Act geographical indications can be protected as either **CERTIFICATION TRADE MARKS** or as **COLLECTIVE TRADE MARKS**.

Section 42 - Certification trade marks

”42.(1) *A mark **capable of distinguishing**, in the **course of trade**, **goods or services certified** by any person in respect of kind, quality, quantity, intended purpose, value, **geographical origin** or **other characteristics** of the goods or services, or the **mode** or time of production of the goods or of rendering of the services, as the case may be, **from goods or services not so certified**, shall, on application in the prescribed manner, be registrable as a certification trade mark in respect of such first-mentioned goods or services, in the name, as proprietor thereof, of that person:*

Provided that a mark may not be so registered in the name of a person who carries on a trade in the goods or services in respect of which registration is sought.

(2) *Subject to the provisions of this section, the provisions of this Act shall, except in so far as is otherwise provided, and in so far as they can be applied, apply to a certification trade mark.”*

The application for the registration of a certification mark shall be accompanied by (i) **a statement** by the applicant that he **does not carry on a trade in the goods or services** in respect of which registration is sought and by (ii) **rules governing the use of the mark**.

The rules shall specify (i) **the conditions for the use of the mark**, the (ii) **circumstances** in which the proprietor is to certify the goods or services and (iii) in respect of **which characteristics** of the goods or services or other aspects referred to in section 42 (1) the applicant will certify the goods or services.

STATUTORY PROTECTION (3)
TRADE MARKS ACT (ACT 194 OF 1993)
COLLECTIVE TRADE MARKS

Section 43 – Collective trade marks

- “43.(1)** *A mark **capable of distinguishing**, in the **course of trade**, goods or services of persons who are **members of any association from goods or services of persons who are not members** thereof, shall, on application in the manner prescribed and subject to the provisions of this section, be registrable as a collective trade mark in respect of such first-mentioned goods or services in the name of such association as the proprietor thereof.*
- (2)** ***Geographical names or other indications of geographical origin may be registered as collective trade marks.***”

An application for the registration of a collective trade mark shall be accompanied by **rules** governing the use of the mark.

The rules shall specify (i) the **persons authorised** to use the mark, (ii) the **conditions of membership** of the association and, when applicable, (iii) the **conditions of the use** of the mark, including any **sanctions against misuse**.

STATUTORY PROTECTION (3)
TRADE MARKS ACT (ACT 194 OF 1993)
TRADE MARK REGISTRABILITY

Geographical indications applied for for protection as either certification or collective trade marks must still pass the threshold of being registrable trade marks for purposes of Sections 9 and 10 of the Trade Marks Act.

Such geographical indications must still serve the basic trade mark function of being **capable of distinguishing** and may **not consist exclusively** of a sign or an indication which may designate kind, quality, quantity or geographical origin of goods or services.

STATUTORY PROTECTION (3)

TRADE MARKS ACT (ACT 194 OF 1993)

TRADE MARK REGISTRABILITY

Section 9 of the Trade Marks Act stipulates as follows:-

“Registrable trade marks

9. (1) *In order to be registrable, a trade mark shall be capable of distinguishing the goods or services of a person in respect of which it is registered or proposed to be registered from the goods or services of another person either generally or, where the trade mark is registered or proposed to be registered subject to limitations, in relation to use within those limitations.*
- (2) *A mark shall be considered to be capable of distinguishing within the meaning of subsection (1) if, at the date of application for registration, it is inherently capable of so distinguishing or it is capable of distinguishing by reason of prior use thereof.”*

Section 10 of the Trade Marks Act stipulates as follows:-

“Unregistrable trade marks

10. *The following marks shall not be registered as trade marks or, if registered, shall, subject to the provisions of sections 3 and 70, be liable to be removed from the register:*
- (1) *A mark which does not constitute a trade mark;*
- (2) *a mark which -*
- (a) *is not capable of distinguishing within the meaning of section 9; or*
 - (b) *consists exclusively of a sign or an indication which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode or time of production of the goods or of rendering of the services; or*
 - (c) *consists exclusively of a sign or an indication which has become customary in the current language or in the bona fide and established practices of the trade.”*

EXAMPLES

CERTIFICATION TRADE MARK

COLLECTIVE TRADE MARK

SOUTH AFRICA

Proprietor: Karoo Foundation Trust

Class 29 Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats.



Proprietor: Kalahari Red Club

Class 31 Agricultural, horticultural and forestry products and grains not included in other classes; foodstuffs for animals; live animals.

KALAHARI RED

CERTIFICATION TRADE MARK

COLLECTIVE TRADE MARK

INTERNATIONAL

Proprietor: Mejeriforeningen Danish Dairy Board

Class 29 Butter, cheese, milk, preserved milk and other dairy products, edible oils and fat.



Proprietor: Consorzio Tutela Provolone Valpadana

Class 29 Provolone Valpadana cheese.





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THANK YOU

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