

Panel Discussion in March 7, 2019

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Moderator asks the speakers from Japan about if they feel any reaction of the Japanese players regarding the expansion of the protection of GIs in South East Asian Countries.

Japan;

For me, GI is just a mark, an identification mark - as I said. Japanese companies do not think it is effective as is and it is necessary to have further support from other IP rights, such as designs or trademarks. For example, in Japan we have seed rights, to protect the seed of newly developed products. If the producer get registrations they will get 20 or 25 years of exclusive rights over the seed. It is a very strong right. Then, GI can be used effectively with Seed protection.

Moderator;

Do you think your clients became more interested in activities in ASEAN regarding GI, as a patent attorney?

Japan;

No, not really. However, I can tell you an interesting story about wagyu. Wagyu is a very high quality beef, we have Kobe beef and other fancy beef and all. But in the past someone took those cows to the US and gave them those cows, which were created in Japan. After that, the wagyu cows started to be raised all over the world. We now have the wagyu associations all over the world, in the US, in Australia, in Argentina, etc. They have their own definition of wagyu - Japanese cow. I guess we came too late, we could not oppose the use of wagyu at that time. Maybe if we had GI protection 50 years ago maybe it would have been different. But now it is hard to act against it. But the general perception is that strong GI protection is welcome.

Q (Indonesia);

My question is to Japanese speaker, is GI protection important? I am not sure there is a real governmental interest in enforcing it. I do not know if lobby maybe necessary? Can you give more explanation about it? Any special cases about it?

Japan;

Thank you for the question. According to the Japanese Ministry of Agriculture, since Japan only started protecting GI 3 years ago there have not been any real cases as of yet. However, they are going to keep policing what third parties are doing and if they find some infringing act they will act upon it. However, the problem is that they are not police, their power is limited. On a secondary level, there is the international protection. We have the FTA with EU starting January this year and this FTA has mutual recognition of GI protections. Europe has many more GI protected but Japanese GI will also be recognized in Europe. If that spreads, maybe GI will be more protected globally.

Japan;

The problem with GI is that it is just a mark. If the owner used the GI, it is ok. If another third party uses it, it is like an infringement. However, the GI owner cannot ask the infringer to stop GI. They have to ask the government and if the government accepts, they only allow for injunction - it is a weak right.

Moderator;

We have been handled a question to Indonesia. Indonesia implemented a protection for indication of source, which is inclusive, and you said that Indonesia is doing well with this. Could you explain more?

Indonesia;

The problems are similar to other countries, about when they implement GI systems. There are requirements to registration, etc. We need to decide about accumulative factors and human factors and etc. In Colombia, for example, they use the Lisbon system, which is strict. In Indonesia we decided to be flexible, you can use either one or combine. Most of the products are already produced extensively so we can't limit. We also have the culture of sharing. We have a lot of GIs, including PISCO from Peru, We also have examples of national products, like vanillas, where the price tripled in some years after the use of GIs and indication of source. However, of course there are products who had no impact when using GI. GI is only a tool. The collective people behind the tool are the most important ones to make it valuable. So, by that fact and situation we also find that many potential groups fail to fulfill the requirement of GI products, that is

why we make the indication of source as a safety net for local producers.

Moderator;

GI is a collective IPR, however, there was little discussion on management matters. How are GI managed? Is it by an association? Regional? National?

Colombia;

That is a very good question, getting the right is one thing - there are some standards, etc. You got a right, now what are you going to do to use the right. And how are you going to enforce the right? How could you stop a free rider? In Colombia, management is mostly handled by the government, but organized communities are also active in the management of the rights. Government grant control and administration of GIs. Communities are the ones policing and enforcing the right. They are the ones who check who is following the standards or not. They are also able to go and enforce the right. In Japan, it is difficult. But, in Latin America, we have many cases where enforcement was successful.

Indonesia;

There are many ways to make GIs effective after registration. There are 2 ways - first is leaving the community to themselves, it depends on them on how to use GI to boost the products. The 2nd way, some of Indonesian GI are applied by the local government, in this case the local government acts to empower the producers - they become the managers. There are several GIs owned by indigenous people, they have their own protocol. It would depend on how they handle it.

Thailand;

Enforcement and management is done at the local level and each community has their own standards. Sometimes they have their own brands besides the GI. But in the international level GIs are managed by the government, who need to act to enforce it international.

Vietnam;

We have TRIPS and TRIPS plus and I can say that we can give the best examples

Moderator;

US is an important country and business partner, but they do not recognize GIs
US - only as collective trademarks or certification marks, how ASEAN countries
can protect GIs in the US?

Thailand;

Well, we lost Jasmine rice in US to another company who registered it first. After
that the government also tried to register it as a trademark in some countries,
such as Taiwan. Then we can protect it.

Colombia;

We have the FTA with the US. What we did is go on and protect it as collective
trademark, because there are already standards of protection. For example, the
coffee produced in Colombia, can only be produced in Colombia. The branding,
protecting the collective mark was the obvious step and the way to boost 100%
Colombian coffee in the US and to add value to the coffee producing Colombian
communities that are selling in the US.

Japan;

As I am from the industry side, I prefer trademark rights - before we thought GI
was just for wine

Indonesia;

Actually we know that GI is part of branding strategy and we will be flexible since
we can only use trademarks in the US. But in GI, as Indonesia, it is a matter of
pitching the potential consumer. However, in the US we can use something like
trademarks. We have experience with EU where coffee was protected as TM but
it was not a premium one.

Vietnam;

For us, not, main product to export, we can use GI or collective TM. But in fact
collective TM is easier to protect than GI because there are more requirements at
GI.

Q (Philippines);

I think GI may be protected as TM if there is a certification of the government. I have a question about Colombia, is there a remedy against a decision over a decision regarding Decision 486?

Colombia;

In case the patent office refuses to protect, they have to issue a resolution - you can have a reconciliation action, where the same government can reconsider. Or if that fails, we can go to the Supreme Court for administrative issues if the PTO make a mistake. Andean Court of justice, only to harmonize.

Q (India);

GI is just a name, not a patent which protect a product and not a design that protect the look and feel. Should GI protect look and feel? Like craft products? What if someone produces identical product, in that case name would not be used. Do you think that other than wines, do you think it should be used to protect to handicrafts.

Colombia;

The first question, I will give you an example, in Mexico the mescal is produced in some parts of Mexico and GI was granted to those parts. But there were other regions using mescal in different location. But for us, for branding purposes - they wanted to use mezcal, so they made clear that they want to be part of that, and asked to extend the territory to cover their territory so that they could also use mescal that territory. The beauty of that story, GI became so good for the branding that if they don't have, they are out of the market.

I think that GI is great to craftsmanship. If they are using GI, they should do that. Many people in the government are encouraging the craftsmanship to organize themselves so that they get GI and can have better protection.

Indonesia;

There are stuff going on in Australia - the fights among winery there were so strong that they are having to rethink stuff. They asked to join the community because they had to share similar brandings. In Indonesia, there is protection for the clothes, they maybe similar but there different standards. It depends on how you draft the book of requirements.