

Regarding the Revision of the Industrial Property Code

Some months ago, the Industrial Property Institute conducted a timely revision of the industrial property code, more specifically, by the approval by the Council of Ministers of Decree 20/2009, of 3 June 2009, which altered lines m) and n) of article 1 and of article 119, by the addition of numbers 2 and 3 of Decree 4/2006, of 12 April, which approved the Industrial Property Code, and by Decree 21/2009, which approved the Regulations on Appellations of Origin and on Geographical Indications.

Decree 20/2009, of 3 June 2009

This decree alters lines m) and n) of article 1. These lines have to do with the definition of what may constitute a geographical indication, and an appellation of origin.

While, in the previous version, a geographical indication focused on a region, place or country which had become known as a centre of production or processing of a given product or service, in the new version, the geographical indication focuses on a product (only, and not on a service) which has become known because of its geographical origin (region, place or country), and which is produced in this specific place/region/country.¹

It should be emphasized, however, that, in order to be considered to be a geographical indication, the product must, essentially and cumulatively, have the following items:

- Origin – the product must originate from a specific region
- Reputation – derived from the specific region
- Production/processing/preparation – must be undertaken in that geographical area

As far as the appellation of origin is concerned, in the old version the emphasis was also placed on the place / region from which the product had originated, the qualities of which product were derived from the fact that it had originated from that region, but in the new version, the focus is not only on the origin which confers on the product the quality or reputation which it has, but also on human and natural factors, and on the production or processing of it, which takes place in that specific region.²

¹ m) Geographic indication: name of a region, given place or, in exceptional cases, of a country which serves to designate or identify a product originating from that region, that given place or country, and whose reputation, given quality or other characteristics may be attributed to its geographical origin, and the production and / or processing and / or preparation of which takes places in the defined geographical area;

² n) Appellation of origin: the name of a region, of a given place or, in exceptional cases, of a country which serves to designate or identify a product which originates from that region, given place or country, and whose qualities or

In consequence, it must be noted again that, in order to be an appellation of origin, the product must have:

- Origin – the product must originate from a determined region
- Reputation – derived from a geographical factor
- Production / processing / preparation – must take place in that geographical area

This decree also inserted an addition to article 119 of the code, relating to the bases for the refusal of applications for trademark registration. Thus, in terms of the newly created no. 2 of this article,

“An application for the registration of a trademark which is similar or identical to an appellation of origin or to a geographical indication registered in terms of these Regulations, or with a prior date of deposit, shall be refused.”

In consequence, there should be no similarity or possibility of confusion between a trademark and an appellation of origin or geographical indication, failing which the application will be refused.

In the new number 3 of article 119, the code provides for the non-renewal of trademarks which have already been registered, and which are ***“composed only of geographical names which may constitute an appellation of origin or a geographical indication”***.

This new provision should be taken into account by all those who propose to submit applications for the renewal of trademarks to the authority responsible for the administration of industrial property in the country, particularly so as to avoid the possibility of the existence of similarities between the trademark in question and an appellation of origin or geographical indication. For this purpose, interested parties may, if they so wish, conduct the relevant investigation with that authority.

Number 2 of the said decree revokes various articles of the code, namely:

Article 156 – which provided for the application of rules relating to trademarks, to appellations of origin, or to a geographical indication. Thus these appellations and indications now have their own legal provisions.

Article 157 – which set out the criteria for the demarcation of the limits of the areas to which an appellation of origin or a geographical indication is related.

characteristics are due, essentially or exclusively, to a specific geographical factor, including natural and human factors, and whose production, processing and preparation occurs in that delimited geographical area.

Article 158 – which set out the requirements for the submission of an application for the registration of an appellation of origin, or a geographical indication.

Article 159 – which set out the bases on which applications for the registration of appellations of origin, or geographical indications, may be refused.

The matters which were regulated by the Articles cited above are now covered by the new Regulations on Appellations of Origin and Geographical Indications.

Decree 21/2009, of 3 June 2004

This decree approves the Regulations on Appellations of Origin and Geographical Indications. This regulation ***“sets out the special framework of rights and obligations relating to the protection of appellations of origin and geographical indications, namely, for agricultural, cattle-farming, fishing and forestry products, for the types of food products flowing therefrom, for salt, and for artisanal crafts”***, as set out in Article 2 of the same.

In effect, it is in this regulation that the rules relating to the registration process for appellations of origin and geographical indications are set out. As regards the requirements, one of the innovations worth highlighting is that of a specification document, defined as ***“the document which contains the elements and technical characteristics of the product for which registration is requested as an appellation of origin or geographical indication”***. Basically this specification must contain, inter alia, the product description, the raw materials from which it is constituted, its physical, chemical and microbiological characteristics, as well as elements which prove that the product is from that geographical region, and a description of the production method.

In our understanding, this regulation compiles with the *“Selo Orgulho Moçambicano - Made in Mozambique”*, created by the Government of the Republic of Mozambique and which envisages, above all, the promotion of national products, the expansion of production and the promotion of employment.³

The attribution of this seal to a specific company (for products of services performed) is subject to compliance, inter alia, with the following requirements: document describing conditions for

³ Regulations on the Made in Mozambique Seal – Technical Unit for the Promotion of National Products (UTPPRON) – Ministry of Industry and Commerce
Guide to the Made in Mozambique Seal – Technical Unit for the Promotion of National Products (UTPPRON) – Ministry of Industry and Commerce.

product presentation and conservation; list of raw materials used and the source from which these were acquired; proof of research or laboratory tests on these products, or equipment utilized; proof of incorporation of at least 20% of raw materials or components produced nationally (if the product is industrial, subject to processing).⁴

It thus follows that the approval of these regulations on Appellations of Origin and Geographical Indications, which substantially alter the industrial property code as regards these matters, is intended to empower the governmental policy on the expansion of national products, which is also the objective behind the creation of the Made in Mozambique Seal. Both envisage an increase in the capacity of the business sector to compete with other SADC countries, in light of the SADC Commercial Protocol which entered into force in 2001, and which provides for the removal of tariff barriers in transactions between the countries of this organization. It is thus hoped that the alterations introduced into the code will allow for compliance with the major objective of the use of the industrial property system in Mozambique, which is to increase the value of national products and, in consequence, to drive the national economy forward.

⁴ Documents for an application for the Made in Mozambique Seal – Technical Unit for the Promotion of National Products (UTPPRON) – Ministry of Industry and Commerce