

An examination of the legal framework for origin-linked goods in Zimbabwe: Producer perspectives on legal protection of Chipinge coffee

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Abstract –Zimbabwean coffee, known among coffee aficionados as Chipinge coffee has re-emerged on the global market. Cultivated by mostly small-scale farmers in the Eastern Highlands, the coffee possesses a distinct taste, and therefore could be protected as a trademark or geographical indication. The research investigated the scope of the legal regimes within the context of Chipinge coffee. Zimbabwe has two approaches to protection of origin-linked goods: the trademark system and a geographical indications law. Using Chipinge coffee as a case study, the objective of the research was to ascertain from coffee farmers their perceptions on legal protection for the coffee and highlight the advantages and limitations of each legal protection system.

Keywords – coffee, trademark, geographical indication

INTRODUCTION TO USING THE TEMPLATE

Over the last few years, coffee cultivation in Zimbabwe has grown with an increase in small-scale farmers growing coffee in the Eastern Highlands of the country. Coffee is produced in four districts in the Eastern Highlands of Zimbabwe: Chipinge, Chimanimani, Mutare and Mutasa. The area is climatically suitable for coffee production, mostly Arabica coffee. The coffee is often referred to as Chipinge coffee, a name derived from the area where the coffee was first grown (Kireeva and O'Connor, 2010).

In 2018, Nestle introduced a limited edition of the Arabica coffee known as Tamuka mu Zimbabwe. The coffee is attracting a niche market but has no specific brand for identification, apart from the one used by Nestle. This raises questions concerning the prospects of trademark and geographical indication protection for the coffee. Zimbabwe has broadly, two approaches to protection of origin-linked goods: the trademark system and a *sui generis* geographical indications law.

The aim of the research was to ascertain from the coffee farmers whether legal protection of the coffee would be advantageous or disadvantageous and examine the potential and limitations of the legal frameworks to protect Chipinge coffee.

RESEARCH METHODOLOGY

The study employed a qualitative research method. An exploratory case study was undertaken to assess the potential and limitations of the existing legal frameworks to protect Chipinge coffee.

Primary data was collected via interviews and direct observation. Secondary data was compiled from legal documents, policy documents, research reports and newspaper articles. The interviews were with small scale coffee farmers in Bvumba, located in the Eastern Highlands of Zimbabwe (Figure 1).

Ten participants were chosen on five criteria, membership of a coffee cooperative, farm size (less than 17 hectares), and years of experience in coffee farming, labour hired and wages paid. Interviews were also held with three other stakeholders, the Zimbabwe Coffee Mills (ZCM), which plays an intermediary role; officials from the Zimbabwe Intellectual Property Office (ZIPO) involved in intellectual property administration; and a researcher from the Coffee Research Institute (CoRI), a division of the Department of Research and Specialist Services.

Relevant literature and the primary data collected were analysed to interpret and understand the results of the study.



Figure 1. Eastern Highlands of Zimbabwe

RESEARCH FINDINGS

The characteristics of Chipinge coffee

The Eastern Highlands is the only region suitable for coffee cultivation in Zimbabwe. Chipinge coffee is a

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full body coffee with an earthy chocolate aroma and sweet woody flavour and the fermentation and drying process affect the body and flavour of the coffee. Cultivated in deep moisture rich soils its acidity is affected by the high rainfall averaging 1000 mm and cool temperatures averaging between 24 and 26 degrees Celsius (Chemura et al., 2014).

Awareness of trademark and geographical indication

Of the ten farmers interviewed, three knew what a trademark and geographical indication were and could rightly identify these on a product. As to the reasons for a distinguishing mark for Chipinge coffee, at least six were of the view that having a distinguishing mark would be a viable strategy to identify and market.

DISCUSSION OF FINDINGS

Purpose of a legal protection scheme

The farmers were of the view that such a strategy could be used to market Chipinge coffee. It emerged from the research that the farmers viewed a trademark or geographical indication scheme as a marketing strategy, thus the focus on the legal form of protection was not a major consideration. The implication could be that the legal protection scheme *per se* may not matter as much to the farmers, if it delivers results i.e., serves as a marketing strategy.

Potential legal protection of Chipinge coffee

It emerged from the research that protection for Chipinge coffee could fall under: trademark, collective mark, certification mark, and geographical indication. In terms of s 12 (1)(d) of the Trade Marks Act (Chapter 26:04) (The Trade Mark Act), geographical names *per se* cannot be registered as trademarks, and 'Chipinge' is a geographical name. However, the proviso to s 12 (1) (d) of the Act states that if the word or name contains an 'additional essential particular that makes the intended significance clear beyond doubt', registration is possible. The inclusion of the word 'coffee' after Chipinge would suffice to meet this requirement. The word 'coffee' speaks for itself, and coupled with 'Chipinge' it creates an association between Chipinge and coffee. Other popular trademarks in Zimbabwe incorporate geographical names, for example Tanganda Tea and Cashel Valley Beans (Nyakoty, 2013)

Perhaps the main advantage of trademark is the possibility of licensing Chipinge coffee. For example, one of the most notable branding efforts for coffee in Africa is the Ethiopian Trademark and Licensing Initiative (Christie and Rotstein, 2010) which licensed Ethiopian coffees.

As the farmers expressed a willingness to participate in a scheme that they could all benefit, a collective mark can be considered. Section 100A (1) and (2) of the Trade Mark Act state that the application for registration must be done by an association and be accompanied by a copy of the constitution of the association. There is currently no single association of coffee growers, but several cooperatives throughout the region with no formal structure and there-

fore a potential challenge. Furthermore, the Act is silent on whether an application for registration must be accompanied by the rules governing the use of the collective mark.

Chipinge coffee can also be registered as a certification mark in respect of origin, mode of production or quality. In terms of s 42 (1) of the Trade Mark Act, the mark cannot be registered in the name of a person who carries on trade in the goods for which the mark is certified. Though the obvious choice of a certifying body would be ZCM, the challenge could be that it is involved in the trade of the coffee. But, as an entity it does not actually trade in the coffee as it facilitates trade in the coffee – it is involved in processing and marketing the coffee on behalf of the coffee growers, and not in its' capacity as a legal persona.

With a geographical indication, the law envisages a strong link to origin, that is a description of the product including its' physical, chemical, or organoleptic characteristics and the link to the characteristics attributable origin. However, there does not seem to be any study that has investigated the link between Chipinge Coffee quality and the geographic origin. Anecdotal evidence, however, does suggest an origin link between the climatic and human factors in the Eastern Highlands and Chipinge coffee (Chemura et al., 2014)

CONCLUSION

The most scalable option for Chipinge coffee would be a certification mark given that ZCM already undertakes some quality assurance. There is however, no hindrance to pursue both options, initiating the geographical indication process and simultaneously registering a certification mark.

Given that the study is exploratory, and the findings drawn from a small pool of participants, it would be important to get the views of a much larger group of coffee growers.

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