

AN EXAMINATION OF THE LEGAL
FRAMEWORK FOR
ORIGIN-LINKED GOODS IN ZIMBABWE:
PRODUCER
PERSPECTIVES ON LEGAL PROTECTION
OF CHIPINGE
COFFEE

OUTLINE

- COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE
- CASE STUDY: CHIPINGE COFFEE
- METHODOLOGY
- OBSERVATIONS
- CONCLUSION

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

TRADEMARK

- COMMON LAW - UNLAWFUL COMPETITION OR PASSING OFF
- STATUTE - TRADE MARKS ACT (CHAPTER 26:04)
- OTHER LEGISLATION THAT HAVE A BEARING ON TRADEMARKS - BRANDS ACT (CHAPTER 19:03), COMPETITION ACT (CHAPTER 14:28) AND MERCHANDISE MARKS ACT (CHAPTER 14:13)

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

TRADEMARK

“A MARK WHICH IS USED OR PROPOSED TO BE USED IN RELATION TO GOODS OR SERVICES FOR THE PURPOSE OF:

1. INDICATING A CONNECTION IN THE COURSE OF TRADE BETWEEN THE GOODS OR SERVICES AND SOME PERSON HAVING THE RIGHT, EITHER AS PROPRIETOR OR AS REGISTERED USER, TO USE THE MARK, WHETHER WITH OR WITHOUT ANY INDICATION OF THE IDENTITY OF THAT PERSON
2. DISTINGUISHING THE GOODS OR SERVICES IN RELATION TO WHICH THE MARK IS USED OR PROPOSED TO BE USED, FROM THE SAME KIND OF GOODS OR SERVICES CONNECTED IN THE COURSE OF TRADE WITH ANY OTHER PERSON; BUT DOES NOT INCLUDE A CERTIFICATION MARK”

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

s.31 (1)(A) USE REQUIREMENT FOR REGISTRATION

RIGHTS CONFERRED

1. RIGHT TO USE THE MARK IN RELATION TO GOODS OR SERVICES FOR WHICH THE TRADEMARK IS REGISTERED
2. RIGHT TO EXCLUDE OTHERS FROM USING THE TRADEMARK
3. ASSIGNMENT (WITH OR WITHOUT GOODWILL)

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

CERTIFICATION MARK

SECTION 42 (1) - MARK THAT DISTINGUISHES GOODS OR SERVICES CERTIFIED BY ANY PERSON IN RESPECT OF ORIGIN, MATERIAL, MODE OF MANUFACTURE OR PERFORMANCE, QUALITY, ACCURACY OR ANY OTHER CHARACTERISTIC FROM GOODS OR SERVICES NOT SO CERTIFIED

- CANNOT BE REGISTERED IN THE NAME OF A PERSON WHO CARRIES ON TRADE IN THE GOODS OR SERVICES OF THE KIND CERTIFIED
- RIGHTS CONFERRED SIMILAR TO TRADEMARK (s.43)
- NO ASSIGNMENT WITHOUT CONSENT OF REGISTRAR (s.48)

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

COLLECTIVE MARK

“A MARK THAT IS CAPABLE OF DISTINGUISHING, IN THE COURSE OF TRADE, GOODS OR SERVICES OF PERSONS WHO ARE MEMBERS OF AN ASSOCIATION FROM GOODS OR SERVICES OF PERSONS WHO ARE NOT MEMBERS OF THE ASSOCIATION” (s.100A (1))

- APPLICATION FOR A COLLECTIVE MARK IS DONE BY THE ASSOCIATION (s.100A (2))
- RIGHTS CONFERRED, DURATION AND RENEWAL SAME AS FOR A TRADEMARK

COLLECTIVE IP LEGAL FRAMEWORKS IN ZIMBABWE

GEOGRAPHICAL INDICATION

- GEOGRAPHICAL INDICATIONS ACT (CHAPTER 26:06) ENACTED IN 2001
 - “AN INDICATION, HOWEVER EXPRESSED, WHICH IDENTIFIES A PRODUCT AS ORIGINATING IN A PARTICULAR AREA, WHERE SOME QUALITY, REPUTATION OR OTHER CHARACTERISTIC OF THE PRODUCT IS ESSENTIALLY ATTRIBUTABLE TO ITS GEOGRAPHICAL ORIGIN” (s.2)
- BROAD RANGE OF POSSIBLE APPLICANTS FOR REGISTRATION (s.16)
- APPLICATION SPECIFY THE PRODUCT AND THE QUALITY, REPUTATION OR CHARACTERISTIC OF THE PRODUCT WHICH IS ATTRIBUTABLE TO ITS GEOGRAPHICAL ORIGIN (s. 17 (1)(A)(III) AND (IV))

CHIPINGE COFFEE

- FOUR DISTRICTS IN EASTERN HIGHLANDS:
CHIPINGE, CHIMANIMANI, MUTARE AND MUTASA.
- APPROXIMATELY 418 130 HECTARES.
- CLIMATICALLY SUITABLE FOR COFFEE CULTIVATION
HIGH ALTITUDES ABOVE 900 METRES,
TEMPERATURES AVERAGE BETWEEN 24 AND 26 DEGREES CELSIUS,
RAINFALL AVERAGING 1000MM PER YEAR AND RICH SOILS.



METHODOLOGY

- QUALITATIVE RESEARCH
- EXPLORATORY CASE STUDY
- PRIMARY DATA COLLECTED VIA INTERVIEWS USING A SEMI-STRUCTURED QUESTIONNAIRE (MEMBERS OF A COOPERATIVE, ZIMBABWE COFFEE MILLS AND ZIMBABWE IP OFFICE)
- SECONDARY DATA FROM LEGAL AND POLICY DOCUMENTS, RESEARCH REPORTS, NEWSPAPER ARTICLES

OBSERVATIONS

ISSUES THAT IMPEDE THE ADOPTION OF THE LEGAL PROTECTION STRATEGY:

- LIMITED KNOWLEDGE/AWARENESS OF TRADEMARKS AND GEOGRAPHICAL INDICATIONS
- INSTITUTIONAL DEFICIENCIES
- GAPS IN THE LAW

OBSERVATIONS

POSSIBLE LEGAL OPTIONS FOR CHIPINGE COFFEE

TRADEMARK

- GEOGRAPHICAL NAMES *PER SE* CANNOT BE REGISTERED AS TRADEMARKS IN PART A OF THE REGISTERS (12 (1)(D) OF THE TRADE MARKS ACT)
- ACQUIRED DISTINCTIVENESS CAN BE A GROUND FOR REGISTRATION (s13 (2))
- POSSIBILITY OF LICENSING

OBSERVATIONS

COLLECTIVE MARK

- APPLICATION FOR REGISTRATION SHOULD BE DONE BY AN ASSOCIATION AND MUST BE ACCOMPANIED BY A COPY OF THE CONSTITUTION OF THE ASSOCIATION (s.100A (2))
- POSSIBILITY FOR AN INTERESTED PERSON TO REGISTER A MARK AND SUBSEQUENTLY TRANSFER IT TO AN ASSOCIATION ONCE IT IS CONSTITUTED (s.34 (1))
- PROVISIONS INSUFFICIENT TO ADDRESS COLLECTIVE MARKS I.E. s100A NO RULES GOVERNING THE USE OF THE COLLECTIVE MARK

OBSERVATIONS

CERTIFICATION MARK

- CERTIFICATION MARK IN RESPECT OF ORIGIN, MODE OF PRODUCTION OR QUALITY (§42.1)
- THREE POTENTIAL HURDLES:

PROPRIETORSHIP (§.42(1))

CERTIFYING ENTITY (§.44 (5) (A))

RULES GOVERNING USE (§.44(2))

OBSERVATIONS

GEOGRAPHICAL INDICATION

- REGISTRATION BY AN ASSOCIATION OF PRODUCERS OR REPRESENTATIVE BODY (s.16)
- STRONG ORIGIN LINK NECESSARY
- TWO POSSIBLE HURDLES:

RULES OF GOVERNANCE

COLLECTIVE GOVERNANCE STRUCTURE

CONCLUSIONS

- PURPOSE OF A LEGAL PROTECTION SCHEME CHIPINGE COFFEE
- CENTRALITY OF ZCM IN ANY SCHEME
- PREFERENCE FOR A COLLECTIVE LEGAL PROTECTION SCHEME
- POSSIBILITY OF CERTIFICATION MARK (SHORT TERM) & GEOGRAPHICAL INDICATION (LONG TERM)

THANK YOU!

CHARLENE MUSIZA
CTMUSIZA@GMAIL.COM