

Applicable Procedures in the Republic of Ghana to Challenge and Enforce Rights in Appellations of Origin and Geographical Indications

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The applicable procedures to challenge and enforce rights in appellations of origin and geographical indications in the Republic of Ghana are detailed in Sections 9 and 17 of the GI Act, (ACT 659) of the Law on Geographical Indications of 2003, as well as Regulations 26 to 35 and 65 of the GI Regulations (L.I. 2414) of 2020, on the Procedure for the Registration and Protection of Geographical Indications.

The relevant provisions of the GI Act, (ACT 659) and the GI Regulation, L.I. 2414, are provided hereunder, for reference purposes.

I. OPPOSITION

Law on Geographical Indications, GI Act, 2003 (ACT 569)

A. Section 9: Opposition to Registration

(1) Any interested person or competent authority may within the prescribed period and in the prescribed manner give notice to the Registrar of an opposition to the registration of a geographical indication on the ground that one or more of the requirements of sections 4, 6 and 7 are not fulfilled.

(2) The Registrar shall send a copy of the notice to the applicant within the prescribed period and in the prescribed manner.

(3) The applicant shall within the prescribed period and in the prescribed manner, send to the Registrar a counter-statement of the grounds on which the applicant relies for the application.

(4) Where the applicant fails to send a counter-statement under subsection (3), the applicant shall be deemed to have abandoned the application.

(5) If the applicant sends a counter-statement, the Registrar shall on receipt of the counter-statement send a copy of the counter-statement to the person giving the notice of opposition within the prescribed period.

(6) The Registrar after hearing the parties, if either or both wish to be heard and considering the merits of the case, shall decide whether the geographical indication should be registered.

B. Section 17 - Appeals

Appeals. Any interested person may appeal to the High Court against a decision taken by the Registrar under this Act, in particular, the registration of a geographical indication.

II. GI REGULATIONS, (L.I. 2414) OF 2020; PROCEDURE FOR THE REGISTRATION AND PROTECTION OF GEOGRAPHICAL INDICATIONS

C. *Regulations Procedure for Geographical Indication Registration, Regulations 26-30: Opposition of Registration of Geographical Indications)*

Regulation 26: Notice of opposition

(1) A notice of opposition to the registration of a geographical indication under section 9 of the GI Act, 2003 or Regulation 22 of the L.I. 2414 shall be filed

(a) Within 90 days from the date when the application for registration published in the in the Journal is made available to the public; and

(b) in triplicate form and as set out in Form Five of the Schedule.

(2) The notice of opposition shall include a statement of the grounds on which the opponent objects to the

(a) registration of the geographical indication; or

(b) authorised user of the geographical indication.

(3) A notice of opposition filed under subregulation (1) shall be accompanied with the fee as specified in the Fees and Charges (Miscellaneous Provisions) Act, 2018 (Act 983).

(4) The Registrar shall, within sixty days of receipt of a notice of opposition, serve a copy of the notice on the applicant concerned.

(5) Where a notice of opposition has not been filed in respect of any single application for the registration of a geographical indication, that application shall proceed to registration.

Regulation 27: Counter-statement

(1) An applicant may, within sixty days from the date of receipt of a copy of the notice of opposition, file a counter-statement

(a) in triplicate form as set out in Form Six of the Schedule; and

(b) setting out the facts alleged in the notice of opposition that are admitted by the applicant.

(2) The verification process in respect of a notice of opposition filed under regulation 26 applies to the verification of a counter-statement filed.

(3) The Registrar shall, within sixty days from the date of receipt of the counter-statement, serve a copy of the counter-statement on the opponent.

Regulation 28: Evidence of opposition

28. (1) An opponent shall, within thirty days from the date of receipt of a copy of the counter-statement,

(a) submit to the Registrar any evidence, by way of affidavit,

that that opponent intends to adduce in support of the opposition; or

(b) indicate to the Registrar and to the applicant in writing that, that opponent does not intend to adduce evidence in support of the opposition but intends to rely on the facts stated in the notice of opposition.

(2) The Registrar may, on request by the applicant, grant the applicant an extension of time of not more than thirty days.

(3) The opponent shall deliver to the applicant, copies of any evidence that the opponent submits to the Registrar and inform the Registrar of the delivery of copies of the evidence to the applicant.

(4) Where an opponent fails to comply with subregulation (1), the opponent shall be considered to have abandoned the opposition of the registration of the geographical indication.

Regulation 29: Evidence in opposition proceedings

(1) Where a party to the proceedings receives a copy of the evidence of the other party, the receiving party shall

(a) submit to the Registrar any evidence, by way of affidavit, that that party wishes to adduce in reply; and

(b) deliver to the other party a copy of the evidence which shall be confined to matters strictly in reply.

(2) In any proceedings before the Registrar, the Registrar may at any time that the Registrar considers appropriate, grant leave to either the applicant or the opponent to lead evidence on matters relating to cost or any other matter that the Registrar considers appropriate.

(3) Where a document in a language other than English is referred to in

(a) the notice of opposition,

(b) the counter-statement,

(c) an affidavit filed in opposition, or

(d) any other proceedings before the Registrar, an attested translation of that document in English shall be furnished in triplicate.

30. (1) Where an exhibit to an affidavit is filed in opposition, a copy of the exhibit or impression of the exhibit shall be sent to the other party.

(2) Where a copy or impression of the exhibit submitted pursuant to subregulation (1) is not legible, the Registrar shall request for the original copy of the exhibit to be submitted.

D. Hearing of Proceedings

Regulation 31: Hearing

- (1) The Registrar shall, within ninety days of completion of the evidence, give notice to the parties of a date for hearing the arguments of the case.
- (2) A date for the hearing shall be fixed at least thirty days after the date of the first notice unless the parties consent to a shorter notice.
- (3) In any proceeding, the Registrar
 - (a) may limit the duration in respect of an oral argument; and
 - (b) shall take a record of any written argument submitted by a party to the proceeding.
- (4) A person who intends to appear at the hearing shall, within fourteen days from the receipt of the first notice, notify the Registrar.
- (5) A person who intends to appear at the hearing but fails to comply with subregulation (4) shall be treated as not desiring to be heard and the Registrar shall proceed with the case ex-parte.

Regulation 32: Adjournment of hearing

- (1) Where sufficient cause is shown, the Registrar may consider not more than two requests for adjournment within thirty days by the opponent or the applicant to the proceeding in the form as set out in Form Seven of the Schedule.
- (2) A request made under subregulation (1) shall be accompanied with the grounds for the request.
- (3) The Registrar shall treat the application as dismissed if the applicant
 - (a) is not present at the adjourned date of hearing; and
 - (b) has not notified the Registrar of the intention to appear at the hearing.
- (4) The Registrar shall treat the opposition as dismissed for want of prosecution and the application may proceed to registration if the opponent
 - (a) is not present at the adjourned date of hearing; and
 - (b) has not notified the Registrar of the absence.
- (5) The Registrar shall, in every case of adjournment,
 - (a) fix a day for further hearing of the case; and
 - (b) make the relevant order as to the cost occasioned by the adjournment; or
 - (c) any higher cost that the Registrar considers appropriate

Regulation 33: Extension of time for filing notice of opposition

33. An application for an extension of the time within which a notice of opposition to the registration of a geographical indication made under subsection (1) of section 15 of the Act shall be

(a) in the form as set out in Form Eight of the Schedule; and

(b) accompanied with the required fee as specified in the Fees and Charges (Miscellaneous Provisions) Act, 2018 (Act 983), before the expiry of ninety days.

Regulation 34: Decision of Registrar

34. The Registrar shall within ninety days from the date of completion of the proceeding

(a) take a decision on the case; and

(b) inform the parties to the proceeding of the decision in writing.

Regulation 35: Costs

35. (1) Where an opposition filed under regulation 26 is not contested by the applicant, the Registrar shall decide whether cost should be awarded to the opponent.

(2) The Registrar shall, in deciding whether cost should be awarded to the opponent, consider whether the proceedings could have been avoided if the opponent had given reasonable notice to the applicant before the notice of opposition was filed.

(3) Subject to regulation 26, the Registrar may, in proceedings before the Registrar, unless otherwise provided by the Act, award costs not exceeding the amount admissible that the Registrar considers reasonable having regard to the circumstances of the case.

Regulation 65: Appeal to the Court

An interested person may appeal to the Court against a decision of the Registrar within ninety days from the date of the decision of the Registrar.