

Zimbabwe

## Geographical Indications Act

### Chapter 26:06

Legislation as at 31 December 2016

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# Zimbabwe

## Geographical Indications Act

### Chapter 26:06

Commenced on 1 March 2002

*[This is the version of this document at 31 December 2016 and includes any amendments published up to 31 December 2017.]*

*[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]*

**AN ACT to provide for the protection and registration of geographical indications and to provide for matters connected therewith or incidental thereto.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Geographical Indications Act *[Chapter 26:06]*.

#### 2. Interpretation

In this Act—

“**area**” includes a country, region locality or place;

“**Controller**” means the Controller of Patents, Trade Marks and Industrial Designs referred to in paragraph (a) of subsection (2) of section 3 of the Patents Act *[Chapter 26:03]*;

“**geographical indication**” means 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;

“**Journal**” means the Patent and Trade Marks Journal published in terms of section 95 of the Patents Act *[Chapter 26:03]*;

“**Minister**” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**misleading geographical indication**” means a geographical indication that is misleading as described in section three;

“**package**” means anything in or by which a product is covered, contained or packed;

“**product**” means any natural or agricultural product or any product of handicraft or industry;

“**Register**” means the Register of Geographical Indications kept at the Trade Marks Office in terms of section seven;

“**registered**” means registered in the Register in terms of this Act;

“**Registrar**” means—

- (a) the Controller; or
- (b) a registrar referred to in subsection (3) of section five; or
- (c) an officer who is exercising a function which the Controller has directed, in terms of subsection (4) of section five, should be exercised by that officer;

“sell” includes—

- (a) to offer, advertise, keep, possess, expose, consign or deliver for sale;
- (b) to authorise, direct or allow a sale;
- (c) to barter, exchange, supply or dispose of for any consideration, direct or indirect;

“Trade Marks Office” means the Trade Marks Office referred to in subsection (1) of section five;

“Tribunal” means the Intellectual Property Tribunal established by section 3 of the Intellectual Property Tribunal Act [Chapter 26:08].

### 3. When geographical indication regarded as misleading

- (1) A geographical indication shall be regarded as misleading, when applied to or in relation to a product—
  - (a) if it suggests that the product originates in an area other than its true area of origin; or
  - (b) if it misleads the public as to the area of origin of the product; or
  - (c) if its application to or in relation to the product constitutes unlawful competition; or
  - (d) in the case of a wine or spirit, if the geographical indication is applied to a wine or spirit that does not originate in the area suggested by the indication, even if—
    - (i) the true origin of the wine or spirit is indicated; or
    - (ii) the geographical indication is used in translation; or
    - (iii) the geographical indication is accompanied by an expression such as “kind”, “type”, “style”, “imitation” or the like.
- (2) A geographical indication shall be regarded as misleading as provided in subsection (1) if it falsely represents to the public that the product originates in an area other than the product’s true area of origin, even if it is literally true as to the area in which the product originates.
- (3) For the purpose of determining whether a geographical indication—
  - (a) suggests that a product originates in a particular area; or
  - (b) misleads the public as to the area of origin of a product;regard shall be had to the general understanding of consumers or users of the product concerned where it has been, is being or is intended to be sold.

### 4. When geographical indication regarded as applied to product

For the purposes of this Act, a geographical indication shall be deemed to have been applied to a product if —

- (a) the product or its package is marked with, contains or bears the geographical indication; or
- (b) the geographical indication is used in any advertisement for the product; or
- (c) the geographical indication is used in any other manner that indicates or suggests that the product originates in a particular area.

## Part II – Trade Marks Office, officers and register

### 5. Functions of Trade Marks Office, Controller, registrars and other officers

- (1) The Trade Marks Office established by subsection (1) of section 3 of the Trade Marks Act [Chapter 26:04] shall be responsible for registering geographical indications and for exercising all the other functions of the Trade Marks Office in terms of this Act.
- (2) The Controller shall exercise general supervision and direction of the Trade Marks Office in the exercise of its functions under this Act.
- (3) Every registrar of trade marks referred to in paragraph (a) of subsection (3) of section 3 of the Trade Marks Act [Chapter 26:04] shall have power, subject to the Controller's general supervision and direction, to exercise the functions of the Registrar under this Act.
- (4) If the Controller so directs, an officer referred to in paragraph (b) of subsection (3) of section 3 of the Trade Marks Act [Chapter 26:04] shall have power, subject to the Controller's general supervision and direction, to exercise any function of the Registrar under this Act.

### 6. Seal

The seal of the Patent Office kept in terms of the Patents Act [Chapter 26:03] shall also be the seal of the Trade Marks Office for the purposes of this Act, and impressions thereof made for the purposes of this Act shall be judicially noticed.

### 7. Register of geographical indications

There shall be kept at the Trade Marks Office for the purposes of this Act a Register of Geographical Indications, in which shall be entered—

- (a) particulars of every registered geographical indication, including—
  - (i) the name and address of the person on whose application the indication was registered; and
  - (ii) the effective date of registration of the indication; and
  - (iii) the area which the indication identifies as the area of origin of the product to which it relates; and
  - (iv) each product to which the indication relates, and the quality, reputation or characteristic of the product that is attributable to its origin;and
- (b) everything which is required by or under this Act to be entered in the Register; and
- (c) anything else relating to registered geographical indications that the Registrar thinks necessary or desirable to enter in the Register.

### 8. Inspection of Register and right to obtain copies of entries therein

The Register shall be open to inspection by the public at all convenient times, and a certified copy, sealed with the seal of the Patent Office, of any entry in the Register shall be given on payment of the prescribed fee to any person who requires it.

### Part III – Use of misleading geographical indications

#### 9. Prohibition against use of misleading geographical indications

- (1) Subject to this Act, no person shall apply a misleading geographical indication to any product.
- (2) Subject to this Act, no person shall—
  - (a) sell any product; or
  - (b) import any product for sale in Zimbabwe; or
  - (c) export any product for sale outside Zimbabwe; or
  - (d) manufacture any product for sale;if a misleading geographical indication is applied to the product.

#### 10. Institution of proceedings regarding use of misleading geographical indication

- (1) In this section—

“interested person”, in relation to the application or alleged application of a misleading geographical indication to any product, includes—

  - (a) any person who sells, manufactures, imports or exports for sale—
    - (i) the same product or a substantially similar product; or
    - (ii) any product to which the same or a substantially similar geographical indication is applied;
  - or
  - (b) any person who, in the course of business, consumes or uses a product referred to in subparagraph (i) or (ii) of paragraph (a); or
  - (c) where the geographical indication concerned is registered, the person on whose application it was registered; or
  - (d) any representative of a person referred to in paragraph (a), (b) or (c).
- (2) Proceedings to prevent a contravention of section nine or for any other remedy arising out of such a contravention may be instituted by any interested person in—
  - (a) the Tribunal; or
  - (b) the High Court; or
  - (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [Chapter 7:10], in a magistrates court.

#### 11. Remedies available in proceedings regarding use of misleading geographical indication

- (1) In proceedings referred to in section ten, an interested person shall be entitled to any appropriate remedy, whether interdict, damages, attachment or otherwise, that is available in respect of the infringement of any proprietary right.
- (2) If it is established, in proceedings referred to in section ten, that the defendant or respondent contravened section nine and the Tribunal or the court, having regard to—
  - (a) the flagrancy of the contravention; and



- (b) any benefit shown to have accrued to the defendant or respondent as a result of the contravention; and
- (c) the need to deter the defendant or respondent and other persons from further such contraventions;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Tribunal or the court, as the case may be, shall have power to award such additional damages as it thinks fit.

- (3) If it is established, in proceedings referred to in section ten, that the defendant or respondent contravened section nine but that at the time of the contravention he was not aware and had no reasonable grounds for suspecting that he was not entitled to use or apply the geographical indication concerned in the manner he did, the plaintiff or applicant shall not be entitled under this section to any damages against the defendant or respondent in respect of that contravention.

## 12. Defences available in proceedings regarding use of misleading geographical indication

- (1) If it is alleged, in proceedings referred to in section ten, that the defendant or respondent applied to any product a foreign geographical indication identifying any wine or spirit, it shall be a defence for him to establish that he used the geographical indication concerned in Zimbabwe continuously with regard to the same or a similar product—
  - (a) for at least ten years before the 15th April, 1994; or
  - (b) in good faith before the 15th April, 1994.
- (2) In any proceedings referred to in section ten relating to the application of a foreign geographical indication, it shall be a defence for the defendant or respondent to establish that the indication is not or has ceased to be protected in the foreign country concerned or has fallen into disuse in that country.
- (3) In any proceedings referred to in section ten it shall be a defence for the defendant or respondent to establish that he is entitled to use the geographical indication concerned by virtue of section forty-five.
- (4) This section shall not be construed as limiting the defences that may be available to a defendant or respondent in proceedings referred to in section ten.

## 13. Presumptions where geographical indication is registered

In any proceedings referred to in section ten regarding the application of a registered geographical indication it shall be presumed, unless the contrary is proved that—

- (a) the indication concerned is a geographical indication as defined in section two; and
- (b) each product which is recorded in the Register in relation to the indication concerned has some quality, reputation or other characteristic that is essentially attributable to its geographical origin.

## 14. Anton Piller orders (orders without notice)

- (1) If a person satisfies the Tribunal or a court that, *prima facie*—
  - (a) he has a cause of action against another person regarding a contravention of section nine and he intends to pursue that action; and
  - (b) the other person has in his possession documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and

- (c) there is a real and well-founded apprehension that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;
- the Tribunal or court, as the case may be, may make such order commonly known as *Anton Piller* order as it considers necessary or appropriate to secure the preservation of the documents or things as evidence.
- (2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the Tribunal or court may sit *in camera* for the purpose of hearing an application for such an order:
- Provided that the Tribunal or Court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.
- (3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the Tribunal or court may fix.
- (4) This section shall not be taken to limit any power a court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

#### **15. Remedy for groundless threats of proceedings regarding use of misleading geographical indication**

- (1) Where any person, whether or not he is an interested person for the purposes of section ten, threatens another person with proceedings for a contravention of section nine, anyone who is aggrieved by the threat may bring proceedings against him in a court of competent jurisdiction for the relief referred to in subsection (2).
- (2) In proceedings brought by virtue of subsection (1), the plaintiff or applicant shall be entitled to any one or more of the following remedies—
- (a) a declaration to the effect that the threats are unjustifiable;
  - (b) an interdict against any continuation of the threats;
  - (c) such damages, if any, as he has sustained in consequence of the threats;
- unless the defendant or respondent proves that the acts in respect of which he threatened proceedings constitute or, if done, would constitute, a contravention of section nine.
- (3) The defendant or respondent in any proceedings brought in terms of subsection (1) may counter-claim for any relief to which he would be entitled in separate proceedings in respect of any contravention of section nine by the plaintiff or applicant.

### **Part IV – Registration of geographical indications**

#### **16. Persons entitled to apply for registration**

An application for the registration of a geographical indication may be made by or on behalf of any of the following—

- (a) a person who sells or who manufactures, imports or exports for sale a product to which the geographical indication is applied or is to be applied; or
- (b) a person who, in the course of business, consumes or uses a product to which the geographical indication is applied or is to be applied; or

- (c) any organisation established to represent or further the interests of persons referred to in paragraph (a) or (b);

and may be made by that person alone or jointly with anyone else.

## 17. Application for registration

- (1) An application for the registration of a geographical indication shall—
- (a) specify—
    - (i) the applicant's name, address and nationality; and
    - (ii) the geographical indication concerned; and
    - (iii) the product or products to which the geographical indication is to be applied; and
    - (iv) the quality, reputation or characteristic of the product which is attributable to its geographical origin;
  - and
  - (b) contain such other particulars and information as may be prescribed; and
  - (c) be accompanied by the prescribed fee.
- (2) An application for the registration of a geographical indication shall be lodged at the Trade Marks Office in the prescribed manner.
- (3) If an application does not comply substantially with any one or more of the requirements of subsection (1), the Registrar shall invite the applicant to correct it within two months and, if the applicant fails to do so, the application shall be deemed not to have been lodged in terms of this section.
- (4) Subject to subsection (3), the Registrar shall accept an application lodged with him in terms of subsection (2) if he is satisfied, *prima facie*—
- (a) that the applicant is entitled to lodge the application; and
  - (b) that the indication sought to be registered is a geographical indication as defined in section two; and
  - (c) that the application of the geographical indication concerned to the product specified in the application will not be contrary to public order or morality; and
  - (d) where the application is for the registration of a foreign geographical indication, that it is protected in the foreign country concerned and has not fallen into disuse in that country;
- and, if he is not so satisfied, he shall reject the application.
- (5) At any time before or after acceptance of an application under subsection (4), the Registrar may—
- (a) correct any error in or in connection with the application; or
  - (b) permit the applicant to amend his application upon such terms as the Registrar thinks fit:
- Provided that the Registrar shall not permit an amendment which substantially affects the identity of the geographical indication concerned or any product to which it is to be applied.
- (6) An appeal shall lie against—
- (a) a decision by the Registrar under subsection (3) that an application does not comply substantially with any requirement of subsection (1); or
  - (b) a rejection of an application by the Registrar in terms of subsection (4); or

- (c) a refusal by the Registrar to permit an amendment of an application under subsection (5).

## 18. Publication of application and opposition thereto

- (1) As soon as practicable after an application for the registration of a geographical indication has been accepted, the applicant shall advertise in the prescribed manner the application as accepted, and the advertisement shall set forth any conditions and limitations subject to which the application has been accepted:

Provided that in exceptional circumstances the Registrar may direct that an application shall be advertised before acceptance and, where an application has been so advertised, the Registrar may direct that it shall be advertised again when it has been accepted.

- (2) Any person may, within two months from the date on which an application was advertised in terms of subsection (1), notify the Registrar that he opposes the registration of the geographical indication concerned on any one or more of the following grounds—
  - (a) that the applicant is not entitled to lodge the application;
  - (b) that the application does not comply with the requirements of subsection (1) of section seventeen;
  - (c) that the indication sought to be registered is not a geographical indication as defined in section two;
  - (d) that the application of the geographical indication concerned to the product specified in the application would be contrary to public order or morality;
  - (e) where the application is for the registration of a foreign geographical indication, that it is not or has ceased to be protected in the foreign country concerned or has fallen into disuse in that country.
- (3) A notice of opposition in terms of subsection (2) shall—
  - (a) be given in writing in the prescribed manner; and
  - (b) include a statement of the grounds of opposition.
- (4) The Registrar shall send a copy of any notice of opposition in terms of subsection (2) to the applicant and, within the prescribed time after its receipt, the applicant may send the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application.
- (5) If an applicant—
  - (a) does not send the Registrar a counter-statement in terms of subsection (4) after being sent a copy of a notice in terms of that subsection, he shall be deemed to have abandoned his application;
  - (b) sends the Registrar a counter-statement in terms of subsection (4), the Registrar—
    - (i) shall furnish a copy of it to every person who gave notice of opposition; and
    - (ii) after considering the evidence and hearing any representations or argument the parties may wish to make, shall decide whether registration is to be permitted and, if it is, with what amendments, modifications, conditions or limitations it is to be permitted.
- (6) An appeal shall lie from any decision of the Registrar under this section.
- (7) At the hearing of an appeal under this section, any party may, either in the manner prescribed or by special leave of the Tribunal, bring forward further material for the Tribunal's consideration.
- (8) In an appeal under this section, no further grounds of objection to the registration of the geographical indication concerned shall be allowed to be taken by the opponent or the Registrar,

other than those stated in terms of this section by the opponent, except by leave of the Tribunal and, where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application on giving the prescribed notice, without payment of the opponent's costs.

## 19. Registration

- (1) If—
  - (a) no notice of opposition is lodged in terms of subsection (2) of section eighteen in respect of an application for registration of a geographical indication; or
  - (b) the Registrar has decided, in terms of subparagraph (ii) of paragraph (b) of subsection (5) of section eighteen, that registration of a geographical indication is to be permitted, and no appeal has been lodged against that decision; or
  - (c) the Tribunal, on an appeal against a decision of the Registrar in terms of section eighteen, directs that a geographical indication should be registered;

the Registrar shall, subject to this section, register the geographical indication concerned.

- (2) When registering a geographical indication, the Registrar may impose such conditions on its registration as, in his opinion, are necessary to protect the rights of the proprietor of any trade mark that was registered or used in good faith—
  - (a) before the date of the publication of this Act; or
  - (b) in the case of a foreign geographical indication, before it was protected in the foreign country concerned.
- (3) When registering as a geographical indication a name or word which, when written or uttered, has two or more meanings, the Registrar shall impose such conditions on its registration as, in his opinion, are necessary to ensure—
  - (a) that the various meanings are differentiated from each other; and
  - (b) that the public is not misled; and
  - (c) where two or more of the meanings refer to different geographical areas, that all producers concerned are treated equitably.
- (4) The Registrar shall cause notification of the registration of a geographical indication to be published in the Journal.

## 20. Effective date of registration

- (1) Subject to subsection (2), the effective date of registration of a geographical indication shall be the date on which the application for its registration was lodged with the Trade Marks Office in terms of section seventeen.
- (2) If an application for the registration of a geographical indication, when initially lodged at the Trade Marks Office, does not contain sufficient particulars to identify the applicant and that defect is corrected within the two-month period specified in subsection (3) of section seventeen, the effective date of registration of the geographical indication shall be the date on which the corrections were lodged with the Trade Marks Office.

## Part V – Correction and rectification of Register and cancellation of registration

### 21. Power of Registrar to authorise corrections

- (1) The Registrar may authorise the correction of any clerical or similar error in the Register.

- (2) The Registrar may authorise a correction in terms of subsection (1) either on his own initiative or upon a written request made by any interested person and accompanied by the prescribed fee.
- (3) Where it is proposed to make a correction otherwise than upon the request of the person on whose application the geographical indication concerned was registered, the Registrar shall give notice of the proposal to that person and to any other person who appears to him to be concerned, and shall give every such person an opportunity to be heard before the correction is made.

## **22. Rectification of Register**

- (1) On the application of any aggrieved person, the Tribunal may order the Register to be rectified by the making or alteration of any entry in it or the deletion of any entry from it.
- (2) The Tribunal may determine any question which it may be necessary or expedient to determine in connection with the rectification of the Register.
- (3) Notice of any application to the Tribunal in terms of subsection (1) shall be given in the prescribed manner to the Registrar and to any other person appearing from the Register to be interested in the geographical indication concerned, and the Registrar and any such person shall be entitled to appear and be heard in the application.
- (4) A notice of any order made by the Tribunal under this section shall be served on the Registrar and, on receipt of the notice, the Registrar shall rectify the Register accordingly.

## **23. Cancellation of registration**

- (1) Upon a request being made in the prescribed manner by all the persons on whose application a geographical indication was registered, the Registrar may cancel the registration of the indication.
- (2) At any time after a geographical indication has been registered, any interested person may apply to the Tribunal for the registration of the indication to be cancelled on the ground that on the effective date of its registration, the geographical indication was not capable of being registered and the Tribunal may make such order on the application as it thinks appropriate.
- (3) Notice of any application to the Tribunal in terms of subsection (2) shall be given in the prescribed manner to the Registrar and to any other person appearing from the Register to be interested in the geographical indication concerned, and the Registrar and any such person shall be entitled to appear and be heard in the application.
- (4) Notice of any order made by the Tribunal under this section shall be served on the Registrar and, on receipt of the notice, the Registrar shall amend the Register accordingly.
- (5) Where the registration of a geographical indication is cancelled by virtue of an order under subsection (2) the indication shall be regarded as never having been registered.

## **Part VI – Powers of Registrar**

### **24. Exercise of discretionary powers of Registrar**

Without prejudice to any provision of this Act requiring the Registrar to hear any party to any proceedings or to give any such party an opportunity to be heard, the Registrar shall not exercise any discretionary power given to him under this Act in a manner which adversely affects the rights of any person unless he has given that person a reasonable opportunity to make representations in the matter, either personally or by his agent.

### **25. Proceedings before Registrar**

- (1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit:

Provided that the Registrar may take oral evidence on oath in lieu of or in addition to evidence by affidavit and may allow any witness to be cross-examined on his affidavit or oral evidence.

- (2) For the purposes of any proceedings before the Registrar under this Act, the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

## 26. Registrar may award costs

- (1) In any proceedings before the Registrar under this Act, the Registrar may award any party such costs as he considers reasonable and may direct how and by what parties they are to be paid.
- (2) Any costs awarded by the Registrar in terms of subsection (1) shall be taxed by the registrar of the Tribunal, and payment thereof may be enforced in the same way as if they were costs allowed by the Tribunal.

## 27. Power of Registrar to fix time and place of sitting and to adjourn proceedings

In any proceedings before him under this Act, the Registrar may decide the hours, times and places at which he will sit and may adjourn the proceedings for such time and to such place as he may think fit.

## 28. Power of Registrar to extend time-limits

- (1) The Registrar may extend the time for doing anything under this Act, upon due notice to the parties concerned and on such terms and conditions as he may think fit to impose.
- (2) The Registrar may grant an extension under subsection (1) even though the time for doing the thing concerned has already expired.

# Part VII – Appeals and references

## 29. Appeals from decisions of Registrar

Where this Act provides for an appeal against a decision of the Registrar, the appeal shall be made to the Tribunal in accordance with this Part and the Intellectual Property Tribunal Act [Chapter 26:08].

## 30. Time for appeals

An appeal referred to in section twenty-nine shall be lodged with the Tribunal within two months after the appellant was notified of the decision or order against which the appeal is brought or within such further time as the Tribunal may for good cause allow.

## 31. Powers of Tribunal on appeal

Without derogation from section 8 of the Intellectual Property Tribunal Act [Chapter 26:08], in any appeal under this Act the Tribunal may—

- (a) confirm, set aside or vary the order or decision against which the appeal is brought;
- (b) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connection with which the appeal is brought.

### 32. References to Tribunal by Registrar

- (1) If it appears to the Registrar that any matter to be decided by him under this Act involves a point of law or is unusually important or complex, he may, after giving notice to the parties, refer the matter to the Tribunal for decision, and thereafter in relation to that matter he shall act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to the Supreme Court.
- (2) Where a matter has been referred to the Tribunal in terms of subsection (1), the Registrar and the parties shall be entitled to be heard by and appear before the Tribunal before any decision is made in the matter.

### 33. Costs of Registrar

In any proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any of the other parties.

### 34. Certification of validity of registration

- (1) If the validity of the registration of a geographical indication is contested in any legal proceedings and the proceedings are decided in favour of the person on whose application the indication was registered, or his successor in title, the Tribunal or the court concerned may issue a certificate to that effect.
- (2) Where a person has been issued with a certificate in terms of subsection (1) and he obtains a final judgment or order in any subsequent legal proceedings in which the validity of the registration of the same geographical indication is contested, he shall be entitled to his full costs and expenses as between legal practitioner and client, unless in those subsequent proceedings the Tribunal or court concerned directs that he ought not to have them.

## Part VIII – Offences and penalties

### 35. Falsification of certain documents

Any person who—

- (a) makes or causes to be made a false entry in the Register, knowing the entry to be false; or
- (b) makes or causes to be made or produces or tenders or causes to be produced or tendered in evidence, any document falsely purporting to be a copy of an entry in the Register, knowing the document to be false;

shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 36. Deceiving or influencing Registrar or officer

- (1) Any person who, for the purpose of—
  - (a) deceiving the Registrar or any other officer of the Trade Marks Office in the execution of his functions under this Act; or
  - (b) procuring or influencing the doing or omission of anything in relation to this Act;makes or submits a false statement or representation, whether orally or in writing, knowing the statement or representation to be false, shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.



- (2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act and who, on becoming aware that the statement or representation was false, fails to advise the Registrar forthwith of its falsity, shall be guilty of an offence and liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### 37. Witness giving false evidence before Registrar

Any person who, after having been sworn, wilfully gives false evidence before the Registrar concerning the subject-matter of the proceedings in question, knowing his evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding twenty thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## Part IX – Evidence

### 38. Register to be evidence of entries therein

The Register shall be *prima facie* evidence of anything that is required or permitted by or under this Act to be entered in it.

### 39. Evidence of certain entries and documents

- (1) In any proceedings before the Tribunal or any court, a document purporting to be a copy of an entry in the Register provided in terms of section eight shall be admissible on its production by any person as *prima facie* evidence of the entry having been made and of its contents.
- (2) In any proceedings before the Tribunal or any court, a document purporting to be a statement by the Registrar, certified with the seal of the Patent Office and giving particulars of—
  - (a) any proceedings before him in terms of this Act; or
  - (b) the grounds for any decision or order given or made by him in terms of this Act; or
  - (c) the practice of the Trade Marks Office; or
  - (d) any document kept in the Trade Marks Office; or
  - (e) any other matter which is within his knowledge as Registrar;shall be admissible on its production by any person as *prima facie* evidence of the facts stated in the document.

## Part X – General

### 40. Recognition of agents

Where by this Act anything is to be done by or to any person in connection with the registration of a geographical indication, it may be done by or to that person's duly authorised agent, where the agent is—

- (a) a legal practitioner; or
- (b) registered as a patent agent in the Register of Patent Agents kept in terms of the Patents Act; or
- (c) registered as a trade mark agent in the Register of Trade Mark Agents kept in terms of the Trade Marks Act [Chapter 26:04].

#### 41. Lodging and authentication of documents

- (1) Any application, notice or document which, under this Act is required or permitted to be lodged, made or given at the Trade Marks Office or to the Registrar or to any other person, may be delivered by hand or sent by registered post.
- (2) No authentication shall be required in respect of any document lodged in the Trade Marks Office under this Act or used in proceedings before the Registrar or the Tribunal.

#### 42. Provisions as to fees

- (1) Where, under this Act, a fee is payable in respect of—
  - (a) the doing of anything by the Registrar, the Registrar shall not do that thing until the fee has been paid;
  - (b) the doing of anything by any person other than the Registrar, the thing shall be deemed not to have been done until the fee has been paid;
  - (c) the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.
- (2) All fees shall be paid at the Trade Marks Office in such manner as the Registrar, with the approval of the Minister, may accept.

#### 43. Publication of matters in Journal

The Minister may direct the Registrar to publish in the Journal any reports of cases on geographical indications and other relevant matters that the Minister thinks desirable.

#### 44. Regulations

- (1) The Minister may make regulations prescribing anything which under this Act is required or permitted to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act or for its better administration.
- (2) Regulations made in terms of subsection (1) may provide for—
  - (a) the form of applications for the registration of geographical indications and the form of any copies and drawings and other documents that may be lodged at the Trade Marks Office;
  - (b) the number of copies of any article or document to be lodged at the Trade Marks Office;
  - (c) the procedure to be followed in connection with any application or request to the Registrar and in any proceedings before him, including the condoning of procedural irregularities;
  - (d) the service of notices and other documents in connection with proceedings under this Act;
  - (e) fees payable in respect of any application, registration or other matter under this Act;
  - (f) the conduct of the business of the Trade Marks Office;
  - (g) the provision of services by the Trade Marks Office, including the provision of information regarding geographical indications, and the fees and charges payable for such services;
  - (h) giving effect to any international treaty or agreement which relates to geographical indications and to which Zimbabwe is a party.

#### 45. Saving of right to use certain descriptions, names or trade marks

- (1) Nothing in this Act shall prevent the application to any product of a description or name which is customarily applied to that product in common parlance in Zimbabwe, even if the description or name is identical to a geographical indication applied elsewhere to that product.
- (2) Nothing in this Act shall limit the right of any person, in the course of business, to use his name or the name of his predecessor in business, unless his use of that name is likely to mislead the public.
- (3) Nothing in this Act shall prevent—
  - (a) the registration under the Trade Marks Act [Chapter 26:04] of a mark that is identical or similar to a geographical indication, where the application for the mark's registration was made in good faith before the date of publication of this Act or before the geographical indication was protected in its country of origin; or
  - (b) the use of a trade mark that is identical or similar to a geographical indication, where—
    - (i) the mark was registered in good faith under the Trade Marks Act [Chapter 26:04] before the date of publication of this Act or before the geographical indication was protected in its country of origin; or
    - (ii) the person who uses the mark acquired the right to do so through use in good faith before the date of publication of this Act or before the geographical indication was protected in its country of origin.

#### 46. Act not to be construed as limiting other laws preventing misuse of geographical indications

This Act shall not be construed as limiting any other law which prohibits or restricts the application or use of misleading geographical indications, in particular—

- (a) the crime of fraud; and
- (b) the delicts of passing off and unlawful competition; and
- (c) any enactment relating to the labelling or sale of any product.

#### 47. Transitional provisions

Any regulations or rules which, on the date of publication of this Act, are in force under the Trade Marks Act [Chapter 26:04] shall apply, *mutatis mutandis*, in respect of applications, references, appeals, proceedings and other matters in terms of this Act, until regulations dealing with those matters are published in terms of section forty-four.