

DRAFT

LAW OF GEORGIA ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

ARTICLE 1. SPHERE OF REGULATION

This Law regulates the relations arising in connection with registration and protection of appellations of origin and geographical indications.

ARTICLE 2. MAIN DEFINITIONS USED IN THE LAW

1. Sakpatenti - National Intellectual Property Center of Georgia - a legal entity, which conducts the legal enforcement of the rights of natural persons and legal entities in the field of intellectual property.

2. The State Register of the appellations of origin and geographical indication - the combined data of the appellations of origin and geographical indications, also the data of the persons entitled to the use of the registered appellations of origins and geographical indications.

3. Application - the combination of the documents necessary for registration of the appellations of origin and geographical indications and or acquiring of the right to the use of the registered appellations of origin and geographical indications.

4. Applicant - a natural person or legal entity or voluntary association of the producers, claiming for the registration of the appellation of origin or the geographical indication or for the right to the use of the registered appellation of origin or geographical indication.

5. Patent Attorney - in the sphere of industrial property an authorized person acting in the name of another person.

ARTICLE 3. APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION

1. Appellation of origin is a name of a geographical place, region or, in the exceptional cases, a name of a country (hereinafter referred to as "geographical area"), as well as their historical name, used for designation of the goods:

a) originated within the established limits of the given geographical area;

b) the exclusive quality and features of which are entirely, or mainly stipulated by natural and humane factors of only this geographical area;

c) production, processing and preparing of which has taken place within the established limits of this geographical area.

2. Geographical indication is an indication of a geographical area or a country, as well as their historical name used for designation of the goods:

a) originated within of the geographical area;

b) the specific quality, reputation, or other characteristics of which are associated with this geographical area;

c) production, or processing or preparing of which has taken place in this geographical area.

3. If a traditional geographical or non-geographical name creates a notion for a consumer about the origin of goods from the given geographical area, and the requirements of Article 3 paragraph 1 are fulfilled, then the indicated name can be regarded as appellation of origin of the goods.

4. Irrespective of the requirements of Article 3 paragraph 1 as an appellation of origin can be considered a designation of such a geographical area where, for the purposes of goods production, raw materials obtained from the area broader, than this geographical area or obtained from the different geographical area are used, if :

a) the different boundaries of the geographical area are established by the competent body (by the ministry of Office of the respective field);

b) there are definite conditions established by the competent body for production of raw materials;

c) there is a possibility to check that these conditions are preserved.

5. Under raw materials, indicated in Article 2.4. of this Law, may be considered only live-stock, milk and meat.

ARTICLE 4. LEGAL PROTECTION OF APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION

Protection of an appellation of origin and geographical indication is conducted in Sakpatenti on the basis of their registration or the international agreement.

ARTICLE 5. THE ABSOLUTE GROUNDS FOR REFUSAL OF REGISTRATION

As an appellation of origin or a geographical indication shall not be registered the name or any other indication, which:

- a) does not comply with the requirements of Article 3;
- b) has become a generic name of goods, even if it indicates correctly the place or the region where the goods have been produced, processed, or prepared;
- c) coincides with the names of varieties of plants and breeds of animals in a manner which misleads a consumer as to the origin of goods;
- d) contradicts to public morality and order;
- e) leads the public into confusion regarding the origin of the goods.

ARTICLE 6. PROTECTION OF HOMONYMOUS APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

If an appellation of origin or geographical indication registered in the other country is similar with the appellation of origin or geographical indication registered in Georgia, then the rules and conditions of registration of such a name in Georgia are established by the respective agreement.

ARTICLE 7. APPLICATION FOR REGISTRATION OF AN APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION

1. An application for registration of an appellation of origin and geographical indication is filed with Sakpatenti by a legal entity or natural person or any voluntary association of producers, irrespective of its legal form (hereinafter referred to as "applicant").

2. Sakpatenti receives the application for registration of appellation of origin or geographical indication of the country, which on its side provides for the registration of the appellation of origin or geographical indication of Georgia.

3. The foreign applicant establishes relations with Sakpatenti through the representative having the address for correspondence in Georgia.

4. The application shall apply to one appellation of origin or geographical indication.

5. The application must be filed in Georgian language.

6. The application must include:

- a) a request for registration of an appellation of origin or geographical indication;
- b) the full name and legal address of the applicant;

- c) the appellation of origin or geographical indication;
- d) the list of the goods for which the registration of the appellation of origin or geographical indication is sought;
- e) the description of the goods and if necessary of the raw material, with the indication of their chemical, physical, microbiological and/or organoleptical and other characteristics.
- f) description of the geographical area location, by indicating its exact bounds;
- g) the document confirming that the goods have originated from the geographical area stipulated by the Article 3 of the Law;
- h) the description of production specific conditions and methods characterizing the production technology of the goods and relevant geographical area, in case of existence of the mentioned.
- i) the documents confirming, that:
 - i.a) the exclusive quality, or properties of the goods are entirely or mainly stipulated by natural and humane factors of only this geographical area;
 - i.b) the specific quality, reputation, or other characteristics of the goods are closely associated with this geographical area;
- j) documents and data stipulated by the subparagraphs e, f, g, h and i must be confirmed by the state private institutions, universities, research centers and laboratories, which by the state are conferred the right to conduct respective works and have the necessary material-technical base and personnel of high qualification.
- k) the document confirming the payment of the prescribed fee;
- l) a power of attorney issued by an applicant in the name of his representative, if the application is filed by the representative;

7. If the applicant is a foreign person, the application must include the data required under subparagraphs a, b, c, d and l of the Article 6 and the document confirming the registration of the appellation of origin or geographical indication in the country of origin, and the right of the applicant to the use of the registered name.

ARTICLE 8. EXAMINATION, PUBLICATION, REGISTRATION

1. Sakpatenti checks whether the application complies the requirements of the Article 7 of this Law, whether there exists the basis defined by the Article 5 paragraphs b, c, d, e of this Law and conducts the search in respect to the trademark databases.

2. If the basis defined by the Article 5 paragraphs b, c, d, e exists Sakpatenti takes the decision on refusal of the further consideration of the application.

3. If the application complies the requirements defined in the Article 7 paragraph 6 subparagraphs e, f, g, h and i for additional consideration the application is send to the competent body (the Ministry or Office of the respective field).

4. If the application complies the requirements of the Article 7 of this Law and the basis defined by the Article 5 paragraphs b, c, d, e does not exist, Sakpatenti publishes the application materials in the Official Bulletin of the Industrial Property of Georgia (hereinafter the Bulletin), in one central and one local newspaper.

5. If within three months after the publication of the application materials the additional information shall be presented to Sakpatenti, this information shall be send for consideration to the competent body (the Ministry or Office of the respective field).

6. If no information is presented within three months from the publication of the application materials, Sakpatenti takes the decision on registration, records the data of the appellation of origin or geographical indication, also respectively in the State Register of the appellations of origin or geographical indications, also records the data of the persons entitled to their use and publishes the data in the Bulletin.

7. The registration of the appellation of origin or geographical indication is limitless.

8. In the Bulletin the following data shall be published:

- a) an appellation of origin or geographical indication;
- b) name of goods for which the appellation of origin or geographical indication was registered and description of its specific features;
- c) description of the geographical area, showing the exact borders thereof;
- d) full name and legal address of the applicant.

9. Other data obligatory for publication are defined by the “Instruction on Presenting of the application for the Appellation of Origin and Geographical Indication and Procedures Relating to the Registration”.

ARTICLE 9. FEES

The respective fee shall be paid for examination of an application for an appellation of origin or geographical indication, services in regard of the examination, registration, entering the changes in the Register, publication, granting of the certificate, issuing of the extract from the Register, procedural terms connected with registration and extension, also for other legal actions regarding the protection of an appellation of origin and geographical indication. The amount of the fee, conditions of payment and return of the paid fee shall be defined by set rule approved on basis of regulation. The amount of the fee can be revised once in three years in regard of the respective international standards and inflation.

ARTICLE 10. REGISTRATION OF AN APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION OF ABROAD

Legal entities and natural persons of Georgia have the right to present the appellation of origin and geographical indication for registration in other country after their registration in Georgia.

ARTICLE 11. THE SCOPE OF PROTECTION

1. Proceeding from the registration of the appellation of origin or geographical indication it is prohibited:

a) any kind of direct or indirect commercial use of the registered name in respect with the good which is similar to, or associated with the registered good, or any use of such a name which would exploit the reputation of the registered name;

b) any use of the registered appellation of origin indicating a real geographical place of production, processing or preparing of goods, but conveys a false impression as to its origin;

c) any commercial use of the registered appellation of origin, even in translation, or accompanied by such expressions as: "type", "style", "kind", "imitation", "method", etc.

d) any use of misleading indication as to the origin, essential qualities and features of the goods on the packaging, on an advertising material, or on documents relating to the goods.

e) any packaging or presentation of a good which can mislead a consumer as to its origin.

2. Where the registered name contains the generic name of the product, the usage of that generic name shall not fall within the scope of Article 1. The registered

appellation of origin or geographical indication, is not supposed to become a generic name.

3. The protected appellation of origin or geographical indication cannot be transferred into the generic term.

ARTICLE 12. THE USE OF THE REGISTERED APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION

1. Any natural person or legal entity, which obtain or process the raw or has real production in the boundaries of the registered appellation of origin or geographical indication and the special quality, features and reputation of the produced goods is completely conditioned or connected with this geographical place, can present the application to Sakpatenti to the use of the registered appellation of origin or geographical indication.

2. The data of the person entitled to the use of the registered appellation of origin or geographical indication Sakpatenti records in the Register.

3. The right to the use can be revised by the competent body on the basis of inspection.

4. The rule of inspection and time is defined by the special normative act.

5. The use of the registered appellation of origin or geographical indication by the person, who is not registered as the holder of the right, is prohibited.

ARTICLE 13. INVALIDATION OF THE REGISTRATION OF AN APPELLATION OF ORIGIN OR GEOGRAPHICAL INDICATION AND/OR OF A CERTIFICATE ON THE RIGHT FOR THE USE OF THE REGISTERED NAME

1. The registration of an appellation of origin or geographical indication can be invalidated if:

a) the registration has taken place under violation of the requirements of this Law;

b) due to changing or disappearing of natural and/or humane factors, characteristic of the given geographical area, becomes impossible to produce such goods which would have the exclusive quality and properties indicated in the Register;

c) the registration of the appellation of origin or geographical indication was invalidated in the country of origin;

ARTICLE 14. RELATIONSHIP BETWEEN AN APPELLATION OF ORIGIN OR GEOGRAPHICAL INDICATION AND A TRADEMARK OR COLLECTIVE MARK

1. If after filing of the application for appellation of origin or geographical indication shall be filed the application for appellation of origin or geographical indication with Sakpatenti for identical or similar trademark registration and there exists one of the conditions in result of the registration of appellation of origin or geographical indication defined by the Article 11 of this Law the pending of such an application is retained until the taking of the decision on registration of the appellation of origin or geographical indication.

2. If at filing of the application for appellation of origin or geographical indication there was filed with Sakpatenti the application for registration of the appellation of origin or geographical indication or for the similar trademark and the decision on registration of this trademark has not been taken and in result of the registration of the appellation of origin or geographical indication there exists one of the conditions defined by the Article 11 of this law the pending of the application is retained until the decision on registration of the appellation of origin or geographical indication is taken.

3. If Sakpatenti takes the decision on refusal of the registration of appellation of origin or geographical indication, the consideration of the trademark application is retained in respect to the paragraph 1 and 2 of the Article and shall continue at the request of the applicant by preserving of the filing date.

4. If by the use of trademark or its registration was caused the infringement defined by the Article 11 of this Law, then the appeal shall be drawn within 5 years from the day of the infringement of the rights to the appellation of origin or geographical indication or the registration day of the trademark, if for this day the trademark has been already published and this ate is earlier than the date of the infringement of the rights provided, that the use of the geographical indication or registration was conducted unfair.

5. If one of the infringements defined by the Article 4 of this Law takes place by using of the trademark registered before the registration of the appellation of origin or geographical indication, the interested person can appeal requiring the prevention of the use of such trademark within 5 years term from the day of recognition of the infringement on the appellation of origin or geographical indication. In the case of disagreement among the parties the use of the registered trademark may be extended temporarily, but no longer than the registration term.

6. If the trademark was registered in breech of the requirements of the paragraphs 1 and 2 of this Article, the registration of such a trademark is annulled on basis of the Court decision.

7. The registration of the trademark and its fair use is not terminated, if the registration was conducted before the protection of the appellation of origin or

geographical indication in the country of origin and the coexistence of the appellation of origin or geographical indication must not lead the public into confusion.

8. The Article 11 of this Law is not applied for the trademark used for at least 10 continuous years before April 15, 1994 (before the signing date of the World Trade Organization Agreement).

9. Taking into account the good reputation of the registered trademark its notoriety and longevity of use, it is admissible not to register the appellation of origin or geographical indication, if such a registration leads the public into confusion relating the real origin of the goods.

ARTICLE 15. RESPONSIBILITIES FOR INFRINGEMENT OF THE RIGHTS

Infringement of the right arising from registration on an appellation of origin or geographical indication causes civil, administrative or criminal responsibilities in accordance with the current legislation.

ARTICLE 16. THE SUIT REQUIREMENTS

The holder of the right for the use of an appellation of origin or geographical indication, is authorized to bring an action against an infringing party in the court and require the following:

- a) to prevent the acts of infringement;
- b) to compensate the damages;
- c) to confiscate or liquidate the unlawfully produced product and the equipment used for production of the said product.
- d) to distract all those labels, tags, drawings, imprints, packing, packing documents and advertisements which include the Registered names.

ARTICLE 17. INTERNATIONAL AGREEMENTS

If the International Agreement with the participation of Georgia has established rules other than those contained in the present Law and the issues in connection with other appellations of origin or/and geographical indications of Georgia, or other than the provisions of the legislative acts, the rules of International agreements shall be applicable.

ARTICLE 18. NORMATIVE ACTS RELATING TO THE ENACTMENT OF THE LAW

1. This Law enters into force within 3 months from the publication.
2. In three months after publication of this Law shall be elaborated and approved in respect to the established rule the “Instruction on Presenting of the Application for the Appellation of Origin and Geographical Indication and Procedures Relating to the Registration”.
3. In three months after the publication of this Law shall be elaborated and approved the amount of the fees and the rule of payment relating to the registration of the appellation of origin and the geographical indication.