

**DRAFT**

## **LAW OF GEORGIA ON APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

### **ARTICLE 1. SPHERE OF REGULATION**

This Law regulates the relations formed in connection with registration, protection and use 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 of public law, which provides for 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 unity of the appellations of origin and geographical indications data, also the data of the persons entitled to the use of the registered appellations of origins and geographical indications.

3. Application - collection of the documents necessary for registration of the appellations of origin and geographical indications, or for acquiring of the right to the use of the registered appellations of origin or 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 registered at Sakpatenti acting in the name of another person.

6. Foreign applicant - a natural person or legal entity, who does not have a residence or a real or acting undertaking within the territory of Georgia.

7. Product - product or services.

### **ARTICLE 3. APPELLATION OF ORIGIN AND GEOGRAPHICAL INDICATION**

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

- a) originating within the given geographical area;
- b) the specific quality and features of which are essentially or exclusively due to a particular geographical environment and human factors;
- c) production, processing and preparation of which take place within the defined geographical area.

2. Geographical indication is the name or any other indication designating a geographical place, district, region, in exceptional cases country (hereinafter - geographical area) and is used to describe the product:

- a) originating in that geographical area;
- b) the specific quality, reputation, or other characteristics attributable to that geographical area;
- c) production, or processing or preparation of which take place in the defined geographical area.

3. If a traditional geographical or non-geographical names create a notion for public as to the origin of products from the given geographical area, and the requirements of paragraph 1 Article 3 are fulfilled, then the said name can be regarded as appellation of origin of the products.

4. Irrespective of the requirements of paragraph 1 Article 3 as an appellation of origin can be considered the name of a geographical area where, for the purposes of products production, raw materials come from the area larger or different from said geographical area, if :

- a) the different boundaries of the geographical area and conditions for raw material production are determined;
- b) there are inspection arrangements to ensure that those conditions are adhered to.

5. For the purposes of paragraph 4 of this Article, only live animals, meat and milk may be considered as raw materials.

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

Protection of an appellation of origin and geographical indication is conducted by registration at Sakpatenti or on basis of 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, although it relates to the region where the products were produced, processed, or prepared;
- c) where it conflicts with the name of a plant variety or an animal breed, that is likely to mislead the public as to the true origin of the product;
- d) contradicts to the law, public morality and order;
- e) is likely to mislead the public as to the origin of the products.

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

If an appellation of origin or geographical indication registered in Georgia, or any name of the geographical are of Georgia is identical to an appellation of origin and geographical indication protected in the other country, then the rule of protection and conditions of use of said indication in Georgia is defined 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(hereinafter referred to as "applicant "), irrespective of its legal form is not in breach with the legislation of Georgia or country of origin.

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 shall 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 products for which the registration of the appellation of origin or geographical indication is sought;
- e) the description of the products 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 issued by the local administrative body confirming that the products originate from the geographical area;
- h) the description of production specific conditions and methods characterizing the production technology of the products and relevant geographical area, in case of existence of the mentioned.
- i) the documents confirming, that the specific quality, or properties of the products are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, or specific quality, reputation or characteristics are attributable to 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 respective rights, said documents and data are confirmed by the Ministry of relevant filed.
- 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 contain the data required only 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 exist the bases defined by the subparagraphs b, c, d, e Article 5 of this Law and conducts the search in respect to the trademark databases.

2. If the bases defined by the subparagraphs b, c, d, e Article 5 exist Sakpatenti takes the decision on refusal of the further examination 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 Ministry of relevant 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 Ministry of relevant 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 in the State Register of the Appellations of Origin or Geographical Indications, also - 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) list of products 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.

## **ARTICLE 9. FEES**

The fee defined in respect to the legislation of Georgia shall be paid for examination of an application for an appellation of origin or geographical indication, registration, publication, issuing of the extract from the Register, also for other legal actions regarding the protection of an appellation of origin and geographical indication.

#### **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. SCOPE OF PROTECTION**

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

a) any direct or indirect commercial use of an appellation of origin or geographical indication registered in respect to the products not covered by the registration, insofar as those products are similar to the registered under that name or insofar as using the name exploits the reputation of the protected name;

b) any use of the registered appellation of origin and geographical indication, which word for word designates the real place of products manufacture, processing or preparing of the raw material, but is likely to mislead the public as to the true origin of the product; or

c) any use of such a name or indication, which is the imitation or evocation of registered appellation of origin or geographical indication, even in translation, or accompanied with such words as “type”, “style”, “similar”, "as produced in”, “method”, etc.

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

e) any packaging or presentation of a product which can convey false impression as to its origin.

2. Where a registered appellation of origin or geographical indication contain the generic name of the product, the usage of that generic name shall not fall within the scope of Article 11.

3. The protected appellation of origin or geographical indication cannot be transformed into the generic name.

## **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 have real undertaking in the boundaries of the registered appellation of origin or geographical indication and the special quality, features and reputation of the produced products 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 Ministry of relevant field on basis of inspection.

4. The rule and frequency of inspection are defined by the Georgian legislation.

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**

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 products 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 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 with Sakpatenti, the application for registration of the appellation of origin or geographical indication or for the similar trademark has been already filed, 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 for 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 of the appellation of origin or geographical indication or from the registration day of the trademark, if for this day the trademark has been already published and this date is earlier than the date of the infringement of the rights provided, that the use of the geographical indication or registration was conducted in good faith.

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 claiming 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 continued temporarily, but no longer than the registration term.

6. If the trademark was registered in breach 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 before this Law enters into force, whereas 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 product 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 as to the true origin of the products.

#### **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) prevention of the acts of infringement;
- b) compensation of the damages;
- c) confiscation or destruction of the illegally produced product and the equipment used for production of said product.
- d) to destroy all those labels, tags, drawings, imprints, packing, packing documents and advertisements which include the Registered names.

#### **ARTICLE 17. TRANSITIONAL PROVISIONS**

1. In three months after publication of this Law Sakpatenti shall elaborate and approve 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”.

2. The Ministry for Agriculture and Food together with Sakpatenti shall elaborate and approve in respect to the established rule the regulations in regard to the procedures mentioned in subparagraph b) paragraph 4 Article 3, subparagraph j) paragraph 6 Article 7, paragraphs 3 and 5 Article 8 and paragraph 3 Article 12, for mineral water, non-alcoholic and alcoholic beverages, agricultural and food products

#### **ARTICLE 18. FINAL PROVISIONS**

This Law enters into force within 3 months from the publication.