

The Protection of Traditional Speciality Guaranteed: Study on the Measure of Thai Law and the European Union Law

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Abstract

Traditional foods of Thailand are valuable. Geographical indication law is used to protect traditional food of Thailand. Geographical Indication (Geographical Indications: GI) is a type of intellectual property law. Geographical Indication is used in case of traditional foods which have two important factors are the nature and human. The unique feature of the natural geography, weatherproof and raw materials in area utilized in the production of their locality made special features product different from the other areas. This specifically features refer to the quality, reputation or other characteristic of the geographical origin. The product has been legally geographical indication protection is famous and popular product, special and unique this is because the geographical environment (climate, geography, and other sources), the skills and wisdom of the local people who live in households of geographical origin. Geographical Indication differs from the other types of intellectual property as the owner is community who live in the geographical area. As a result, producers who live in this area can use geographical indication and geographical name. Moreover, other producers who live outside the geographical area can't use the origin geographical name. This right is called the Community Right. traditional foods of Thailand have protected by geographical indication law for example; khaotan lampang or people known as rice cracker is the local famous dessert of traditional ceremony in the northern parts of Thailand, Thai custard dessert recipe (khanom maw kaeng), Chaiya salted egg, Trang roast pork and etc. On the other hand, many Thai food valuable wisdom isn't linked to geographical area. Therefore, This wisdom did not legally protected by geographical indication law. Thai traditional foods are not protected by the law thoroughly. Traditional foods that do not link with geographical area for example; green curry, Thai crispy pancake, bamboo rice, Thai fish sauce, pickled fish, krayasart, rice salad, tom yum kung, chili dip, Thai fried noodle, papaya salad, red curry and so on. Compare with The European Union (EU) rules and Thailand rules, the geographical indication of European Union more comprehensive than Thailand since the European Community law defines what is to be registered as a geographical indication into two categories, including Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). In addition, the EU is protected intellectual food by Traditional Speciality Guaranteed (TSG) which protect local tradition foods don't links with geography but they have traditional cooking, culture and valuable heritage. Thus, the protection of the local tradition foods of the European Union have conservation and consumer protection more comprehensive than Thailand.

Keywords: Traditional Food, Traditional Speciality Guaranteed, Geographical Indications, Designation of Origin, Geographical Indication

Introduction

In Thailand, there are various kinds of cultural foods which are unique and distinctive. This is because Thai cooking traditions inherited from their ancestors which ancestral

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practices and verbally to future generations. Thai foods are good taste and elaborate cooking methods with local ingredients. They use medicinal plants which are beneficial to health or using foods with traditional religious beliefs. This is the reason why, Thai foods are popular for foreigners. In addition, Thai foods are cultural products and major source of revenue for Thailand. For instance, a consumer-oriented tourism, delicatessen, frozen food and the Thai restaurant business in abroad are the reason encourages farmers to produce raw materials and all cooking process. Traditional local foods are intangible culture, knowledge practices conceding nature and the universe refers to cognitive skills, practice shows that a community has developed, making permanent the interaction with nature and environment which in the form of values, beliefs, rituals, ceremonies treatable disease, social practices, institutions and social organizations. Apart from tradition foods, wisdom of this field such as local ecology, knowledge of indigenous ethnic pogroms biological, botanical, the treatment of traditional herbal medicine texts, rituals, beliefs, ways of living and food science mysterious ritual and religious ceremonies divination, astrology, cosmology and beliefs about the shaman or oracle are intangible culture, knowledge practices conceding nature and the universe too.

Among the export products of Thailand and many countries around the world. Products from local (Traditional Knowledge Goods) are product that take income for many developing countries. Products in this group appeared in various forms such as agricultural products, liquor, wine, silk, jewelry and folk songs. The wisdom or traditional food products that are the most unique and stand out because the wisdom or tradition foods of Thailand are exported the traditions to consumers. The wisdom or traditional food products take revenues to the public including farmers who grow vegetables, fruits, breeders, chef cooking and suppliers of ingredients.

Thai Legal Protection on Traditional Foods

Considering intellectual property law including patent, trademark, copyright laws. Trade Secrets Protection for Protection of the traditional foods are as follows.

Copyright Act B.E. 2537 Originality or the copyright on the main initiatives of their own creators but local traditional food Thailand is a body of knowledge accumulated heritage, so it is not of any individual. **Section 6** “The Copyright work by virtue of this Act means a work of authorship in the form of literary, dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work or any other work in the literary, scientific or artistic domain whatever may be the mode or form of its expression. Copyright protection shall not extend to ideas or procedures, processes or systems or methods of use or operation or concept, principles, discoveries or scientific or mathematical theories” **Thai local traditional foods aren't one of Section 6 aforementioned so Thai local traditional foods can't be protected by copyright law.**

Patent Act B.E. 2522 Section 5 “Subject to Section 9, a patent may be granted only for an invention in respect of which the following conditions are satisfied: the invention is new; it involves an inventive step; and it is capable of industrial application”

PETTY PATENTS Section 65 b is A petty patent may be granted for an invention in respect of which the following conditions are satisfied: the invention is new and it is capable of industrial application. **Patents and petty patent are the new invention which traditional foods are eaten cooked for a long time and collective wisdom cooking aren't new knowledge. Although petty patent doesn't need to inventive step but would like to new invention. So it may not be protected whether the patent or petty patent.**

Trademark Act B.E. 2534 "trademark is defined as a mark used or proposed to be used on or in connection with goods to distinguish those trademarked goods from other

trademarked goods.” **the right of the trademark is individuals right while the traditional foods knowledge is community right.**

Trade Secrets Act B.E. 2545 “Trade Secrets mean trade information not yet publicly known or not yet accessible by persons who are normally connected with the information. The commercial values of which derive from its secrecy and that the controller of the trade secrets has taken the appropriate measures to maintain the secrecy.” **Considering aforementioned provisions, the trade secret commercial information is not generally known or not yet accessible among individuals. While Thai local traditional food information isn't family secrets. Thus, it can't be protected by Trade Secrets Act.**

Another legislation is Geographical indications, A geographical indication is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a geographical Indication, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. Geographical indications products of Thailand, for example

Chaiya Salted Eggs: They are made using eggs from ducks of Chaiya district. Then take the soil from Molehill to a low resolution. Take only a separate screen resolution to take the gravel out knead with water and salt to the soil rather leathery. Then take the clay coat duck eggs. Then knead it with the husk ashes process is completed a salted egg Chaiya, Suitable for fries and perfect for eating when boiled.

Pork Trang: The origin of pork occurred in China around 1,000 years ago in the Tang Dynasty. Discover how to roast a pig it's a coincidence. While the chefs are cooking in the palace. Pork pieces fell into charcoal. Until the meat is cooked and burned. Chef pick to taste. Pork is crispy and delicious. Academic grilled pork has spread from generation to generation.

Thung Kula Rong-Hai Hom Mali Rice (TKR): Kularonghai is growing jasmine rice is the best in the world at this place. The spacious flat has the largest territory in the east. Kularonghai have area of approximately 2,107,691 hectares, covering five provinces of Surin, Maha Sarakham, Roi Et, Yasothon, Si Sa Ket. In the past, This area is the ancient seas. It found that the salts present in the soil is relatively high. There are some rock salt mixed in relatively high. There are some rock salt mixed in a thick layer of topsoil over 250 meters. The sandy soil is acidic medium. Some of the subsoil Clay, sandy clay, minerals and fresh water, no food will help cast. Trees to grow yet.

The climate of Kularonghai, it is meadow tropics (Tropical Savannah Climate) is a periodic rain. Areas with poor drainage if it rains to flood suddenly. If the soil does not absorb it well. So dropped the rain would dry immediately. Some cracked somewhere. A small grain of salt Kaolin dazzling catch up to the front of the field. Although Kularonghai is a major river flowing through the line. However, as with all areas Kularonghai slopes from west to east. The river's flow through these quickly. In the past, Kularonghai was a vast ocean. A duration of one year in the production of the soil of this encounter with five factor soil is sandy, salty flood, drought, cold and fog of the great atrocities. Therefore rice raised Kularonghai unique taste. And a distinct smell of jasmine rice grown in other areas.

Praewa Silk of Kalasin: Praewa Silk is the specific name that northeastern people call one kind of fabric which used for cover the shoulder and used in special occasions like the festival, traditions or religious ceremonies. Praewa is the fabric made by hand and had a weaving procedure between Khid and Jok pattern. The outstanding feature of Praewa weaving has various patterns in one piece fabric. Weaving fabric is utilization for Isan people

(Northeastern people). The fabric which has many Wa is called “1 Hook” (a traditional Thai measurement). The length of each hook is up to Sen-Yeun (a main thread) which called “Kruehook” (KuehooK) after finished weaving, it will be cut into pieces. They use the fabrics for many purposes such as use as a blanket as a Sa-Bai (for wrapping them over left shoulder). This is 1 Wa length in size, thus it is called “Praewa fabric”

However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication. GI is a community right, not for an individual. (Blakeney, 1996) Geographical indication law is used to protect Local traditional food of Thailand. Geographical Indication is a type of intellectual property law which geographical Indication law is used in case there is a link (Links) between two important factors are the nature and human factors. Unique feature of the natural geography such as weatherproof or raw materials in area utilized in the production of their locality and made products with special features that come from that area. This specifically features refer to the quality, reputation or other characteristic of the geographical origin. The product has been legally protected geographical indication is often a product of the famous and popular. This is because geographical environment make it special. For instance, the environment, climate, geography, and other sources together with the skills and wisdom of the people who live in households of geographical origin.

Geographical Indication differs from other types of intellectual property. The owner is not a person but a community where a manufacturer in the geographical area. As a result, producers who live in places or geographical origin of the goods using geographical indication, only the right to use its geographical name. Other producers outside the geographical origin can't use the geographical origin name. This right is called the “Community Right”. Local traditional food of Thailand that has protected geographical indication for example Lanpangkhaotan (Rice Cracker), Phetchaburi Coconut Custard Squares, Chaiya Salted Egg, Trang Roast Por so on.

European Union Regulations Protection of Traditional Foods

The following EU schemes encourage diverse agricultural production, protect product names from misuse and imitation and help consumers by giving them information concerning the specific character of the products.

Protected Designation of Origin-PDO: covers agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognized knowhow.

Protected Geographical Indication-PGI: covers agricultural products and foodstuffs closely linked to the geographical area. At least one of the stages of production, processing or preparation takes place in the area.

Traditional Speciality Guaranteed-TSG: highlights traditional character, either in the composition or means of production

Protected Designation of Origin-PDO

Agricultural products and food products will be protected names of origin or PDO is something to consider along with the definition. "The name of origin" provided for in the EC Regulation.

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs Article5 “Requirements for designations of origin and geographical indications

For the purpose of this Regulation, “designation of origin” is a name which identifies a product: Originating in a specific place, region or, in exceptional cases, a country: Whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors: and The production steps of which all take place in the defined geographical area.

Considering the above definition, The product will be registered PDO are strictly whether the material, process, manufacturing or preparation must come from geographical source. Products are required elements of nature and the human or the wisdom of local people. The reasons create products that are unique and can't be produced in other area. The raw materials from animals, meat, milk, or any other material which sourced from outside the area or location are determined by the specific conditions, husbandry and the production of meat, milk or other ingredients. Surveillance systems are guaranteed by compliance with such conditions, including animal feed must come from within the same area.

Protected Geographical Indication: PGI

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs Article5 “Requirements for designations of origin and geographical indications

For the purpose of this Regulation, “geographical indication” is a name which identifies a product: originating in a specific place, region or country; whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and at least one of the production steps of which take place in the defined geographical area.

PGI certification is similar to PDO but will different in some special feature. Namely to be certified to be registered on the PGI isn't the geographical environment and the elements of nature and the human very seriously. PGI will focus on the famous as well as other characteristics of the products from the traditional areas of geographical but the product to be registered as a PDO, not only relies on the natural and human elements mentioned previously. Procedures and processes in production, preparation materials must process in original geographical area. Therefore PGI is more convenient than PDO and give protection to the product more than PDO. PDO and PGI are Community Right. However the Protection of Traditional Foods by geographical indication is important mean for conservation tradition foods example Prosciutto Toscano (PDO) from Italy, bryndza podhalańska (PDO) and oscypek (PDO) from Poland, Marchfeldspargel (PGI) from Austria, Lübecker Marzipan (PGI) from Germany, Scotch Beef and Lamb (PGI) from Scotland, bryndza (PGI) and Oštiepok (PGI) from Slovakia, Kaszëbskô malëna (Kashubian garden strawberry) (PGI) from Poland.

Traditional Speciality Guaranteed (TSG)

Traditional means conforming to established practice or specifications prior to the Second World War. Traditional food is a food with a specific feature or features, which distinguish it clearly from other similar products of the same category in terms of the use of “traditional ingredients” (raw materials of primary products) or “traditional composition” or “traditional type of production and/or processing method”²⁵ as defined below.

²⁵ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs Article 18

1. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:

(a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or

Traditional Ingredient (Raw Material Or Primary Product) Raw material (species and/or varieties) or primary product, either alone or as an ingredient, which has been used in identifiable geographical areas and remains in use today (taking into account cases where use was abandoned for a time and then reinstated) and its characteristics are in accordance with current specifications of national and EU legislation.

Traditional Composition The uniquely identifiable composition (in terms of ingredients) that was first established prior to the Second World War and passed down through generations by oral or other means (taking into account cases where composition was abandoned for a time and then reinstated) and when necessary is differentiated from the composition defined by the generally recognized characteristics of the wider food group to which the product belongs.

Traditional Type of Production and/or Processing The production and/or processing of a food that: Has been transmitted from generation to generation through oral tradition or other means and-Has been applied prior to the Second World War and remains in use (taking into account cases where composition was abandoned 6 Traditional Foods in Europe for a time and then reinstated) despite its adjustment to binding rules from national or EU food hygiene regulations or the incorporation of technological progress, under the condition that production and/or processing remains in line with methods used originally and that the food's intrinsic features such as its physical, chemical, microbiological or organoleptic features are maintained.

Analysis and Results

Geographical indication protects Thai local traditional food which linked to geographical origin but many Thai Foods have valuable wisdom don't linked to geographical area. Thus, wisdom isn't legally protected by geographical indication and There aren't legal protection. Thailand Food wisdom that not link with geography for example, Green Curry, Thai Crispy Pancake, Bamboo Rice, Thai Fish Sauce, Pickled Fish, Krayasart, Rice Salad, Tom Yum Kung, Chili Dip, Thai Fried Noodle, Papaya Salad, Red Curry and etc. Thus, Thai local traditional food is not thoroughly protection by law. Compared to the European Union (EU), Geographical indication of EU rules more comprehensive than Thailand. Geographical indication protection in the European Union by the European Community law defines what is to be registered as a geographical indication into two categories Including Designation of Origin (PDO) and Geographical Indication (PGI).In addition, the EU is protected by

- (b) is produced from raw materials or ingredients that are those traditionally used.
- 2. For a name to be registered as a traditional speciality guaranteed, it shall:
 - (a) have been traditionally used to refer to the specific product; or
 - (b) identify the traditional character or specific character of the product.
- 3. If it is demonstrated in the opposition procedure under Article 51 that the name is also used in another Member State or in a third country, in order to distinguish comparable products or products that share an identical or similar name, the decision on registration taken in accordance with Article 52(3) may provide that the name of the traditional specialty guaranteed is to be accompanied by the claim 'made following the tradition of' immediately followed by the name of a country or a region thereof.
- 4. A name may not be registered if it refers only to claims of a general nature used for a set of products, or to claims provided for by particular Union legislation.
- 5. In order to ensure the smooth functioning of the scheme, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, concerning further details of the eligibility criteria laid down in this Article.

intellectual food Traditional Speciality Guaranteed (TSG) which protect tradition food in the lack of geographical link but foods have traditional cooking, culture and valuable heritage. Therefore, the protection of the tradition foods of the European Union have conservation and consumer protection more comprehensive than Thailand. Thus, Thai law should apply the principle of the protection of Traditional Speciality Guaranteed (TSG) for protect tradition foods too. This will contribute to conservation of cultural heritage of Thai Local tradition food and Thai Local tradition food is protected as well as the protection of internationally. At the present, Thailand prescribe act which is Promote and Preserve the Intangible Cultural Heritage Act. But this Act hasn't concrete provisions to encourage conservation and food culture. This act commandments protect tradition by registration, the policy orientation which hasn't compulsory legal. Therefore this Act and geographical indication law aren't able to thorough protect the traditional food.

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