

KOREA, REPUBLIC OF

Response to Question 1 :

Trademarks

A trademark registration may not be obtained where the mark consists solely of a sign indicating in a common way the origin of the goods; nor where the mark consists solely of a sign indicating a conspicuous geographical name, an abbreviation thereof for a map as in article 6(1) of Trademark Law. Even in the case of a trademark which falls under the article, where as a result of the use of such trademark prior to the application for registration, consumers are able to conspicuously recognize whose goods it indicates in connection with a person's business, the trademark may be registered together with the designated goods for which the trademark has been used. There is also provision for a "collective mark", which means a mark intended to be used with respect to the goods and services of members of a legal entity founded by and composed of persons who are in the same line of business and who are closely associated therein and who are controlled by the legal entity.

Geographical Indications

According to the 'Agricultural Products Quality Management Law' and the 'Fisheries Products Quality Management Law,' for agricultural and fisheries products and their processed products, if one applies for the registration of a geographical indication, the National Agriculture Products Quality Management Service and the Geographical Registration Council examine the application to see if it meets registration requirements, particularly that the reputation of the subject matters should originate from the geographic features of the region and that the matters should be produced and manufactured in the region.

Patents

Traditional knowledge in the public domain is considered as prior art. According to the Patent Law, if a newly applied invention derived from traditional knowledge does not meet the requirements of novelty and/or inventive step, the registration of the application is rejected.

Copyright and related rights

Copyright-related rights may indirectly protect traditional knowledge through the protection of the rights of performers under the Korean Copyright Law. This includes performances of something other than works, through such artistic means as acting, playing music, singing, reciting, or screening. In some cases sound recordings of such performances are afforded indirect protection through the neighboring rights of phonogram producers.

Unfair competition

TK is protected as a trade secret if not publicly known, has independent economic value, and has been maintained and managed as a secret through considerable effort as in article 1(2) of the Unfair Competition Prevention and Trade Secret Protection Law. Article 2(1) of the Law defines the act of making a mark on goods, advertisements, traded documents communicated to the public or in communications, or selling, distributing, importing or exporting goods marked with such a mark which would mislead the public into believing that the place of production, manufacture, or processing is different from the actual place of production, manufacture or processing as an act of unfair competition.

Response to Question 26 : Traditional Knowledge designated by the Law of Protection of Cultural Property as the property of "national or local culture" is to be protected from destruction, and to be maintained for purposes of good preservation, not in regard to

intellectual property rights. Therefore, there are no special measures to assist traditional knowledge holders to handle their intellectual property matters.

Response to Question 27: In Korea, it is often difficult to identify an owner of traditional knowledge because traditional knowledge is handed down from generation to generation and is already well known to the public.