

No. 5

Intellectual Property and Traditional Handicrafts

Introduction

Traditional craftsmanship requires specialized and traditional techniques, skills and knowledge that are often of considerable antiquity and transmitted from generation to generation. Handicrafts can be traditional cultural expressions (TCEs) in their design, appearance and style, and can also embody traditional knowledge (TK) in the form of the skills and know-how used to produce them.

TK and TCEs, including handicrafts, are valuable cultural, social and historical assets of the communities who maintain, practice and develop them; they are also economic assets that can be used, traded or licensed for income generation and economic development. Unfortunately, however, traditional techniques - and the design, reputation and style associated with handicrafts - are vulnerable to imitation and misappropriation. All too often cheap imitations undermine sales of traditional handicrafts as well as the quality reputation of the genuine products.

Proposals and solutions are being identified for the legal protection of TK and TCEs to prevent their misuse, misappropriation, or other kind of illicit exploitation. These can also be useful for the protection of traditional handicrafts. Negotiations on a *sui generis* international legal instrument for the protection of TK and TCEs are currently taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). These negotiations aim to address the linkages between the intellectual property (IP) system and the concerns of TK and TCE holders. A number of countries and regions have also developed their own *sui generis* systems for protecting TK and TCEs.

In the meantime, existing IP rights, such as trademarks, geographical indications, copyright, industrial designs or patents can also be used by artisans and handicraft organizations to promote their interests. In particular, they can be used to protect traditional handicrafts against unauthorized reproduction and adaptation, and against misleading use of their style and reputation.

This brief identifies practical, accessible and often community-based means of using the existing IP system for the effective recognition, protection, management, marketing and commercialization of traditional handicrafts as cultural and economic assets.

What Are “Handicrafts”?

Handicrafts are sometimes referred to as artisanal products, craft products, traditional creative crafts or works of artistic or traditional craftsmanship. There is no universally agreed definition of handicrafts, but the following common characteristics can be identified:

- they are produced by artisans, completely by hand or with the help of hand-tools or even using machinery, provided the artisan’s direct manual contribution remains the most substantial component of the finished product;
- they are representations or expressions that are symbolic of the artisan’s culture;
- they encompass a wide variety of goods made of raw materials;
- their distinctive features can be utilitarian, aesthetic, artistic, creative, culturally attached, decorative, functional, traditional, or religiously and socially symbolic and significant;
- there are no particular restrictions on production quantity, and no two pieces are exactly alike.

Additional characteristics that may apply to “traditional handicrafts” include the fact that they are transmitted from generation to generation and that they are linked to an indigenous or local community. The following paragraphs apply to both handicrafts and traditional handicrafts.

Handicrafts and Intellectual Property

From an IP perspective, handicrafts can have three distinct components:

- **reputation** - derived from their style, origin or quality;
- **external appearance** - their shape and design; and
- **know-how** - the skills and knowledge used to create and make them.

Each component can potentially be protected by a distinct form of IP. Know-how, for example, could be protected by patents or as a trade secret, external appearance could be protected by copyright or industrial designs, while reputation could be protected by trademarks, collective or certification marks, geographical indications or unfair competition law. These forms of IP will be examined in turn.

Protecting the reputation and distinctiveness of handicrafts

Trademarks

A trademark is a sign used to identify and distinguish the goods or services of a particular firm or undertaking, in the course of trade. Trademarks may be composed of distinctive words, letters, numerals, drawings, pictures, shapes, colors or advertising slogans, among others. They serve to indicate the origin of goods or services, so as to distinguish them from identical or similar products produced by competitors.

Registering and using a trademark can increase consumer recognition of authentic handicrafts and add to their commercial value. Registration gives the trademark owner the exclusive right to prevent others from using an identical or confusingly similar mark on identical or similar goods or services. Trademark law also provides protection against the registration of deceptive marks by others, for example, if someone applies for a trademark that falsely implies that a good or service has an indigenous origin, so as to induce people to purchase the good or service, the registrar must reject the application.

Collective marks and certification marks

Collective and certification marks can be used to inform the public of certain characteristics of the products or services marketed under such marks.

A collective mark distinguishes the goods and services of members of an association, which is the owner of the mark, from those of other undertakings. There is no requirement for certification; any member of the association is entitled to use the mark. For example, the MGLASS collective mark was registered by the Regional Commission of the Crystal Industry in Portugal, and is used on mouth-blown glass and crystal works of art created by artisans in the *Marinha Grande* region.

A certification mark indicates that the goods or services are certified by the owner of the mark to conform to certain standards or characteristics, such as geographical origin, material, mode of manufacture or quality. For example, in Panama, authenticity labels are used on *molas* (distinctive textile panels produced by Kuna craftswomen) to guarantee their authenticity and combat the widespread sale of cheap *mola* imitations.

Registering and using a collective or certification mark can help indigenous communities to distinguish their crafts from others, and promote them and the artists who made them nationally and internationally. It can help improve their economic position and ensure that they get fair and equitable returns. Collective and certification marks can also raise public awareness and provide reassurance to consumers as to the authenticity of the goods they are buying. While certification marks or authenticity labels cannot prevent the sale of imitations, they can discourage them by distinguishing the genuine traditional handicrafts.

Geographical indications

A geographical indication is a sign that can be used on goods with a specific geographical origin and possessing qualities, reputation or characteristics that are essentially attributable to that place of origin. These products are often the result of traditional processes and knowledge, carried forward by a community from generation to generation in a given region. Handicrafts made using natural resources, with qualities derived from their geographical origin, may qualify for registration as geographical indications. For example, the appellation of origin *Olinalá* refers to craft products made by the *Olinalá* people of Mexico in accordance with special techniques and skills, using wood from the aloe tree which is native to the region.

Geographical indications do not directly protect the actual knowledge or know-how associated with handicrafts. Instead, knowledge often remains in the public domain under conventional IP systems, and is open to misappropriation by third parties. However, they can contribute to their indirect protection in several ways. They can protect handicrafts against misleading and deceptive trading practices, protect the reputation or goodwill accumulated over time, and safeguard a niche market. In addition, they can prevent others from using a protected geographical indication on goods that do not come from the defined area or do not possess the requisite quality or characteristics.

Unfair competition

Unfair competition law is used to restrain dishonest practices in the marketplace, and can be a useful means of combating false and misleading claims as to authenticity or origin - for example, where a cheaply made souvenir item carries a label falsely indicating that it is “authentic”, “indigenous made”, or originates from a particular community, measures can be taken by those producing the authentic products to prevent those claims.

Protecting the external appearance of handicraft

Copyright

Artisans often produce creative works that can be protected by copyright law. Copyright, which arises automatically upon a work’s creation, protects the products of creativity. It provides copyright owners with exclusive rights that allow them to benefit financially for a long but fixed period of time, usually the life of the author plus 50 years. These rights, also called economic rights, protect copyright owners against unauthorized reproduction and adaptation. Copyright protection also comprises moral rights, such as the right to claim authorship of the work and the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. Handicrafts may be protected by copyright if they are original and possess artistic qualities. Examples can include enamel works, jewelry, sculptures, ceramics, tapestries, woven goods and leather ornaments.

Designs

A design refers to the aesthetic aspect or outward appearance of a product, such as its shape, patterns, lines or colors, and may be embodied in a wide range of handicraft products. For example, the shape of a basket, the design of a necklace or the ornamentation of a vase may be protected as designs.

In most countries, a design must be registered in order to be protected. In addition, it must be new, original and have individual character. Protection lasts for a limited period, usually up to 25 years. An artisan who owns the rights over a design embodied in a handicraft may prevent others from producing, importing, selling, or distributing products that look like or are very similar to the protected design. However, a design essentially or entirely dictated by the technical features of a product may not be protected. In addition, some countries exclude handicrafts from design protection, which only applies to products made by industrial means.

Protecting the know-how associated with handicrafts

Patents

Patents protect inventions that are new, involve an inventive step and are capable of industrial application. They allow the patent owner to prevent others from commercially using the invention for a fixed period of time, usually 20 years.

Patents can provide indirect protection to handicrafts by protecting the tools or the process used to make them, where an artisan has substantially improved an earlier process or invented a new one capable of industrial application. For example, new functional features of items such as wood-working tools, hand-tools, brushes, paints, and musical instruments could be protected by patents, as could significant functional improvements to machines, looms, kilns or furnaces used to make handicrafts.

Trade secrets

Any confidential information that provides artisans with a competitive edge may qualify as a trade secret. Trade secrets may relate to the composition or conception of a product, a method of manufacture or the know-how necessary to perform a particular operation. Artisans may hold information that they want to keep hidden from their competitors because of its commercial value and the likelihood that competitors would use it. For example, a carpet weaver may know a faster and more cost-effective weaving technique than the ones competitors are using.

In order to qualify as a trade secret, the information must be confidential or secret, it must have commercial value because it is secret, and reasonable steps must have been taken to keep it confidential or secret. Unlike patents, which have to be applied for, trade secrets are automatically protected as long as the information is kept confidential. Artisans who possess trade secrets can prevent others from improperly acquiring, disclosing or using them. For example, if a textile enterprise finds that an employee has revealed a secret weaving technique to a competitor, it may obtain a court order to prevent the competitor from using that technique. However, trade secrets law cannot stop people who acquire or use the information in a legitimate way.

WIPO provides technical assistance on developing effective IP management strategies and on practical tools to enable TK and TCEs holders to manage IP issues, including those related to handicrafts. WIPO also offers advice, on request, on the range of IP issues related to TK and TCEs, in the light of regional and international legal developments.

Further Information

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