

# Promoting the Development of Gastronomic Tourism in Malaysia through IP

**REPORT:**

**IP ANALYSIS**



**By**  
**Giulio C. Zanetti**  
**Adjunct Professor, Loyola University of Chicago and**  
**International IP Consultant**

**Submitted on May 11, 2022**  
**Finalized on July 7, 2022**

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## I. The Project and its Methodology

The World Intellectual Property Organization (WIPO) project “Promoting the Development of Gastronomic Tourism through Intellectual Property (IP)” aims at boosting economic growth by enhancing the added value of the gastronomic tourism sector. Its overall purpose is to promote intellectual property related to culinary traditions for use in the gastronomic tourism sector. Its objectives for Malaysia are as follows:

- a. Allow the mapping, development and sustainable use of culinary traditions of Malaysia;
- b. Raise awareness on the advantages that the use of IP can bring to gastronomic tourism activities among economic operators linked to the gastronomic tourism sector and national authorities; and
- c. Strengthen the capacity of these economic operators, including IP offices, to use and take advantage of IP tools and strategies.

The first phase of the project started in 2020 and consisted of the development of a scoping study on the gastronomic tourism sector that provided a mapping of key culinary traditions in Malaysia. It ended in December 2021 with a roundtable discussion aimed at selecting a range of traditional specialties to be analyzed in the second phase of the project.

This IP Analysis is part of the second phase of the project. More in particular, the specific objective of this project component is to establish an analysis of IP tools which can be used for the promotion of the value chain of culinary traditions selected during the stakeholders’ round table of December 2021.

WIPO project is currently implemented in Peru (proponent of the project), Cameroon, Malaysia and Morocco. It was created within the framework of the WIPO Committee on Development and Intellectual Property (CDIP) in November 2018. The project was launched in Malaysia by WIPO and MyIPO with the approval of Country-Level Project Plan in July 2019.

The approach and methodology applied to this part of the project required a profound analysis of the Malaysian legislative framework relating to IP to ensure that any solution proposed be fully aligned with the domestic normative requirements. It also implied an analysis of the current state of protection and enforcement systems in the country.

Information relating to each selected gastronomic delicacy, its ingredients, traditional ways of preparing and serving them, as well as on current initiative to promote tourism and culinary traditions, was based on the analysis of all documents produced in previous phases of the project, including:

- The Scoping study on the gastronomic tourism sector: an inventory of Malaysia’s key culinary traditions
- The report of the Round Table of December 17, 2021, within the framework of the CDIP Project on Intellectual Property (IP) and Gastronomic Tourism)
- Other background project documents

This analysis was accompanied by extensive research on the internet, and exchanges with the project's counterparts (and in particular with representatives of MyIPO and Professor Rohazar Wati).

The main limitation in the project methodology was represented by the impossibility to travel to Malaysia due to Covid-19 travel restrictions. This implied the impracticality to carry out interviews to individual stakeholders operating at different levels of the Malaysian tourism and/or gastronomy value chain (including chefs, restaurant owners, producers of the various delicacies, producers of raw materials, etc.). Notwithstanding this important limitation, the amount and quality of information that was furnished by the project's counterparts enabled the International Consultant to compile this comprehensive report.

## II. The Malaysian IP Landscape

The Malaysian IP landscape may be defined as very advanced, particularly thanks to the relentless work carried out by its national IP office, named Intellectual Property Corporation of Malaysia – MyIPO (<http://www.myipo.gov.my>). In addition, its legislative framework is very well developed and most of the domestic laws and regulations are in line with international standards and best practices, and in compliance with the major obligations under international treaties.

Malaysia is currently member to nine WIPO treaties (including Berne and Paris conventions, the Madrid and PCT international registration systems, Nice and Vienna classifications, and the two WIPO copyright/related rights treaties). As member of the WTO, Malaysia has to comply with the standards of protection set out in the TRIPS Agreement.

The domestic legislative framework mainly consists of the following normative texts:

- Trademarks Act 2019 (No 815), and its implementing Regulation 2019
- Patents Act 1983 (No 291) as amended in 2006, and its implementing Regulation 1983 as amended in 2011
- Industrial Designs Act 1996 (No 552) as amended in 2013, its implementing Regulation 1999 as amended in 2013
- Geographical Indications Act 2000 (No 602), and its implementing Regulation 2001 as amended in 2013. A new amendment was recently enacted with the brand-new Geographical Indication Act and implementing regulation that came into force on March 18, 2022.

MyIPO:

The Geographical Indications Act 2000 was repealed and replaced by the Geographical Indications Act 2022 and its implementing Regulation 2022 that came into force on March 18, 2022.

- Copyright Act 1986 (No 332), and 14 implementing regulations specifically referring to particular aspects of copyright

- Protection of New Plant Varieties Act 2004 (No 634) as amended in 2006, its implementing Regulation 2008
- In December 2021, the Malaysian Parliament approved amendments to the Patents Act and Copyright Act. However, these texts are not in force yet.

**MyIPO:**

The amendments to the Patents Act came into force on March 18, 2022 excepts for provisions relating to Budapest Treaty and Post-grant Opposition.

The amendments to the Copyright Act came into force on March 18, 2022 excepts for provisions relating to Marrakesh Treaty.

Each type of IP right covered by the above laws and regulations provides its holders with exclusive rights over the output of their creativity and innovation. This means that their innovation will be protected from competitors. They will be the only ones that can use it and gain financial compensation for its exploitation. Third parties desiring to utilize their protected IPRs will be obliged to ask for their prior authorization, and comply with the economic and financial conditions set out by the IP holders.

However, IP rights are subjected to the so-called principle of TERRITORIALITY, whereby IP holders are protected only in the countries where their IP rights have been duly filed and registered. In other words, IPRs are territorial in nature.

The exclusive rights provided by IPRs undoubtedly represent a valuable and powerful tool to promote the gastronomic tourism sector of Malaysia, as explained in the section below.

### **III. How Can IP Support Development of Gastronomic Tourism in Malaysia**

Tourism is recognized as a key driver of growth for a country’s economy, with formidable impact on gross domestic product (GDP). In the extremely competitive world of tourism, it is crucial to differentiate products and services in the market and to constantly improve their offerings. This has a fundamental influence on consumers’ decisions.

The tourism value chain consists of numerous activities and providers, ranging from booking sites and travel agencies to hotels and restaurants, tourist guides and festivals, etc. All these activities collectively contribute to the success of the tourism sector of a country. This sector can also be broken down into many sub-sectors, including historical and cultural heritage, nature and adventure, sports, entertainment, etc.

Statistics demonstrate that over one-third of tourist spending goes to food. Thus, in view Malaysia’s renown culinary tradition, an emerging sector on which Malaysia could further capitalize is certainly represented by the gastronomic sector.

UNESCO recognizes “gastronomy” as an integral part of the intangible heritage of a country and its people. Malaysian gastronomy is a unique hybrid of cultural influences: Indian,

Chinese, Arab and Malay (the latter includes numerous local traditions such as Javanese, Minangkabau, Bugis Melanau, Dayak, Kadazan Dusun, Bajau, etc.). Experiencing local foods has formed an important element enabling foreigners to understand and appreciate local culture.

The intangible nature of Malaysian culinary traditions should be capitalized on in order to promote the tourism sector and, in turn, to enhance the economic development of companies, individuals and communities involved in and operating at various stages of the entire value chain. The strategic use of Intellectual Property rights can represent a valuable mechanism that allows stakeholders of the tourism sector to achieve such results by differentiating their products and service offerings, and by obtaining exclusive rights over the outcomes of their creativity and innovation.

Differentiation is often linked to intangible features, such as aesthetic considerations, cultural aspects, authenticity, creativity, brand identity, know how, etc.

IP can provide incentives and financial rewards at all levels of the value chain, from “the field to the fork”, bringing advantages to producers of raw materials and ingredients, to restaurant owners and chefs, to traders and distributors, food bloggers and influencers, and to the thousands of people employed or involved in this sector. It can also help differentiate culinary products and services as well as increase their quality, presentation and appearance. In short, IP is crucial to transform ordinary food items into sought-after brands.

IP rights can help the gastronomic tourism sector to promote holiday destinations by creating new market niches; diversify and enhance the quality of the tourism experience by, for example, certifying compliance with certain qualitative standards and criteria designed to foster confidence among tourists; increase the reputational value of an individual operator (e.g. an individual or a company) or of an association of producers; attract investments and facilitate access to capital and strategic alliances by increasing the bargaining power of domestic IP-savvy operators.

Finally, IP can support the development and implementation of an alternative ‘signature’ tourism product that helps define Malaysia as a ‘must-go’ destination, a ‘culinary and gastronomic paradise’ for the benefit of all stakeholders operating in this sector, including local communities and the private sector.

After all, many local restaurants are becoming a viable alternative to international food chains and franchises, such as KFC or McDonalds. By way of example, renowned nasi lemak restaurants (e.g. Nasi Lemak Antarabangsa), nasi kandar restaurants and tempoyak ikan patin restaurants and stalls can now be found all over Malaysia.

International competitors certainly take full advantage of all available and relevant IP rights, ranging from their trademarks (protecting names, logos, slogans, names of dishes, etc.), to their trade secrets (protecting some of their secret recipes – like the crunchy coating of KFC fried chicken; or the details of their digital marketing strategies), know-how (on modalities to operate the food outlet - as in the case of McDonalds), copyright (for all promotional materials, including the texts and images on their websites, as well as for possible IT apps to

more efficiently sell their food products), industrial designs (to protect possible efforts to improve the aesthetic features of their products or of their packaging), or other tools as domain names (to cover the key part of their internet address), etc. In order to successfully compete with the foreign “giants” food outlets, Malaysian food operators should follow these examples and also use all available IP tools to strengthen their competitive position. IP rights in fact represent powerful instruments to support domestic players within the gastronomic sector not only in their efforts to protect their creativity and to effectively attract potential new customers, but also to successfully commercialize their food-related products and services through a variety of licensing schemes (including franchising and merchandising) with a view to enhancing revenue generation and commercial success.

As mentioned above, the IP system provides for a spectrum of exclusive rights which can contribute to creating or strengthening the gastronomic tourism sector. These include trademarks, certification marks, collective marks, geographical indications, copyright, trade secrets, etc. These rights will be presented in the following section with the indication of how they can be used in practice to promote Malaysian gastronomic tourism.

#### **IV. Main IPRs Relevant to Gastronomic Tourism**

From the outset, it should be highlighted that patent protection cannot be granted to culinary recipes and gastronomic specialties, as they lack the required technical nature. In particular, sect. 12.1 of the Patents Act defines inventions as “... an idea of an inventor which permits in practice the solution to a specific problem in the field of technology”. Similar considerations are applicable to Utility Innovations, as provided by Part IV, sect. 17 of the Patents Act.

On the other hand, the following IP rights, if strategically used by players of the gastronomic sector, may significantly contribute to their commercial success:

- a. Trademarks
- b. Collective marks
- c. Certification marks
- d. Geographical indications
- e. Copyright
- f. Industrial Designs
- g. Trade secrets

The paragraphs below provide for short explanations of each IP right. Most importantly, they propose options, examples and ideas on how the various IP rights may be used to promote culinary products for the benefit of Malaysian gastronomic tourism.

- a. **TRADEMARKS:** signs that distinguish the products/services of a company or a physical person from those of competitors. They can take the form of one or more words, a logo, an image or a combination of all these elements. They can be in standard capital letters or written in a stylized manner; they can be black and white or in a variety of colours.

In the field of gastronomic tourism, marks can be effectively used to distinguish, for example, names of dishes created by certain individuals (or companies), names and logos of restaurants, food delivery services or distribution channels, names of products, slogans, names of the ingredients, etc.

By way of example:



However, it is important to remember that marks must comply with all domestic legal requirements in order to be registered. In particular, a mark must be:

- distinctive (see sect 3 of Malaysian Trademarks Act that provides for a definition of trademarks as “sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings”, as well as sub-section 23(1) (a) and (b) that specifically refer to lack of distinctiveness),
- not essentially descriptive or generic (see sub-section 23(1)(c) of Malaysian Trademark Act),
- not deceptive/misleading (see sub-section 23(5)(b) of Malaysian Trademarks Act).

This implies that, for instance, actors of the gastronomic field cannot monopolize the generic name of a dish (e.g. Satay, Nasi Lemak, etc.) or of its main ingredients (e.g. banana leaves, coriander, cumin, etc.). Similarly, they should avoid adopting as trademark a term that could potentially mislead customers as to the quality, characteristics, or geographical origin, etc. of the products/services in question.

By way of example, they should refrain from adopting a mark that consists of a geographical name as this could be assessed as either descriptive (if the product, dish or main ingredients do come from the place indicated by the name which is the subject of trademark filing), or deceptive (if the product, dish or main ingredients come from other places). For instance, the invented mark “Pahang beef”, if filed as an ordinary trademark, may be rejected in some countries as descriptive if the beef indeed comes



from the region of Pahang; on the other hand, it may be rejected as deceptive/misleading if the beef comes from other geographical areas.

In this context, it should be noted that the best way to protect geographical terms is as GIs, and possibly also as collective/certification marks (see below).

On the other hand, also slogans and taglines may be protected as trademarks, if they comply with the above legal requirements.

A trademark that contains a partially descriptive, or a deceptive/misleading or a geographical term, may nonetheless to be accepted for registration:

- if it contains other elements, such as non-descriptive and non-misleading logos, designs, images, and/or
- if instead of filing the mark in black and white, the sign is filed claiming a specific colour or combination or colours, and/or
- if instead of being filed in standard capital letter, it is presented in a special script or in a stylized manner.

It should also be recalled that the level of distinctiveness may also increase through use (the so-called “secondary meaning”).

By way of example, the mark PIZZA HUT comprises all the above elements that make the mark distinctive (i.e. non-descriptive logo, special colours, special script and duration of use):



Finally, apart from complying with legislative requirements, producers and/or traders of Malaysian gastronomic delicacies should also be aware of the following best practices relating to **marketing considerations** when choosing their trademarks. In particular, the proposed mark (including words and/or images and logo):

- Should be EASY to read, spell, write, pronounce and especially to remember, not only for Malaysian customers, but also for foreigners.
- Should be suitable for potential use in all marketing channels (e.g. TV, newspapers and magazines, social media including Facebook, Instagram, Twitter, LinkedIn, Tic Toc, etc.);
- Should be able to be used in very large format (e.g. on the side of a building) or on very small supports (such as business cards).
- May be presented in a specific or special colour and special font, where the choice of the precise colour and font may depend on the identity and tastes of the “customer persona”, i.e. the imaginative profile of the typical potential buyer of the products in question. By way of example, the colours chosen for

fast food restaurants targeting youth may be very different from those suitable for a chain of elegant restaurants aimed at senior and wealthy customers.

- Should not have any negative connotation in any country where the products or services will be sold or delivered. A quick internet search may be conducted in this regard.

Finally, it should be noted that the above trademark, filed and protected with or without a logo, possibly in a special colour and font, should be used consistently over time. Consistency is in fact a crucial element for the commercial success of a brand.

b. **COLLECTIVE MARKS:** signs distinguishing the goods or services of members of the association which is the proprietor of the collective mark from those of other undertakings (see definition provided by sect. 72 of the Trademark Act). Collective marks present some peculiarities as compared to ordinary marks, i.e.:

- They belong to a consortium or an association, and not to one individual person or company;
- They must be capable of distinguishing goods and/or services of the members of the consortium/association that owns the mark from those of other undertakings that are not members of said consortium/association;
- The goods or services they cover enjoy certain features relating to their nature, characteristics, quality, method of manufacturing, etc. that comply with specific qualitative standards (as outlined in the Regulation of Use).

An application for the registration of a collective mark must be accompanied by a copy of the Regulation of Use of the proposed collective mark, and such Regulation of Use must contain some specific information as provided by sect. 53 of the Trademark Regulation.

So far, there are no collective marks registered in Malaysia in the gastronomic or agri-food sectors.

Example of a collective mark from Brazil for fruit and derived products:



**NB:** However, it should be emphasized that together with certification marks and GIs, collective marks represent a key tool to enhance the quality of products and their ingredients, and to obtain a certain level of standardization. This bears significant potential considering that the entire world, including Malaysian consumers, is becoming more and more health conscious and attentive to the quality of products and their ingredients. The use of genuine and high-quality organic ingredients (such

as rice, vegetables, etc.) can therefore represent a valuable tool to influence buyers' commercial and nutritional choices.

- c. **CERTIFICATION MARKS:** sign indicating that the goods or services in connection with which it shall be used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics (see definition provided by sect. 73 of the Trademarks Act).

The quality standards are described in the Regulation of Use that is filed together with the mark. It should be noted that the owner of the certification mark cannot use it on its own products/services. In addition, the certification function is often performed by public entities or non-governmental bodies that possess the required certification capacity.

Certification marks are not only provided by the Malaysian Trademarks Act, but are also used and registered in Malaysia, including in the agro-food sector.

In the gastronomic sector, this type of signs could in principle be used to certify a number of relevant items, such as:

- the compliance with hygiene standards for restaurants, production and processing sites;
- the origin of certain products, raw materials and ingredients;
- the compliance with particular methods of preparation and cooking;
- the respect of certain environmental standards;
- the respect of ethical standards and human rights considerations;
- etc.

There are currently 18 certification marks registered for agricultural or food-related products. These include: 100% Susu segar Malaysia, Malaysia's best, Sarawak best, Malaysian brand quality. excellence. distinction, Malaysia good design, Malaysia halal, Myorganic Malaysia, etc. The following are examples of certification marks logos registered in Malaysia and, as such, they may be utilized by food producers who can ensure their compliance with the required qualitative standards and have received authorization from the relevant certification body:



Example of international certification mark for a variety of food items:



Example of certification mark for fruits from Dominica, Saint Lucia, Saint Vincent, Grenadines:



- d. **GEOGRAPHICAL INDICATIONS:** signs that indicate that a product originates in a given geographical area and its qualities, reputation, or other characteristics are essentially due to its geographical origin. In the field of gastronomic tourism, GIs may be extremely useful to protect the (often geographical) names of agricultural produce or specific ingredients of dishes and culinary recipes.

As mentioned, a brand-new Geographical Indications Acts, and its Regulations and Guidelines came into force on 18 March 2022.

There are currently 106 registered GIs in Malaysia, mostly owned by local undertakings, and ranging from agricultural products, to handicrafts, silks, and drinks. Only 10 of the registered GIs refer to non-agricultural or non-food products (i.e. handicraft, silk, etc.). This means that there are 95 GIs that could be relevant to promote gastronomic tourism, as relating to food or key ingredients of culinary specialties. By way of example, the following GIs fall into this category: Harumanis mango, Borneo virgin coconut oil, Sabah seaweed, Ikan Empurau, Sarawak pepper, Tambunan ginger, Sarawak sour eggplant, Langkawi cheese, Durian nyekak Sarawak, and Malaysia durian musang king, Ikan terubuk mulut besar Sarawak, ikan puput Sarawak, Sarawak tapioca, Sarawak sago, durian Balik Pulau, etc.

GIs can be used by all businesspeople and entrepreneurs that operate in a certain geographical area and that comply with the required qualitative standards (as spelled out in detail in the Book of Specifications). However, products and ingredients bearing a GI may be sold elsewhere and can therefore be used in culinary dishes originating in or sold in other areas.

This implies two important consequences linked to the promotion of Malaysian gastronomy:

- Producers of delicacies, when using ingredients that are covered by a registered GI, could refer to this tool to portray the higher quality of their products and dishes, in compliance with labelling rules or other normative texts. Depending on the notoriety of the GI in question, this technique could represent a very strong marketing tool to entice a growing number of customers, who are attentive to the quality and purity of the food they consume.
- The use of GIs on certain gastronomic creations does not exclude the concurrent use of individual marks in order to differentiate the products of the various players operating in the geographical region concerned. This in fact can be considered as a best practice. After all, both GIs and trademarks are extremely powerful branding tools, and they should be capitalized upon to maximize commercial success.

The following is the official logo of Malaysian GIs:



Example of registered GIs from Malaysia:



Bario rice<sup>1</sup>



Sarawak pepper

<sup>1</sup> Source of the photo:

[https://www.google.com/search?tbs=sbi:AMhZZitxLtk15wtFU0uVubIRWFn5taKDNwZu04BrAg4pXEbg-0Q61g0HtR\\_1y9D21vkJ8T8eFtJc-nmkJt5szvk\\_1OGWO1PDxTthVYks9e4iuzsdpuWq6dpoiBB-awktUP8rtgVxPvPIX2JwmzAapi\\_1kJtaa5OweRFEm-MvnmicXQb7W7EbMfglGNxkU2T6F3ZnQnJzUFemGKf8JzGkB76o5EkV6-Oi2B1sSIotfbtX0jQcDgialLgJ7PzqOSxOdpmz1--](https://www.google.com/search?tbs=sbi:AMhZZitxLtk15wtFU0uVubIRWFn5taKDNwZu04BrAg4pXEbg-0Q61g0HtR_1y9D21vkJ8T8eFtJc-nmkJt5szvk_1OGWO1PDxTthVYks9e4iuzsdpuWq6dpoiBB-awktUP8rtgVxPvPIX2JwmzAapi_1kJtaa5OweRFEm-MvnmicXQb7W7EbMfglGNxkU2T6F3ZnQnJzUFemGKf8JzGkB76o5EkV6-Oi2B1sSIotfbtX0jQcDgialLgJ7PzqOSxOdpmz1--)

Examples of GI from Cambodia, Colombia and India:



As evidence of the strong power of GIs as distinctive signs capable of influencing consumers' choices, it is interesting to note significant results achieved by the Kampot Pepper GI in Cambodia, where the price of GI-protected pepper during the period 2015 to 2020 grew from \$9 to \$15 (for black pepper), and from \$15 to \$25 (for red pepper), while the price of ordinary pepper (i.e. not covered by the GI) plummeted from \$9.5 in 2015 to \$2 in 2020. In addition, the recent registration of the GI in the EU facilitated access to this new lucrative market. Nowadays, 70% of Kampot Pepper is exported to international markets.

Please refer to Annex I for information about Sarawak Pepper.

However, it should be recalled that the mere fact of obtaining a registration for a new Geographical Indication does not automatically entail commercial success. This will depend to a large extent on the capacity of all relevant stakeholders (often supported by State actors) to effectively promote the GI in the local market and abroad. Another element that has paramount importance in determining the success of a GI is the ability of the association that owns the GI to assure systematic compliance with the established qualitative standards by all members of the association.

- e. **COPYRIGHT:** original creations in the artistic and literary field (e.g. any written materials such as recipes, company brochures, marketing advertisements, etc.). In the field of gastronomic tourism, copyright may be extremely beneficial in protecting a restaurant's menu, storytelling linked to food traditions, marketing and advertisement materials, food brochures, websites and IT applications, culinary recipes, etc. However, it should be noted that copyright does not protect the content of the recipes, but only the original way in which they are expressed.

Protection of copyrighted work arises automatically upon their creation, without any need to deposit them with the relevant domestic authority (in the case of Malaysia: MyIPO). However, their deposit may nonetheless be advisable in certain situations as it can facilitate the burden of proof in case of possible litigation. In this context, MyIPO provides for a very user-friendly Voluntary Notification System.

By way of example, the following creations are protected by copyright<sup>2</sup>:



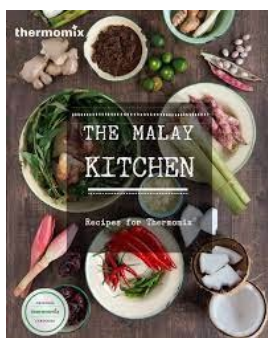
Restaurant menu



Food brochure



Food IT apps



Recipe book



Marketing campaigns

- f. **INDUSTRIAL DESIGNS:** the appearance of utilitarian products. In the field of gastronomic tourism, they are particularly useful to protect efforts to improve the visual appearance of products (e.g. the shape of food items sold to consumers), and of their packaging. By way of example, producers may enhance their commercial success by improving the ornamental appearance of simple food items, such as biscuits, rice cakes, etc., by presenting them on the market in new and creative forms.

<sup>2</sup> Sources of the photos below: [https://www.v2mshop.com/?category\\_id=1319249](https://www.v2mshop.com/?category_id=1319249);  
<https://beautybrochureideas.blogspot.com/2021/06/brochure-design-nutrition.html>;  
<https://www.yellowbees.com.my/top-food-delivery-platforms-malaysia/>;  
<https://www.lazada.sg/tag/thermomix-recipe-book/>;

[https://www.google.com/search?tbs=sbi:AMhZZitlg9FWbXkwmtyPSqv1Zaj2s59RBJtnOk-JN34LODyDILSCJFs7G1xuP8hjOINrp0mjY956-OPprjH\\_1uJ1kv5nRHDp0tTQP3hDTmutSiuW8rVBdaqZaYHnj3duSCnX5c0DmY0voOJ9qwm2WgALmLR87q4BT70ENOXG9USdR6LYCSs1mhFIRKNBDn6t-ixcYppqGIBglLXKUDx-U9F0ppNXHS9bmKOG3Heyl\\_1K4cYzOG84qE\\_1CG\\_10vJmE3Z3LW3NkipM9vLoQi8h\\_1kWqxESRn23D06EiPFXI3Q\\_1DUoAM3o2HftFsqQZekXs4mHMjTMXb9-x0eyA1rHdtvsjn6M\\_1Ko7iQMGGUvw&btnG=Ricerca%20tramite%20immagine&hl=it](https://www.google.com/search?tbs=sbi:AMhZZitlg9FWbXkwmtyPSqv1Zaj2s59RBJtnOk-JN34LODyDILSCJFs7G1xuP8hjOINrp0mjY956-OPprjH_1uJ1kv5nRHDp0tTQP3hDTmutSiuW8rVBdaqZaYHnj3duSCnX5c0DmY0voOJ9qwm2WgALmLR87q4BT70ENOXG9USdR6LYCSs1mhFIRKNBDn6t-ixcYppqGIBglLXKUDx-U9F0ppNXHS9bmKOG3Heyl_1K4cYzOG84qE_1CG_10vJmE3Z3LW3NkipM9vLoQi8h_1kWqxESRn23D06EiPFXI3Q_1DUoAM3o2HftFsqQZekXs4mHMjTMXb9-x0eyA1rHdtvsjn6M_1Ko7iQMGGUvw&btnG=Ricerca%20tramite%20immagine&hl=it)

On the other hand, food packaging plays an increasingly important role in the determination of consumer choices. This is an investment worth undertaking also in view of the fact that packaging is nowadays considered as “the first silent ambassador of any product”. Industrial design can also be used to protect certain types of architectural designs relating to the interior layout design of restaurants.

The above innovative shapes (of food products, of their packaging) would qualify for legal protection under industrial design only if they are in full compliance with the validity requirements of the Malaysian Industrial Designs Act, and in particular with the worldwide novelty requirement provided by sect. 12.

Examples of creative packaging in the food and drink sector:



for rice



for spices



for shrimps



for sushi



for precooked biryani

Examples of creative shapes for products:





for bread



for chocolate

- g. **TRADE SECRETS:** any confidential business information that provides a company with a competitive advantage precisely because it is kept secret. By way of example, more effective post-sale or marketing strategies, list of customers of restaurants with their contact details and commercial preferences, lists of providers of raw materials and ingredients, etc. would certainly qualify for protection under trade secrets.

In the gastronomic field, trade secrets could also play an important role in protecting the way in which certain ingredients are produced and/or harvested, how specific dishes are prepared, the secret ways to cook food, or the modalities in which certain spices are creatively mixed. A famous example in this regard is represented by the secret recipe of the crispy flower crust of KFC fried chicken. Trade secrets should also be effectively used to protect marketing strategies, including digital marketing, listing of providers and customers, etc.

However, it should be recalled that trade secrets are protected only as long as they are maintained secret. Should anyone, without committing any abuse, succeed in understanding a trade secret, its protection would immediately end.

In short:



## V. OTHER TOOLS RELEVANT TO GASTRONOMIC TOURISM

a. **DOMAIN NAMES:** Internet addresses, used to route users to web sites, consist of one or more parts, in a specific sequence and delimited by dots. The core part of internet addresses (technically called the “second level” of the domain name) often, but not always, encompass the company’s (main) mark. Domain names provide exclusive rights of use for a particular duration of time over the chosen internet address. The choice of domain names is nowadays just about as important as the choice of business names and trademarks: anyone trying to locate a company or its products online will enter the name of the company possibly alongside the category of its products or services in a search engine in the anticipation its domain name rises to the top. Sometimes, choosing a domain name in a specific extension (technically called the “Top level Domain”) can actually add meaning, whether a country code (e.g., .my) or a keyword (e.g., “.food”). It should be noted that domain names are not subject to the principle of territoriality and that having the core part of the domain name registered as trademark or using the registered trademark for the core part of the internet address may be crucial not only for user visibility but for avoiding losing the domain name in future (cybersquatting, use in bad faith).

In the gastronomic sector, domain names would be crucial to enable producers of raw materials and ingredients, manufacturers and distributors of local dishes and culinary recipes to be found on the internet by potential customers and to enable engagement in e-commerce transactions.

By way of example, the following are internet addresses of food-related players in Malaysia and abroad:

- [www.foodpanda.my](http://www.foodpanda.my) (or .com)
- [www.sugarbun.com](http://www.sugarbun.com)
- [www.pacificwestfoods.com.my](http://www.pacificwestfoods.com.my)
- [www.papparich.com.my](http://www.papparich.com.my)
- [www.kawanfood.com](http://www.kawanfood.com)
- [www.carrefour.fr](http://www.carrefour.fr)
- [www.mcdonald.com](http://www.mcdonald.com)

b. **TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS:** Knowledge, know-how, skills and practices that are created, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

Traditional knowledge can be identified in a wide variety of sectors, including the agricultural, scientific, technical, ecological, medicinal, and biodiversity-related sectors. While there is not yet an accepted definition of traditional knowledge (TK) at the international level, it can be argued that:

- TK in a general sense embraces the content of knowledge itself as well as traditional cultural expressions, including distinctive signs and symbols associated with TK.
- TK in the narrow sense refers to knowledge as such, in particular the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations<sup>3</sup>.



Traditional knowledge has systematically ancient roots and it is often oral. As such, it is normally not protected by conventional intellectual property (IP) systems, which require novelty, expression of the knowledge in a tangible form, compliance with certain formality requirements, etc. In addition, IP systematically provides for a certain duration of protection which is by definition incompatible with the notion of traditional knowledge<sup>4</sup>.

However, innovations and creations based on TK may effectively benefit from patent, trademark, and geographical indication protection. They may also be protected as a trade secret or confidential information.

Affording protection to TK would enable its legitimate owners to embark upon a set of defensive strategies in order to ensure that third parties do not acquire illegitimate IP rights over their TK, nor unfairly obtain commercial gains through its exploitation. On the other hand, owners of traditional knowledge could potentially exploit it for the benefit of their company and community.

Unfortunately, Malaysia does not yet have a law to protect its traditional knowledge, making it vulnerable to abuses and misuses by foreign and domestic stakeholders.

MyIPO initiated a pilot project to develop a database for traditional knowledge and biological resources in 2009. MyIPO worked with Department of Indigenous Development (JAKOA), Institute for Environment and Development (LESTARI UKM), Forest Research Institute Malaysia (FRIM), the State Government of Sabah and the Ministry of Agriculture and Food Industry (MAFI) to collect data on traditional knowledge and genetic resources. The database is known as the Malaysian Traditional Knowledge Digital Library (MyTKDL) and has been used by Patent Examiner internally as a defensive mechanism to protect traditional knowledge. MyTKDL has a collection of approximately 1,400 data containing the rich fauna and flora in the country as well as the elements of traditional knowledge and biological resources.

<sup>3</sup> See WIPO website: [Traditional Knowledge \(wipo.int\)](http://www.wipo.int)

<sup>4</sup> Source of the photo: <http://www.indianepalviaggi.it/la-leggenda-della-cucina-ayurvedica/>

However, the Ministry of Natural Resources and Environment administers a program aiming at documenting Malaysian traditional knowledge and at developing a national action plan on traditional knowledge. It appears that the Government also intends to establish a Digital Library on Traditional Knowledge.

On the other hand, biodiversity issues are partially covered by the Wildlife Conservation Act 2010 (Act 716), and especially by the “Access To Biological Resources And Benefit Sharing Act 2017”. This latter Act, by regulating access to biological resources, and providing for rules on Benefits Sharing (ABS), embraces the key principles of the Convention on Biodiversity (CBD) and provides for protection for the associated traditional knowledge.



In the gastronomic sector, traditional knowledge could potentially play an important role in terms of ways in which raw materials are harvested, and how ingredients are treated, mixed and cooked. However, in view of the existing legislative gap, this solution may present some challenges for its immediate application by actors of the gastronomic sector<sup>5</sup>.

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<sup>5</sup> Source of the photo: <https://joselynkiri.blogspot.com/2022/05/what-i-learned-as-volunteer-at-2017.html>

## VI. IP Tools for Seven Selected Malaysian Culinary Recipes

This section of the report provides for concrete suggestions on what specific IP tools may be adopted by producers and traders of seven Malaysian gastronomic recipes that were identified by the relevant stakeholders attending the December 2021 workshop organized by MyIPO.

### a. Nasi Lemak



Nasi Lemak<sup>6</sup> is an iconic dish for Malaysia, and a very popular breakfast menu all over the country. Originally, it was a traditional Malay dish from West Malaysia. However, nowadays it can commonly be found everywhere in the country, and it is considered as a national dish.

The main ingredients for cooking Nasi Lemak are the following:

- White rice;
- Coconut milk;
- Daun pandan (screw pines leaves) - Daun pandan or Pandan leaves or screwpine leaves may be considered as the key ingredient that, added to the rice, provides Malaysian Nasi Lemak its distinctive flavour.

Nasi Lemak is traditionally cooked over a slow fire. However, rice can also be steamed or easily cooked in an electric rice cooker. Sambal tumis ikan bilis, or anchovies cooked in chilli paste and tamarind seeds are added to the rice. This dish is served with boiled eggs and a sliced cucumber.

It should be noted that an equivalent dish exists in different parts of Indonesia: in Jakarta it is known as Nasi Uduk, in Central Jawa as Nasi Liwet, and in Banda Aceh as Nasi Gurih. This seems to imply that the Malaysian version of the dish does not present any unique or distinctive features. The only differentiating factor seems to be in its name.

In terms of IP protection, there are various options:

First and foremost, producers of Nasi Lemak could adopt **trademarks** by filing and registering them with MyIPO. This would undoubtedly be the easiest and more practical option. In this context, please refer to the considerations and explanations presented in section IV.a of this Report.

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<sup>6</sup> Source of photo: <https://www.thespruceeats.com/nasi-lemak-coconut-pandan-rice-3030254>

Trademarks could be used to identify the name of restaurants and food outlets, or of chains of restaurants, franchises and food delivery services, the names of production sites and distribution networks. They can also be used to distinguish Nasi Lemak products or related products, with such signs displayed on their packaging.

Individual producers, traders and companies should ensure that their proposed trademarks comply with the legal requirements for the validity of marks as provided by the Malaysian Trademark Act. In particular, a mark must be distinctive (sections 3 and sub-sections 23(1)(a) and (b) of the Malaysian Trademark Act) and cannot be essentially descriptive, generic (sub-section 23(1)(c)), and deceptive/misleading (sub-section 23(5)(b)).

This implies, for example, that:

- The terms Nasi Lemak alone could not be registered as trademarks, as generic.
- The terms Nasi Lemak accompanied by (often laudatory) adjectives such as “delicious”, “gorgeous”, “tasty”, “super”, “best”, “daily”, “traditional”, “new”, etc, should also be avoided as essentially descriptive of the qualities and characteristics of the products.
- The terms Nasi Lemak accompanied by geographical terms such “Malaysian” or “Malay”, “West”, “Johor”, “Pahang” (or the names of cities, valleys, rivers, etc.) should be avoided as they could be rejected as descriptive if the products do come from (or the services are rendered in) the place indicated by the name which is the subject of trademark filing; alternatively, they may be rejected as deceptive if the products, or main ingredients come from other geographical places. As mentioned, the most appropriate way to protect geographical terms is through GIs, collective and potentially also certification marks.
- Please refer to Section IV.a of this report for more information about how to possibly obtain protection for the above marks, by adding logos, images, colours, stylized forms.

Individuals and companies wishing to adopt trademarks for their Nasi Lemak are advised to follow the best practices outlined below:

- Insert in their proposed marks highly distinctive terms and elements, such as:
  - personal names, surnames and nicknames (provided they are not too common);
  - invented terms, such as XYZ, EFG, etc.;
  - terms that possess a meaning that is understandable to the average consumers in Malaysia, but are used out of context. By way of example, terms such as “elephant”, “gorilla”, “butterfly”, etc. would be considered as distinctive;
  - two or more digits, such as “456”, “68”, etc. avoiding numbers that may contain a message, such as “number 1”, etc.;
  - a combination of letters and digits, such as “C-11”, “S4”, etc. Again, combinations that may allude to the qualities of the products (such as “A1”, “AAA”) should be avoided;
  - non-descriptive logos and images. In other words, any logo could be added to increase distinctiveness provided it does not allude to food-

- items (e.g. the image of rice or of nasi Lemak) or geographical symbol (e.g. the KL tower, or the Petronas twin towers);
- highly stylized or graphic forms and shapes.

An example that Malaysian producers and traders could follow is Ms. Saleha Abdullah, who started her business in a small stall/warung over 10 years ago, selling nasi lemak in the amount of one kilo of rice per day. In order to differentiate her products and services, she added her name (Saleha) to the generic terms Nasi Lemak. Nasi Lemak Saleha presents also some distinctive feature in terms of its aromatic flavour and specific wrapping in banana leaves.

Today, Nasi Lemak Saleha<sup>7</sup> is quite well known among local nasi lemak lovers all over Malaysia. Within the period of 10 years, her business considerably expanded and now it earns almost rm400,000.00 per month, and has a second branch in Sri Rampai where they managed to purchase a building worth RM3.8 million with the help of PUNB. Nasi Lemak Saleha today employs over 60 staff and has a daily income of rm12000. Customers can buy Nasi Lemak Saleha in selected Shell Petrol stations in the Klang Valley, through their official website, and online through Foodpanda<sup>8</sup>.



The above trademark was filed and successfully registered in March 2018, in class 30, under number 2018003330 as a complex mark, i.e.: consisting of words accompanied by a logo/image in a specific colour. The term “KG Pandan” were disclaimed. Please see image of the mark as registered below:



<sup>7</sup> Source of the first photo: <https://foursquare.com/v/nasi-lemak-salehakampung-pandan/4d02c48f90762d43844df08a>

<sup>8</sup> Source of the second photo: <https://foursquare.com/v/nasi-lemak-salehakampung-pandan/4d02c48f90762d43844df08a>

Within the category of trademarks, nasi lemak producers and traders could, at least theoretically, also consider the option of adopting **collective marks**. However, given the very significant number of producers, it would be very far-fetched and potentially challenging to organize all of them into an association or a consortium capable of agreeing on a set of common qualitative standards and of monitoring their consistent application.

More likely and realistically might be the establishment of one or more associations covering only some like-minded nasi lemak producers. Evidently, they would have to agree not only on specific qualitative standards to set their products apart from ordinary nasi lemaks, but also on a creative and unique name that could be registered as collective mark.

Collective marks may also support the current initiative undertaken by the Department of National Heritage (under the Ministry of Unity, Culture, Arts and Heritage) to compile a list of traditional foods under the National Heritage Act 2005, with a view to ensuring that these dishes remain a part of Malaysian culture and continue to be enjoyed by the current and future generations. There are currently 213 foods/dishes inserted as traditional foods under the National Heritage Act 2005, and these include also Nasi Lemak. The Department would like to have this list included in the UNESCO world heritage. In this context, a collective mark for a specific group of nasi lemak producers or for producers of traditional Malaysian breakfast dishes could potentially be conceived with the aim of attracting and educating tourists and promoting local gastronomic tourism.

Similar considerations are applicable to certification marks. In theory, it would be possible to set up a certification body capable of certifying the quality, characteristics, origin, ways of manufacturing of nasi lemak produced by certain producers. This would undoubtedly entail significant advantages in terms of enhanced credibility and more visibility to the products, additional and powerful marketing messages to the consumers, etc. However, this would require significant organizational and coordination skills and financial resources to promote the certification scheme.

Another IP tool that producers and traders of Nasi Lemak should consider is **industrial design**. Investing in the visual appearance of products and of their packaging is certainly excellent in terms of ROI (“returns on investment”), as consumers worldwide pay more and more attention to the “beauty” of the products they buy. Banal forms and boring packaging certainly do not help products to stand out in the marketplace. Conversely, creative shapes, curious-looking forms, innovative packaging in terms of profiles and colour combinations can significantly contribute to promoting the sale of a certain product and to transform it into a brand.

Industrial design is the IP right that, if adequately filed and registered, can confer its owners with exclusive rights over:

- The creative shape of a food product: in this case, producers could endeavour to conceive innovative and creative visual appearances for their nasi lemak, different from the normal shapes commonly found on the market (see images below).



- The aesthetic appearance of nasi lemak packaging: this could be both in terms of the peculiar 3-D shape of a box or container (as opposed to ordinary square-rectangular boxes), or in terms of the 2-D decorations and colour features on the box (as opposed to plain or very simple and banal boxes).

By way of example, some creative packaging for nasi lemak already exist<sup>9</sup>:



As mentioned in section IV.f of this report, protection under industrial designs may only be afforded by MyIPO (and other IP offices) only if the proposed 2-D or 3-D shapes complies with validity requirements provided by the domestic legislation (in the case of Malaysia, sect 12.2.a provides for world-wide novelty). Other countries may demand compliance with additional requirements, such as “individual character”, “originality”, etc.

In addition, copyright and trade secrets could play a fundamental role in protecting the interests of producers or traders of Nasi Lemak.

**Copyright** would be extremely useful to protect any written or visual materials that they might create. By way of example, copyright provides exclusive rights over original restaurant menus, storytelling linked to food traditions, marketing and advertisement materials, food brochures, and original ways to present culinary recipes. It should also be noted that copyright also protects software. This means that nasi lemak players can rely on this IP right to protect their websites and their content (text, photos, videos, music, etc.) as well as possible applications to facilitate the purchase of the delicacies online.

On the other hand, **trade secrets** could be very important to protect confidential business information that provides a company with a competitive advantage, such as innovative post-sales or marketing strategies, lists of clients and customers with their contact details and commercial preferences, lists of providers of raw materials and ingredients, the unique way in which certain ingredients are produced or mixed in a dish (e.g. the quantity and modalities to add Daun pandan to the nasi lemak), etc.

Finally, Nasi Lemak producers and traders should adopt **domain names**. This is a *condicio sine qua non* particularly for those businesspeople who intend to take advantage of the numerous opportunities opened up by e-commerce, social media and digital marketing.

Domain names allow potential customers to identify and locate a certain producer or a certain product on the internet. In this context, it should be recalled that domain names should in

<sup>9</sup> Source of the photos: <https://www.deviantart.com/kawaiwawi/art/Nasi-Lemak-Packaging-45015973>, and [https://www.kindpng.com/imgv/TwJJioT\\_nasi-lemak-packaging-hd-png-download/](https://www.kindpng.com/imgv/TwJJioT_nasi-lemak-packaging-hd-png-download/)

principle correspond to the trademark used either to distinguish the specific product/service or the company. This is because consumers, when browsing online on the various search engines, would most likely try to digit such terms in the hope to find the product/service they are looking for.

## b. Satay



The same IP options presented in sub-section VI.a in relation to Nasi Lemak<sup>10</sup> are available and applicable to satay. Also in the case of satay, the ingredients and way of cooking are rather common and widespread in various Southeast Asian countries (e.g. Indonesia, Brunei, Philippines, Singapore and Thailand).

The main ingredients for the satay are:

- Diced meats (beef, chicken, goat, rabbit, or pork – seasoned and then skewered and grilled)
- Ketupat (rice cubes)
- Sliced onions
- Sliced cucumber
- Peanut sauce (made of ground peanut cooked with chili paste, prawn paste and coconut milk)

The dish is prepared in approximately the same manner in all countries where satay is widely consumed. This limits the possibilities to obtain exclusive IP rights for the dish itself. However, some IP tools and other tools may nonetheless prove very useful to producers and traders of satay, such as restaurant owners, manufacturers of ready-made satay sauces, creators of satay delivery services, etc. These include:

- (Individual) Trademarks for the creative and distinctive name of the products (e.g. say sauces) or of the services (e.g. food outlets, delivery services);
- Industrial designs for their packaging (2D and 3D shapes);
- Domain names for the core part of their internet addresses;
- Copyright for the content of their website, any promotional material, and for any possible software powering their website or IT applications;

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<sup>10</sup> Source of the photo: <https://www.google.com/search?sa=G&hl=it&tbs=simg:CAQShwIJBHJHPAANGusa-wELELCMPwgaOgo4CAQSFLUNhSGICfMS2xXNDag-4C2dJaknGhrCH1sBJh68Shfrlj7WuXmuJqgiTovUzEa29yAFMAQMCxCORv4IGgoKCAgBEgRPgoXeDAsQne3BCRqbAQoXCgRib3ds2qWI9gMLCgkvbS8wNGtrZ20KHgoLc2hpc2ggdGFvdWvapYj2AwsKCS9tLzBkeXhxcQocCglicm9jaGV0dGXapYj2AwsKCS9tLzA0dDhwOQomChJjaGlsaS1nYXJsaWMgc2F1Y2XapYj2AwwKCi9tLzBkZnhmMnMKGgoHY2h1dG5ledqliPYDCwoJL20vMDFiZ2RfDA&sxsrf=ALiCzsbcpapz9LPMhl6tqJ5i5KnIJEaOA:1652253419923&q=chicken+satay&tbm=isch&ved=2ahUKewiZlrHR89b3AhUygf0HHY8GCVoQwg4oAHoECAEQMw&biw=1280&bih=577&dpr=1.5#imgsrc=CDhWOoLCKMtNCM>

- Trade secrets for any confidential business information, or for any new, unique and creative ways to mix the spices for the satay sauce.

The options of setting up collective and/or certification marks systems are, in theory, available. However, they are rather challenging not only in terms of time and funds, but also because of the complexity linked to the establishment of effective coordination and quality monitoring mechanisms among all satay producers, in order to ensure that the same quality standards are applied by all players.

An additional possibility would be to capitalize on GIs, not on the dish itself that is widespread in many Southeast Asian countries, but on some of its ingredients. However, this option would be available only if and when one of the key ingredients of the satay is registered as GI.

In terms of trademarks, satay producers and traders could follow the example of Satay Kajang Haji Samuri, that added to the generic term “satay”, also:

- the name of the city (“Kajang”). However, as already explained, this could in principle have created additional problems for its registration as trademark, as the sign could have been assessed as descriptive of the origin of the products covered by the mark; and especially
- the personal name “Haji Samuri”, which makes the mark sufficiently distinctive
- See image of the trademark below<sup>11</sup>.



In fact, the above trademark was filed and successfully registered in 2003, under number 03002264 for services in class 43 (services for providing food and drink). It is interesting to note that the registration clearly indicates that “... registration of this trade mark shall give no right to the exclusive use of the words 'sate kajang'”.

However, it seems that the packaging adopted by Satay Kajang Haji Samuri does not contain any creative or distinctive features capable of justifying protection through industrial design. This could clearly be a possible area of improvement for the company. The example could be followed by other producers and traders of satay products, who could create innovative and creative packaging for their satay and satay-related products and protect them as industrial designs.

All the best practices described in section a) above (relating to Nasi Lemak) and referring to possible terms to avoid (e.g. generic and purely descriptive terms; as well as misleading

<sup>11</sup> Source of the photo: <https://vectorise.net/logo/category/food/page/5/>

words), or to potentially add to a mark in order to increase its distinctiveness, are also applicable in the case of satay. By way of example:

- the term “satay” could not be monopolized as trademark as generic. In Malaysia, as well as in many other countries, such term would have to be disclaimed.
- Similar considerations are applicable to descriptive adjectives such as “delicious”, “wonderful”, “best”, “real”, “authentic”, “premium”, “deluxe”, “Malaysian”, etc.
- Adding geographical terms to the word “Satay” (e.g. “Malaysian” or “Malay”, “West”, etc.) may entail problems as the mark could be rejected as either descriptive if the satay comes from the place indicated by the geographical term; or as deceptive if it originates in other geographical places.
- Instead, adding to the proposed marks highly distinctive terms and elements would significantly improve the chances of obtaining registration. These include:
  - o names, surnames and nicknames (if not too common);
  - o invented terms and words;
  - o terms that possess a meaning, but they are used out of context;
  - o two or more digits or combinations of letters and digits;
  - o non-descriptive logos and images;
  - o highly stylized shapes or graphic forms.

## C. Nasi Kerabu



Nasi Kerabu<sup>12</sup> is a rice dish that has its origins in the State of Kelantan and Terengganu (East Peninsular of Malaysia). Its distinguishing feature consists of the blue colour of its rice, due to the utilization of petals of flowers named “Bunga Telang” (butterfly-pea), as natural food colouring.

The ingredients of nasi kerabu from Kelantan are:

- rice (blue/violet)
- green vegetables (see below)
- finely chopped local herbs

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<sup>12</sup> Source of the photo:

[https://www.google.com/search?sa=G&hl=it&tbs=simg:CAQSGgIJfBqB2MSnOV4a9gELELCMpwgaOwo5CAQSFICW4DrhBvwz8xK7N4otiS\\_1uCtEIGHshuNrl6z0RIUv9YtOs1Bpu7UDNrLJoCTjxSmUgBTAEDAsQjq7-CBoKCggIARIEa9GvvQwLEJ3twQkalQEKfwoEYm93bNqliPYDCwoJL20vMDRra2dtCh8KC25hc2kga3VuaW5n2qWI9gMMCGovbS8wNXprX2hfCh8KC25hc2kgY2FtchVY2qWI9gMMCGovbS8wMjg0ZF9iChwKCXZIZ2V0YWJsZdqliPYDCwoJL20vMGY0czJ3ChoKB2dhcm5pc2japYj2AwsKCS9tLzA2Z3B6bgw&sxsrf=ALiCzsYIZJjoAqMzfnjaG1JgPuD10LnHtw:1652253522506&q=nasi+kerabu&tbm=isch&ved=2ahUKEwjQkqaC9Nb3AhVWi\\_0HHaD8BFoQwg4oAHoECAEQMw&biw=1280&bih=577&dpr=1.5#imgrc=RUHT98HDcUkknM](https://www.google.com/search?sa=G&hl=it&tbs=simg:CAQSGgIJfBqB2MSnOV4a9gELELCMpwgaOwo5CAQSFICW4DrhBvwz8xK7N4otiS_1uCtEIGHshuNrl6z0RIUv9YtOs1Bpu7UDNrLJoCTjxSmUgBTAEDAsQjq7-CBoKCggIARIEa9GvvQwLEJ3twQkalQEKfwoEYm93bNqliPYDCwoJL20vMDRra2dtCh8KC25hc2kga3VuaW5n2qWI9gMMCGovbS8wNXprX2hfCh8KC25hc2kgY2FtchVY2qWI9gMMCGovbS8wMjg0ZF9iChwKCXZIZ2V0YWJsZdqliPYDCwoJL20vMGY0czJ3ChoKB2dhcm5pc2japYj2AwsKCS9tLzA2Z3B6bgw&sxsrf=ALiCzsYIZJjoAqMzfnjaG1JgPuD10LnHtw:1652253522506&q=nasi+kerabu&tbm=isch&ved=2ahUKEwjQkqaC9Nb3AhVWi_0HHaD8BFoQwg4oAHoECAEQMw&biw=1280&bih=577&dpr=1.5#imgrc=RUHT98HDcUkknM)

- spices such as lemongrass, kaffir lime leaves and zest, lime zest, Thai basil and wild pepper leaf - daun kaduk
- other spices are added especially in Malaysia: ginger flower, turmeric leaf, and daun kesum

The term “kerabu” is generic in Malay to indicate mix salad or green vegetables. Traditionally, the dish is made of any green vegetable that can be found in the garden or field, depending on the season. Such vegetables are also used to prepare other culinary recipes, such as Kerabu Mangga (based on mango), Kerabu Pucuk Betik (based on young papaya leaves of trees), etc. The kerabu vegetables are normally eaten raw.

It is therefore evident that the two terms composing the name of the dish are generic and, as such, cannot be registered as trademarks.

However, this delicacy presents two very distinctive features that might facilitate its protection through specific IP tools, namely: its origin (from the State of Kelantan and Terengganu) and its blue/violet colour.

As mentioned, adding reference to the origin of the product (Kelantan), would potentially make an ordinary mark vulnerable to refusal because of its merely descriptive nature (i.e.: describing the origin of the product, if the dish is indeed produced in the State of Kelantan and Terengganu), or in view of its deceptive character, should the product not come from there. However, this addition might make this sign potentially registrable as **collective mark**. As already explained in sect. IV.b above, the establishment of this very powerful quality scheme would require:

- the creation of a consortium or association of relevant stakeholders of Nasi Kerabu from Kelantan and Terengganu. These could include chefs, restaurants and hotels’ owners, producers of ready-made dishes, etc.
- the agreement among all members of such consortium on common qualitative standards. These standards would have to be captured in the Regulation of Use to be filed together with the proposed collective mark;
- the establishment of effective quality assurance mechanisms.

Evidently, to effectively set up the above system is rather challenging both in terms of time and coordination efforts. However, collective marks may play a very important role in facilitating the branding of products to which they refer, as well as the promoting tourism in the region of Kelantan and Terengganu. They also imply significant reduction of financial resources that are needed to promote the products covered by the collective mark.

Local public institutions from Kelantan and Terengganu may also be involved in the design and promotion of this initiative. They could, for example, make use of and refer to this collective mark to promote gastronomic tourism in their region.

The second very distinctive feature is undoubtedly represented by the blue-coloured rice that, in itself may be considered as a very strong differentiating factor, and thus a powerful branding tool if strategically used for marketing and advertising purposes.

Potentially, this specific colour associated to rice could be protected within the context of the collective mark. The Regulations of use could, for example, require not only that only blue-colored rice be used in this dish, but also allow only the utilization of natural color coming from Bunga Telang flowers, with the explicit exclusion of any artificial coloring. This feature could also be highlighted to attract tourists not only to guarantee the “originality” of this traditional dish, but also meet their health concerns. Examiners could, in principle, refuse the mark as descriptive of the colour of the product. However, collective marks are overall more descriptive than ordinary marks, and if coupled with geographical terms hinting to their geographical origin and possibly with a non-descriptive logo or image, the proposed collective mark would most probably pass the examination.

As in the case of previously presented gastronomic recipes, other IP rights and other tools could be successfully used:

- industrial designs to protect the creative packaging of Nasi Kerabu related products.
- Copyright for any written materials, including websites’ texts, photos, videos, etc.
- Trade secrets for any valuable confidential business information, including any creative way of mixing, for example, ginger flower, turmeric leaf, and daun kesum to the sauce.
- Domain names for the core part of the internet address of producers and traders wishing to undertake e-commerce or simply to create a website to present their products on the internet.

Please refer to sections IV and VI.a (on Nasi Lemak) of this report for more information about how to exploit trademarks, domain names, industrial designs copyright and trade secrets.

## d. Laksa Sarawak



Laksa<sup>13</sup> is spicy noodles soup dish, very popular in many Southeast Asia countries, including Malaysia. Laksa was introduced in Malaysia by Chinese traders in the 15th Century.

Laksa Sarawak was pioneered by Goh Lik Tek in 1945 along Carpenter Street, in Kuching city.

Subsequently, representatives of the Tan Yong Him family made changes to the original recipe by adding specific spices and herbs. They created a Sarawak laksa paste and commenced its commercialization in jars.

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<sup>13</sup> Source of the photo: [https://commons.wikimedia.org/wiki/File:Laksa\\_Sarawak\\_\(Yee\\_Fung\).jpg](https://commons.wikimedia.org/wiki/File:Laksa_Sarawak_(Yee_Fung).jpg)

Variations of the recipes can be found in different parts of the country and sold under the generic name (laksa) together with the name of the relevant geographical place, e.g.: Laksa Penang, Laksa Kedah, Laksa Pahang, Laksa Kuala in Perak, Laksa Kuala Perlis, Laksa Nyonya, Laksa Johore, and of course, Laksa Sarawak.

Laksa Sarawak is served with rice vermicelli (bee hoon). Prawns, sambal and beansprouts are added to the broth and the vermicelli. The color of the broth is dark orange. However, research online demonstrates that there is no agreement about its recipe, and on a precise list of ingredients that should be included in the Sarawak laksa. Most often, in fact, this dish is cooked by using the authentic paste purchased in Sarawak, and very rarely it is prepared from scratch mixing the spices. This implies that no exclusive rights may be claimed on the recipe and on the specific way of preparing this gastronomic delicacy.

In addition, it should be noted that the word “laksa” is quite widespread in various languages: in Persian and Hindi the word means “mee hoon”; in Sanskrit, it means “ten thousand”, referring to multitude of ingredients needed to prepare the dish; in Cantonese the word comes from the “La sha” which means “hot spicy sand”, making allusion to the dried prawns that are used to prepare the broth. Nowadays, however, this term seems to have lost its original meaning and it has become the actual name of the above hot and spicy vermicelli soup. In other words, it can be assumed that “laksa” is now a generic term that, as such, cannot be monopolized as a trademark for this type of product.

The only peculiarity that Laksa Sarawak producers may claim is its origin, that may imply the use of certain ingredients that come from the region and thus a certain level of quality (after all, there are approximately 10 registered GIs for ingredients from Sarawak). Therefore, it could potentially be possible to establish and protect either a **geographical indication** or a **collective mark** for this dish. These two options would, however, depend on the capacity of Laksa Sarawak producers and/or traders to:

- set up of a consortium or association of producers of Laksa Sarawak;
- agree among all members of such consortium on common and specific qualitative standards. These standards would have to be captured in a Regulation of Use (in the case of collective mark) or in the Book of Specifications (in the case of a GI);
- establish and enforce effective quality assurance mechanisms.

As mentioned in previous sections, this is rather challenging.

Alternatively, producers and/or traders of Laksa Sarawak may successfully adopt the following IP rights and other tools:

- (ordinary) trademarks for Laksa Sarawak paste, or for restaurants that specialize in the preparation and offering of laksa Sarawak dishes. However, they should remember that both terms “Laksa” and “Sarawak” might have to be disclaimed, and this imply that other distinctive terms of logos should be added.

- Industrial designs to protect the creative packaging of Laksa Sarawak products, including of containers, jars, tubes for sauces or paste.
- Copyright on any written materials, including websites' texts, photos, videos, brochures, menus, promotional materials, storytelling, etc.
- Trade secrets for any valuable confidential business information, including digital marketing strategies, lists of clients and providers, any creative way of mixing spices and ingredients of the Laksa Sarawak, etc.
- Domain names for the core part of the internet address of producers/traders of Laksa Sarawak products or services wishing to establish a website and, possibly, commencing to sell their gastronomic products online.

Please refer to sections IV and VI.a (on Nasi Lemak) of this report for more precise information, suggestions and best practices on how to exploit trademarks, domain names, industrial designs, copyright and trade secrets to promote this gastronomic delicacy.

## e. Lemang



Lemang<sup>14</sup> is a traditional food of Malaysia and Indonesia. Variations are also present in other Southeast Asian countries (e.g.: Lao PDR). Originally, it was prepared to celebrate certain festivities. However, nowadays it can be found 365 days per year.

The main ingredients are:

- Rice: ranging from white rice and brown unpolished rice to specialty rice such as fragrant rice, basmati, parboiled and glutinous rice.
- Coconut: finely grated and squeezed to get the fresh milk without adding any water, in order to ensure that the milk produced remains rather thick (at times, a muslin cloth is used to squeeze the coconut).
- Banana leaves (normally younger ones): they are inserted into the bamboo in order to prevent the rice from sticking to the walls of the bamboo. The same process is also used in parts of Indonesia.
- Hollowed bamboos.

<sup>14</sup> Source of the photo:

[https://m.facebook.com/groups/162555567738192?bac=MTU4NTgzMzA1Njo1MzMxNTM3MjQwMTE3MDY6NTMzMTUzNzI0MDExNzA2LDA5NDoyMDpLdz09&multi\\_permlinks](https://m.facebook.com/groups/162555567738192?bac=MTU4NTgzMzA1Njo1MzMxNTM3MjQwMTE3MDY6NTMzMTUzNzI0MDExNzA2LDA5NDoyMDpLdz09&multi_permlinks)



As in the case of Satay and Nasi Lemak, this dish does not seem to present any unique feature capable of distinguishing it from similar delicacies produced in other countries in the region. This means that all comments and suggestions presented in sect. VI.a in relation to Nasi Lemak, as well as in sect IV, are also applicable to Lemang.

In particular, producers of Lemang may potentially adopt the following IP rights and other tools for their commercial benefit:

- (ordinary) trademarks for Lemang itself, or for food outlets that specialize in the preparation and offering of this food delicacy.
- Industrial designs to protect possible creative packaging of Lemang, should this be feasible (e.g.: an innovative container to carry numerous sticks of Lemang together).
- Domain names for the core part of the internet address of producers/traders wishing to establish a website or a food IT application.
- Copyright on any written materials, including websites' texts, photos, videos, promotional materials, etc.
- Trade secrets for any valuable confidential business information, including any creative way of producing or improving the preparation of Lemang.
- Last but not least, Lemang producers using GI-protected rice, could potentially use this IP tool to successfully promote their food delicacies, using such higher quality rice.

## i. Rendang Tok



Rendang Tok<sup>15</sup> is a famous Malaysian delicacy that originates from the state of Perak, West Malaysia. In particular, it comes from a village called Kampong Pisang (Banana Village), district of Batu Gajah. However, it quickly became very popular in the entire State of Perak.

Rendang Tok is usually prepared to celebrate certain festivities, such as the begin of Ramadan, Aidil Fitri, etc., and weddings.

The name clearly indicates that this dish was traditionally cooked by the old men (the term “Tok” means grandfather in colloquial language). On the other hand, the word “rendang” refer to a meat dish that is spicy and hot, and it is cooked over a wood stove for about 4-6 hours, with slow fire.

The main ingredients of Rendang Tok are:

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<sup>15</sup> Source of the photo: <https://theheartthrills.com/category/se-asia/page/2/>

- Buffalo meat (or, at times, cow meat)
- Coconut milk
- Other condiments such as chili paste, onion, turmeric leaves, garlic, ginger, galangal, lemongrass, kaffir lime leaves and other spices

It is often served with Lemang, rice or pulut kuning (yellow glutinous rice) or ketupat daun palas.

The term “rendang” cannot be monopolized as trademark as it consists of a generic term. The term “tok” is neither generic nor essentially descriptive for food products. However, it could be argued that two terms together are nowadays perceived by the average consumer of Malaysia as a generic name for this type of dish, and as such non-registrable as trademark.

As in the case of Satay and Nasi Lemak, this dish does not seem to present any unique feature. This means that all comments and suggestions presented in sect. VI.a in relation to Nasi Lemak, as well as in sect IV, are also applicable to Rendang Tok.

In particular, Rendang Tok producers may potentially adopt the following IP rights and other tools:

- (ordinary) trademarks for Rendang Tok products, or for restaurants that specialize in the preparation and offering of this dish.
- Industrial designs to protect the creative packaging of Rendang Tok dishes for take away purposes or for jars and containers for ready-made sauces.
- Copyright on any written materials, including websites’ texts, photos, videos, etc.
- Trade secrets for any valuable confidential business information, including any creative way of producing Rendang Tok.
- Domain names for the core part of the internet address of producers/traders wishing to establish a website and, possibly, commencing to sell or distribute their gastronomic products online.

In addition, a collective mark “Rendang Tok from Perak” could potentially be established. This tool would undoubtedly contribute to promote tourism in the region. This endeavor would require chefs from Perak to create an association, agree on specific standards (e.g.: the need to cook the meat over a real wood stove for a minimum of 5 or 6 hours, etc.) and, perhaps with the support of public authorities, commence positioning the dish as a Perak delicacy.

## g. Gulai Tempoyak Ikan Patin



Tempoyak ikan patin<sup>16</sup> is an iconic culinary dish originating from Pahang, but now is famous all over Malaysia.

The dish is based on silver catfish (called ikan patin in Malaysian Bahasa). Silver catfish in Pahang is known for its rich and unique taste, due to the specific environment that can be found in Pahang's rivers.

Tempoyak ikan patin is cooked using fermented durian and other ingredients, such as turmeric, daun kesum (Vietnamese mint), bunga kantan (torch ginger flower), and chilies. At times coconut milk is added to thicken the broth. This dish is eaten with white rice.

It should be noted that the full name of the dish consists of a series of generic terms:

- ikan patin: silver catfish
- tempoyak: a Malay condiment made from fermented durian
- gulai: type of rich, spicy and tasty curry-like sauce frequently found in Malaysia and in other countries in the region.

This means that the above name/s cannot be registered alone as trademark. The preparation and cooking modalities also do not seem to possess any unique or secret feature. On the other hand, the most promising IP right that could be successfully established and exploited by Tempoyak ikan patin producers is undoubtedly geographical indications. After all, other fish (ikan) varieties are already protected in Malaysia as GIs. These include Ikan terubuk mulut besar Sarawak and ikan puput Sarawak. Similarly, ikan patin from Pahang seems to possess unique qualities and characteristics capable of justifying the granting of a GI.

However, as already mentioned in sect IV.d, registering and implementing a GI is challenging and it requires significant coordination efforts among all producers to agree on specific qualitative standards and monitor their homogenous and consistent application. In addition, the mere fact of having a registered Geographical Indication does not automatically entail commercial success. This depends also on the capacity of all relevant stakeholders (often with the support of public authorities) to effectively promote the GI domestically and abroad.

Apart from GIs, all comments and suggestions presented in sect. VI.a in relation to Nasi Lemak, as well as in sect IV, are also applicable to Tempoyak ikan patin and they could be adopted by their producers.

In particular, they could potentially adopt the following IP rights and other tools:

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<sup>16</sup> Source of the photo: <https://www.myweekendplan.asia/gulai-tempoyak-ikan-patin/>

- (ordinary) trademarks for Tempoyak ikan patin products, or for restaurants that specialize in the preparation and offering of this dish, bearing in mind what already emphasized in relation to the need to comply with all relevant legal requirements.
- Industrial designs to protect possible creative packaging of Tempoyak ikan patin and related products.
- Copyright on any written materials, including websites' texts, photos, videos, etc.
- Trade secrets for any valuable confidential business information, including any creative way of cooking Tempoyak ikan patin.
- Domain names for the core part of the internet address of producers/traders wishing to establish a website and, possibly, commencing to sell their gastronomic products online.

## VII. Conclusions

This report clearly highlights that, while the various IP rights cannot prevent third parties from using the recipes of the above seven Malaysian dishes, or from producing those delicacies and calling them by their generic names, they nonetheless represent formidable business assets in the hands of IP-savvy businesspeople to distinguish their gastronomic products from those produced by competitors, and to stand out in a highly competitive market. IP rights such as ordinary trademarks, collective and certification marks, geographical indications, and industrial designs, as well as other tools such as domain names would in fact enable their owners to:

- differentiate their products from those of competitors,
- find a niche for their food-related products or services,
- protect their innovative efforts to improve such products and/or their appearance,
- enhance their capacity to access financing and obtain loans from banks (by using their IP rights as collateral),
- strengthen their negotiating power for possible licensing arrangements and other contractual agreements,

All the above IP rights would enable their owners to differentiate their products or services not only from those of competitors, but also from various ordinary products in the market. They would be instrumental in transforming their products into sought-after brands, moving from the sale of commodities to the provision of ... “dreams”, delights and remarkable experiences.

As Mr. Dan Wieden (famous marketing expert) said: “people don’t buy products or services, but relations, stories and magic”.

After all, the same pure-cotton shirt, produced in Cambodia or Bangladesh, may be bought in a market for €10, or in a boutique for €100. The only difference is that while the first has no brand, the second is a branded shirt. The same is also applicable to culinary and gastronomic products, and to those places where such delicacies may be bought. **Branding is the key for success.**

Producers and traders of the above Malaysian culinary products should undoubtedly embrace a comprehensive and well-crafted branding strategy to capitalize on the strengths of their products and services. This would entail numerous advantages:

- helping their products (food items, dishes, sauces, etc.) or services (restaurant or food delivery services) to stand out and be preferred by consumers;
- establishing lasting bonds of loyalty and trust with them;
- enhancing resilience in cases of crisis, economic downturns or in the presence of new competitors in the market.
- Last but not least, branding would help increase income and return on investment due to enhanced sales and to the premium prices that customers are prepared to pay for branded products and services (see example above).

In conclusion, to use the words of Mr. Seth Godin (renowned marketing expert): *“Something remarkable is worth talking about. Worth noticing. Exceptional. New. Interesting. It’s a Purple Cow. Boring stuff is invisible. It’s a brown cow”*<sup>17</sup>.

Operators in the gastronomic touristic sector in Malaysia and producers of Malaysian delicacies should strive to innovate to transform a commodity, like local food, into a unique, creative and distinctive brand ... let’s make Malaysian gastronomy the new purple cow, capable of attracting tourists from all over the world to the new “Culinary Paradise”!

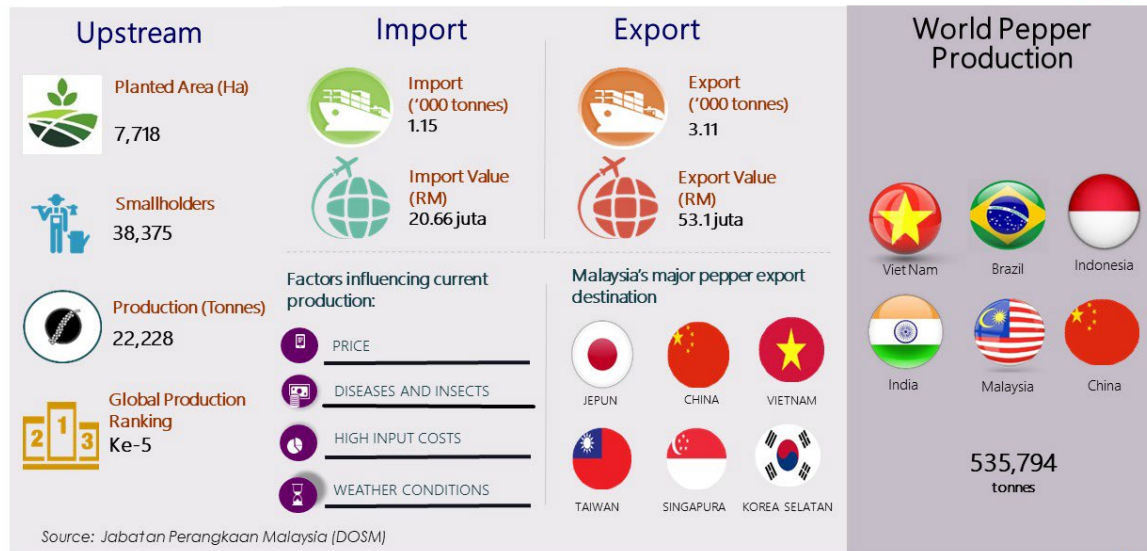


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<sup>17</sup> Source of the photo: <http://tweenteacher.blogspot.com/2014/11/the-purple-cow.html>

## KPI AND ACHIEVEMENT - PEPPER

UPDATED JUN 2021



Source: <https://www.mpic.gov.my/mpic/en/info-teras-komoditi-utama/pepper-commpdity-info>

### GEOGRAPHICAL AREA

The whole state of Sarawak.

### LINK WITH THE ORIGIN

Sarawak, the largest state in Malaysia, is an established producer of “King Of Spice” Pepper, and about 98% of pepper production in Malaysia comes from the state. As Sarawak is situated between 2° and 7° to the north of the Equator line, it makes the Sarawak Pepper vines thrive in a warm, sunny climate with rain in due season and fertile soil.

### GI MANAGEMENT BODY/ASSOCIATION

Malaysian Pepper Board. CONTROL BODY Internal Quality Control Laboratory of Pepper Board Marketing, Sarawak Biodiversity Center.

WEBSITE [www.mpb.gov.my](http://www.mpb.gov.my)

### APPROXIMATE VOLUME OF PRODUCT SOLD WITH THE GI

Before GI registration: 18,824 tonnes in 2003.

After GI registration: 20,000 tonnes in 2016.

Beside local consumption, Sarawak Pepper is exported globally, including to Europe, Japan, China, Taiwan, Korea and Singapore. Until 2017, the total production was 523,400 tonnes worth USD 3,761.2 million.

## EVOLUTION OF PRICES AFTER THE GI

Before GI registration: RM 113.2 million in 2003 (sales in bulk).

After GI registration: RM 490 million in 2016 (sales in bulk).

## OTHER ADVANTAGES OF HAVING GI REGISTERED

The registration of Sarawak Pepper as a GI helps to promote the agro-tourism in the area

Source: [https://internationalipcooperation.eu/sites/default/files/arise-docs/2019/ASEAN\\_GI-Booklet.pdf](https://internationalipcooperation.eu/sites/default/files/arise-docs/2019/ASEAN_GI-Booklet.pdf)