



European
Commission

AFRICA
IP SME HELPDESK

Guide to Market Access to Ghana: The Food Industry



1. Introduction

Ghana's growing food industry is expected to show an annual growth rate (CAGR 2022-2025) of 32.5 % resulting in a projected market volume of USD 223.50 million by 2025 (1). The food industry is highly regulated under the Public Health Act of Ghana 2012, (Act 851) and the Standards Authority Act, 1973 (N.R.C.D. 173), and in accordance with international best practices.

The sector is replete with numerous registered and unregistered intellectual properties (IPs) generated, protected, commercialised and enforced at all levels of industrial property right (IPR) enforcement systems in Ghana.

To safeguard trade related intellectual property rights generally, and within the food industry sector in particular, Ghana has developed and is implementing relevant IP laws consistent with international best practices. The aim is to facilitate the acquisition and enforcement of IPRs within its jurisdiction in the interest of businesses and foreign direct investors.

Businesses in Ghana often face IPR enforcement issues including counterfeits, bad-faith filing of competitors' unregistered trade marks, copying of competitors' designs and copyrighted labels, importation of competitors' products for sale within the Ghanaian market as well as administrative flaws and delays in the registration of IPRs in Ghana.

2. Protection of IPRs and the IP legal framework in Ghana

2.1 Ip laws of Ghana

Ghana is party to a significant number of international and regional IPR treaties, conventions and protocols including the Paris Convention; the Berne Convention; the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Lusaka Agreement; the Harare Protocol; and the Madrid Protocol.

The IP laws of Ghana are TRIPs compliant and include the Patent Act, 2003 (Act 657); Trademarks Act, 2004 (Act 664) as amended; Industrial Designs Act, 2003 (Act 660); Copyright Act, 2005 (Act 690); Geographical Indications Act, 2003 (Act 659); Layout-Designs (Topographies) of Integrated Circuits Act, 2004 (Act 667); Plant Variety Protection Act, 2020 (Act 1050); Protection Against Unfair Competition Act, 2000 (Act 589).

There are legislative instruments (L.I.s) regulating the administration of patents, trade marks, textile designs and copyright. The number of regulating L.I.s limits the number of registrable IPRs in Ghana to patents, trade marks, textile designs and copyright & related rights. Industrial Designs are registered through other routes, including the African Regional Intellectual Property Organisation (ARIPO).

¹ <https://www.statista.com/outlook/dmo/ecommerce/food/ghana>

2.2 Food industry related IPRs

2.2.1 Trade marks

In Ghana, trade marks are used to distinguish the goods and services of one enterprise from the goods and the services of another. The mark may be a sign or a slogan that is not long enough to be protected by copyright. The mark may consist of words, personal names, designs, letters, colours, numerals, shapes, holograms, sounds, or a combination of any of the mentioned elements (2). Many registered trade marks consist of word marks and accompanying devices, which may appear as logos.

Businesses use these trade marks to distinguish their food products from other enterprises. Some of the marks are suggestive marks, which are usually strong trade marks. Companies build strong brands around the trade marks so that the registered trade marks also become well-known marks and acquire a higher protection by virtue of the well-known status within the geographical area of Ghana.

For an EU SME operating within the food industry in Ghana, trade marks are a crucial source identifier that can be built on as a strong brand to secure protection of the company's trade marks.

Businesses within the food industry also rely significantly on certification marks, particularly the Ghana Standards Authority certification mark, to build confidence in the products. This is because the certification mark provides a presumption of having met the prescribed minimum standards, which are usually set in line with international best practices. In addition, some businesses are also ISO certified as further confirmation of quality.

An EU SME may consider such certification marks and other recognised endorsements and certification marks to build client loyalty.

2.2.2 Copyright

Work eligible for copyright in Ghana includes artistic, musical and audio-visual works (3). Some businesses register the artwork of their product labels under copyright. Together with the registered trade mark, copyright provides a stronger protection of the company's food products. It is common to find a competing product bearing a different trade mark but copying the trade dress of the company's product, including the label of the product. A registered artwork provides a presumption of ownership and makes an infringement civil or criminal action less stringent and easier to prosecute.

It is highly recommended that EU SMEs register all their copyrightable works with the Ghana Copyright Office to facilitate enforcement of their rights.

Copyright is also of significant importance to food companies in the context of advertisement of their products and services. Companies must be mindful of the ownership of the content in their promotional materials, especially in the use of audiovisuals. Some advertising agents fail to seek the prior consent of the rights holders of the content used, and the businesses are ultimately held liable for infringement of the IPRs.

² Trademarks (Amendment) Act, 2014 (Act 876)

³ See section 1, Copyright Act, 2005 (Act 690)

It may be prudent for businesses to seek indemnity from contracted advertising agencies against possible infringements, and also to conduct its own due diligence as to the source of content used for the promotional materials to prevent avoidable infringements and consequent embarrassment and transactional costs to the business.

Copyrights are automatic rights; thus registration is not mandatory. However registration facilitates enforcement of the rights as the copyright certificate serves as a rebuttable presumption of ownership and makes both civil and criminal actions easier to prosecute.

2.2.3. Industrial designs

Industrial designs protect the aesthetic value of the business' products. The designs further add to the brand value as it facilitates customer loyalty to the products. The industrial designs may be a composition of lines or colours, any three-dimensional form or any material, whether or not associated with lines and colours or a textile design (4). The designs must be registered to enjoy protection. However, in some circumstances, a suit against a competitor under the common law tort of passing off may apply.

2.2.4. Patents

Patents protect inventions. The invention is a solution to a problem in a field of technology. It may be a product or a process (5). Research and development in the food industry often yields registrable inventions. The inventions must be new, have an inventive step and be industrially applicable. An invention that is not protected by patents may be copied by competitors as the invention will fall within the public domain. Therefore, where the invention solves a general problem in the food industry, it may result in extensive copying if not registered. In that case it is crucial to obtain a patent for the invention.

2.2.5. Trade secrets

Trade secrets are secured under the Protection against Unfair Competition Act of Ghana. A trade secret qualifies as a trade secret if it is a secret, has acquired value because it is a secret, and the business has taken steps to keep it secret. In the food industry, trade secrets may include formulae of the food product, the process, and company lists, including supplier lists. Some businesses further secure the trade secret through the execution of non-disclosure agreements with relevant parties, including employees.

2.2.6. Geographical indications

Some food businesses, such as those in the cocoa and shea butter processing industry, rely on unregistered geographical indications for marketing purposes. Ghana cocoa and shea butter are said to have higher quality, thereby fetching premium prices. Therefore, an indication linking the source of the cocoa and shea butter to Ghana serves as an advantage for these businesses. Unfortunately, Ghana has yet to register a geographical indication since the parent Act does not have a legislative instrument to regulate the administration of the rights.

⁴ Section 1, Industrial Designs Act, 2003 (Act 660)

⁵ See the Patent Act of Ghana, 2003 (Act 657)

2.3 Registration of food industry related IPRs in Ghana and related state institutions

2.3.1 Industrial property rights

Ghana Industrial Property Office (GHIPO) is an office under the Registrar-General's Department of the Ministry of Justice, responsible for the registration of all industrial properties in Ghana. The office currently registers patents, trade marks and textile designs. The Registrar-General also serves as the Registrar of Patents, Trade marks and Industrial Designs.

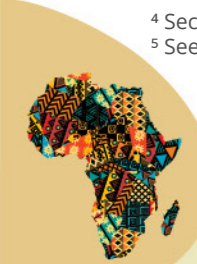
In Ghana, industrial property rights require registration to be enforceable. However, the Protection against Unfair Competition Act of Ghana enables enforcement of very limited unregistered industrial properties, such as some unregistered trade marks and industrial designs under the common law tort of passing-off actions.

2.3.1.1 To register patents/utility models:

- complete form 2 (Request for Grant of Patent) signed by the applicant(s) or appointed agent;
- complete form 1 (Appointment of Representative – Power of Attorney);
- attach the required documents, including description, one or more claims, abstract, drawings (if any);
- submit filing documents at the Patent Registry;
- pay the prescribed fees;
- the application is subjected to formality and substantive examinations, followed by publication and grant of patent;
- *Utility Model applications are not subjected to substantive examination;
- duration of patent protection is 20 years from filing date;
- duration of Utility Models is 7 years from filing date.

2.3.1.2 To register trade marks:

- a trade mark search may be completed prior to filing an application – although searches are not mandatory, they are recommended;
- complete form 2 (Application for registration of Trade mark) signed by the applicant or their appointed agent;
- complete form 1 (Form of Authorisation);
- attach three (3) additional reproductions of the mark to be registered;
- select/indicate the desired class – each application will be for registration in respect of goods services in one class only;
- list the goods and services, which must conform to the International Classification of Goods and Services (Nice Classification)
- submit filing documents at the Registry;



- pay the prescribed fees;
- the application may be subject to trade mark opposition;
- duration of trade mark protection is 10 years from filing date, renewable every 10 years.

2.3.1.3 To register industrial designs through ARIPO Secretariat

GHIPO only registers textile designs under the Industrial Designs Act, and the industrial designs relevant to the food industry are usually registered through ARIPO. To register an ARIPO industrial design that will have a legal effect in Ghana:

- complete a request for registration of industrial designs form;
- appoint an agent/attorney using an Appointment of Representative Form – the agent must be a recognised and registered ARIPO agent;
- attach a reproduction of the industrial design to be registered;
- designate Ghana and any other Member State of interest;
- pay the prescribed fees or send an undertaking to pay the prescribed fees within twenty-one (21) days from filing;
- submit filing documents through courier, email, self-drop off or the ARIPO online portal;
- filing can be done by the applicant or the inventors/designers or by the authorised representative – representation is mandatory for applicants from non-member states of ARIPO;
- duration for protection under ARIPO is 10 years; however, in Ghana, the duration is 5 years renewable for 2 consecutive 5 year periods.

2.3.1.4 Copyright and related rights

The Copyright Office under the Ministry of Justice is responsible for the registration and administration of copyright and related rights in Ghana. The Copyright Administrator is the head of the Copyright Office. The headquarters of the Copyright Office is located at Accra close to the central business district and has regional offices at Kumasi and Tamale.

In Ghana, registration of copyrightable works is not mandatory, however it is highly recommended as it facilitates enforcement of the rights.

To register a copyrightable work:

- submit two (2) copies of the work to the office;
- complete registration forms (Application for Copyright Registration-Form C) at the Copyright Office;
- attach a copy of ID of the applicant and/or author (national ID, passport, voter ID or driver's licence);
- pay the prescribed fee;
- works accepted for registration include music, books, films, logos, paintings, computer software, etc.;



- duration for copyright protection is the life of an author + 70 years; for all other works and related
- rights it is 70 years from publication or performance.

3. Practical IPR registration challenges businesses should look out for

Registration of both industrial property rights and copyright are not always smooth sailing so EU SMEs should look out for the following:

- delays at GHIPO during registration of patents and trademarks;
- significant delays in the trade mark opposition process;
- manual application process for all IPRs;
- inadequate publication of approved trade marks to facilitate a timely opposition process as a means of administrative enforcement of trade marks;
- GHIPO does not register industrial designs and all such applications must be channelled through ARIPO, which may be more costly.

4. Rights conferred through registration

Registration of IPRs, especially industrial property rights, confers statutory rights including the following.

- Exclusive rights: a person other than a registered owner of an IPR (in the case of copyright may be registered or unregistered) must not use the IP without the agreement of the owner.
- The registered owner may institute court action against any person who infringes a registered IPR by (a) using the registered IPR without permission; or (b) performing acts that make it likely that infringement may occur.
- No person shall knowingly infringe the rights of the owner of a registered trade mark by using a trade mark in relation to goods or services for which the trade mark was registered without the consent of the owner.
- The right of the registered owner will, in addition to any other remedies, extend to the use of a sign similar to the registered trade mark and use in relation to goods or services similar to those for which the mark has been registered where confusion may arise for the public.

Where a business fails to register its IPRs, enforcement through administrative, border, civil and criminal measures may be extremely cumbersome, and rights holders may be at the mercy of the discretionary powers of judges and relevant public servants.

5. Commercialisation of IPRs: what businesses should look out for

IP commercialisation is key to the food industry, and foreign businesses, including EU SMEs, must be mindful of the Ghanaian IP ecosystem and how best to maximise the benefits of their IPRs within the industry in Ghana. In this regard, businesses must be conscious of the following.

5.1 There are a number of ways of entering the Ghanaian market.

- An EU SME may enter the Ghanaian market as an external company, that is, a branch office of the foreign parent company.
- Registering such a company will require the incorporation documents from the parent company and registration at the Companies Registry.
- A local company may also be registered having the EU SME as the sole shareholder. In that case the company takes on a Ghanaian identity.
- A local company may be partnered through the purchase of shares in the said company or by registering a Joint Venture entity with the Registrar of Companies.
- An agency/distributorship arrangement can be established with a local entity.

Whichever strategy is chosen by the EU SME, access to the Ghanaian market may require further registration with the Ghana Investment Promotion Centre to facilitate repatriation of profits back to the country of origin and to obtain work permit quotas for the business' expatriates.

The business strategy for mode of entry into the Ghanaian market will impact on the business IP strategy for the Ghanaian market.

5.2 Licensing and assignments are the most common forms of IPR commercialisation in Ghana. Industrial property licences must be registered at the GHIPO before they can be enforced.

Some agents and distributors tend to register their principals' IPRs in their own names, especially trade marks, instead of registering the principal as the rights holder and the agent as a registered user.

5.3 Non-use of trade marks may lead to removal of the trade mark from the trade mark register at the request of an interested party. Therefore, rights holders must use or cause the trade marks to be used through licensing to avoid losing the mark to third parties.

5.4 Enforcement of non-disclosure Agreements (NDAs) and other ip-related contracts can sometimes be cumbersome. Businesses must be precise and concise in drafting such agreements and avoid ambiguities.

5.5 Ghana is an IPR importing state with very limited locally-generated Iprs. Most registered IPRs are foreign owned. Foreign applicants of IPRs require the services of a recognised ip attorney to register their IPRs. It is worth noting that the copyright system in Ghana is more developed than the industrial property rights system.

5.6 Ghana provides for international exhaustion of rights. Therefore, a business' products that are legally placed on other markets may be imported into Ghana legitimately to compete with the business' local product.

5.7 The patents act provides for compulsory license and government use, On the grounds of public interest, such as national security, nutrition, health or development of other vital sectors of the national economy. It can also be applied in cases where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or the owner's licensee is anti-competitive and an involuntary licence will remedy that practice.

5.8 Businesses must also note that it is mandatory under the public health act of Ghana to register food products at the Ghana food and drugs authority before commercialising the food product. During the food registration process, the food will be required to meet certain local standards, as established by the Ghana standards authority, as well as some international standards as set out in the codex alimentarius standards of the food and agriculture organization (fao). Moreover, the use of the Ghana standards authority certification mark without due licence from the authority constitutes an offence punishable by law.

6. Enforcement of IPRs in Ghana

Business IP rights can be enforced through administrative or border measures, civil or criminal enforcement procedures or through alternative dispute resolution.

6.1 Administrative and border measures

As an administrative measure, a trade mark application by a third party / competitor may be opposed after publication of the intended registration of the mark by the third party. This process helps to prevent registration of your business' registered mark or similar mark by GHIPO for a third party / competitor. It is important for IP Attorneys to monitor publications from GHIPO for possible infringing marks to enable their clients to initiate immediate action via a trade mark opposition.

There are no provisions for opposition in patent prosecution since Ghana only publishes the granting of patents, and rights holders will have to proceed to court to invalidate such grants.



As a border enforcement measure, the Customs Excise and Preventive Service of the Ghana Revenue Authority may detain infringing goods at the ports of Ghana to avoid entry into the channels of trade at the request of the rights holder. Therefore, when a business has prior information about a possible entry into Ghana of IPR-infringing goods, it must take immediate steps through an IP Attorney to obtain an order for detention of the infringing materials at the ports. It may be required to post security for cost in these situations.

6.2 Criminal enforcement procedures

A rights holder may also solicit the assistance of the Ghana Police Service to enforce their business IPRs on the market. The police may also engage in raids in matters of counterfeit and piracy and proceed to prosecute accused persons.

Usually, penalty upon summary conviction is a fine not exceeding 250 penalty units, a term of imprisonment not exceeding 1 year, or both. Additionally, for copyright infringement, the convicted infringer may be ordered by the court to compensate the rights holder to an amount proportionate to the profits made from the infringing act.

6.3 Alternative Dispute Resolution (ADR)

The ADR Act of Ghana provides for mediation and arbitration of disputes if parties agree. A decision of a mediation is binding and enforceable. An arbitration award is also final and enforceable.

ADR is expected to expedite dispute resolution and keep details of the dispute private between the parties. Such dispute resolution mechanisms may appeal to rights holders who wish to avoid negative publicity and to keep certain IPRs secret. Therefore, depending on the IP strategy adopted, it may be useful to opt for settlement of disputes through any of the ADR mechanisms.

Although there are ADR professionals in Ghana, there are very few ADR professionals with IP specialisation. Moreover, the Copyright Administrator of Ghana provides mediation services in copyright disputes.

6.4 Civil actions and remedies

An aggrieved rights holder may seek relief from the High Court (Commercial Division) of Ghana. The remedies available to the aggrieved rights holder include:

- interim orders;
- injunctions including Anton Piller injunctions to prevent further infringement;
- special damages, which must be pleaded and proved before a judge may award such damages;
- general damages, which are usually not punitive enough to be a deterrent;
- additional damages, which may be awarded if the infringement is flagrant and blatant;
- detention and disposal of infringing materials at the cost of the infringer;
- disclosure of other persons known to the defendant to be involved in the production and distribution of the infringing goods or services.

7. Recommendation

EU businesses should always seek legal guidance from practicing and experienced IP Attorneys in Ghana, from the registration process of their business IPRs, through to commercialisation contract agreements and appropriate enforcement measures.

Contacts us:

africaiphelpdesk.eu

E-mail: africa.iphelpdesk@euipo.europa.eu

Phone Number: Europe (Spain): +34 96 513 9810

Opening hours: Monday to Friday
8:30 to 18:30 (CET/CEST)

Follow us:

facebook.com/AfricaIPR
linkedin.com/company/africaipr
[@AfricaIPR](https://twitter.com/AfricaIPR)



