

IP Protection in the Food & Beverages Industry in Malaysia

Malaysia's food & beverage industry is growing rapidly, with the revenue of over 25 billion EUR in 2015 and with an annual growth rate of 7.6%,¹ making the country thus attractive for European SMEs.

Malaysia has a large Muslim population and has, thus strong consumer demand for imported beef, mutton and other halal products. This means that importers should be aware of that all slaughtered food must possess halal certification and adhere to specific labelling requirements.

Malaysia's rapidly growing middle class constitutes a consumer base that is increasingly health-conscious, pays attention to the nutrition value of the food, prefers minimally processed fresh food and tends to trust foreign (western) brands when it comes to packaged food.

Together with rapid economic growth, counterfeiting in food products has also increased dramatically in recent years. Thus, the EU SMEs should take steps to ensure that their IP rights are protected, when selling their food products to Malaysia.

IPR are very relevant in the food & beverage industry, such as Trade Marks, Geographical Indications, Design and Trade Secrets.

Trade Mark Protection in Malaysia

Increasing brand consciousness, concerns about food safety and the relatively high number of counterfeiting in the country mean that brand reputation is especially important in Malaysia. A trustworthy brand can be critical to the success of food & beverage products as company's trade mark functions as a badge of quality.

Malaysia adopts a 'first-to-file' system, meaning that the first person to register a trade mark owns that mark, regardless of the first use. It is particularly important for the SMEs to register trade mark in Malaysia because trademark piracy due to 'bad faith' registration is a serious problem. 'Bad faith' registration means that a third party, not owning the trade mark, registers European SME's trade mark, thereby preventing the legitimate owner from registering it. These unscrupulous companies would normally then try to resell the trade mark to its owner at an inflated price.

Trade mark registration is filed with the Trade Mark Division of the Intellectual Property Corporation of Malaysia and the whole process usually takes about 12 months to complete. Even though, Malaysia offers protection for unregistered well-known trade marks (well-known in Malaysia) under the law of passing off, which protects the goodwill and reputation of the business from infringement by dishonest competitors, it is still advisable for the SMEs to register their trade mark in Malaysia in order to fully benefit from brand protection.

¹ <http://store.bmiresearch.com/malaysia-food-drink-report.html>

Geographical Indications (GIs)

In food & beverages industry, it is also important to protect GIs as these are valuable for branding goods in Malaysia, especially as GIs can increase trust towards certain brands, since they identify the country, region, or area from which goods originate and to which a given reputation is assigned. Examples include Bordeaux wine, Parmigiano-Reggiano cheese and Parma ham. To register a GI, the registrant must belong to a collective organisation representing a group of producers in the area that produces the goods they want to register. The European SMEs should thus ask their GI organisations to register the GI in Malaysia.

Protecting Packages with Industrial Design Patents

Creative packaging style is another key element for the success of the brand in Malaysia. It is, therefore, important to protect the design aspects of products to prevent counterfeiting and replication. Besides using trade marks, SMEs can protect their packages with industrial design patents. The design may consist of three-dimensional features such as the shape and configuration of an article, or two-dimensional features, such as pattern and ornamentation. Industrial designs in Malaysia have a worldwide novelty requirement, meaning that for a design to be registrable, it must not have been disclosed to the public in any way at any time before the application.

Industrial designs are protected for five years from the filing date, with a possibility of renewal up to five times, subject to a renewal fee.

Protection of Trade Secrets

A trade secret is a non-public information that is financially valuable and is guarded with confidentiality measures. In the food & beverage industry, trade secrets may refer to ingredients or processing methods that are critical to the taste, texture, appearance and smell of a product. A famous example is the Coca Cola formula.

In Malaysia, trade secrets are best protected by a series of confidentiality clauses, physical barriers, and non-disclosure agreements (NDAs). NDAs allow European SMEs to take legal action in case of disclosure of the information and stop further disclosure of trade secrets.

Helika Jurgenson,

South-East Asia IPR SME Helpdesk

Please include the attached by-line after the article:

SOUTH-EAST ASIA 
IPR SME HELPDESK

*The **South-East Asia IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to South-East Asian countries, through the provision of **free information and services**. The Helpdesk provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email (question@southeastasia-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive **free and confidential first-line advice** within **3 working days**.*

The South-East Asia IPR SME Helpdesk is co-funded by the European Union.

To learn more about the South-East Asia IPR SME Helpdesk and any aspect of intellectual property rights in South-East Asia, please visit our online portal at <http://www.ipr-hub.eu/>.