



PROTECTION OF INTELLECTUAL PROPERTY
RIGHTS IN GHANA'S KENTE TEXTILES:
THE CASE FOR GEOGRAPHICAL INDICATIONS

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Objectives

- **Introduce the concept of GI protection for non-food items**
- **Establish why Geographical Indication (GI) protection should be an important part of a comprehensive IP strategy with Ghana's kente as a case study**
- **Encourage the implementation of the Geographical Indications Act, 2003 (Act 659) in Ghana.**



Introduction

- A GI is a sign or symbol used to identify origin linked products.
- Historically developed in continental Europe in agricultural products.
- Recent interest in GI protection of non-food products such as textiles.



Jamaica Blue Mountain Coffee



Roquefort cheese

Indian Cashmere



Thai Silk

What is Kente?

- Colourful narrow strips of handwoven fabric combined by Ghanaian weavers in certain ethnic groups (Asante and Ewe).
- Culturally significant traditional ceremonial cloth which instils a sense of national pride in Ghanaians and evokes a sense of identity, culture and values even in Ghanaians who have no ethnic ties to them.
- Unique characteristics based on the culture and values of these groups
- Worn only in times of extreme importance and even now is worn on special occasions.

Asante kente



Ewe kente



The kente loom (Nsadua-Kofi/Agbatsi)

Main threats to the Kente Textile



Kente-type textiles which are not traditionally handwoven are being marketed and sold as original kente in other countries such as China.



Kente imitations have reduced the profit being obtained by the local kente producers.



Consistent annual decline of the contribution of the textile industry to Ghana's GDP.

1994- USD 179.7 million

2011- USD 53.5 million



Cultural homogenization- kente being viewed as a general African fabric instead of being revered as part of Ghana's cultural heritage.



Development of modern kente fashion trends and creativity of the fashion industry is gradually eroding the culturally significant traditional value of the cloth which instils a sense of national pride in Ghanaians eg. Louis Vuitton kente

GI Protection of Kente

- GI is a sign, symbol or other instrument used to identify origin-linked products.
- Ensures that the local producers and communities of the textile obtain higher economic gains for their products.

Definite Link

- Definite link between the good and its place of origin (Article 22(1), TRIPS Agreement)
- Kente's historical and cultural link to the Ewe and Asante communities.
- The art of weaving kente has been a part of the Asante culture since the 18th Century.

Shared Character

- Rights are collectively owned by all the people in the community
- Kente designs reflect the characteristics of an entire community and the rights in its reputation should be shared by all the producers in that community.

Certification Tag

- Speaks to the quality of a product and has the potential of acting as a product differentiator, distinguishing between authentic original products and low quality products

International Protection

- by obtaining corresponding GI protection directly in other countries.
- Under a bilateral trading agreement.
- Multilateral agreements- Ghana is a signatory to the Madrid system

Advantages of GIs Over Other IPRs

- In Ghana, the Copyright Act, 2005 (Act 690) is being used to protect the Intellectual Property Rights (IPRs) in kente
- Under the Copyright Act any person who intends to use kente commercially must apply for authorization from the Ghana Folklore Board and pay fees for its use.
- Requires identification of an individual creator and offers exclusive rights to the creators of original works
 - ✓ But, Kente is a communal product that reflects the characteristics of an entire community and has an unknown author.
 - ✓ The Berne Convention on Copyright attempted to correct this by stating that the legislation of the country could designate a competent authority to represent the author,
 - ✓ So the Copyright Act vests kente in the president on behalf of the people of Ghana.
 - ✓ However, this suggests that kente is owned by the president instead of the Asante and Ewe communities which produce them
 - ✓ With GI protection, the rights are owned by the entire community and do not need to be vested in one particular person.

Advantages of GIs Over Other IPRs

- Copyright protects the expression of the idea and not the idea itself.
 - ✓ it can protect the kente styles and designs from being copied but does not address the problem of cultural misappropriation of Ghana's textile tradition in other countries.

“Copyright law protects only original expressions, leaving works that have become an intrinsic part of our history and culture to the public domain.” USA's comments on The Implementation of the Model Copyright Provisions

- Patents and industrial designs are also not considered suitable to protect kente because of their novelty, inventive step and originality requirements.
- Trademarks are inadequate because trademark rights are typically owned by an individual or company, instead of collectively by a community.

Advantages of GIs Over Other IPRs

- **GIs are better suited and must be used in addition to copyright to:**
 - Promote the cultural awareness of the cloth as a Ghanaian textile.
 - Establish the link between a product and its geographical origin and increase the awareness about the link between kente and the Ghanaian communities instead of it being viewed generically as an African product.
 - Prohibit third parties from referring to their below standard textiles as *Kente* which will protect the quality standard of the textile..
 - Provide unlimited protection

Recommendations

- Ghana has enacted a GI legislation known as the Geographical Indications Act, 2003 (Act 659) (GIA)
- The enactment of legislation identifying *kente* as a qualifying GI good is only the first step in successfully developing *kente* as a GI. The most important step is its implementation.

Value Creation at Producer Level

- First level in the GI registration process, according to the Continental Strategy for Geographical Indications in Africa 2018-2023' .
- Research reveals that consumers are willing to pay premium prices for GI-related products because of its correlation with quality.
- Will foster trade development
- Quality control mechanism
- Code of Practice (CoP) which includes a marketing plan

Institutionalized Support System

- to put producers in a position to execute the existing GI legislative framework.
- To provide technical and financial support
- National Kente Board can be used as a facilitator for kente registration
- Thailand GI Protection of Thai Silk

Conclusions

- Commercial diversification of kente has resulted in lower quality products being manufactured for sale as authentic kente
- Kente cloth risks being viewed as a general African fabric, rather than revered as the embodiment of the history of the Ashanti, and Ewe communities of Ghana.
- Reduced income for the local *kente* weaving industry negatively affects Ghana's overall revenue from its local textile industry.
- In the absence of a sui generis system for protecting folklore, GIA must be implemented because copyright protection for kente is inadequate.
- First step of implementation is collective action and establishing a code of practice.
- Adhere to AU-EU Continental Strategy Guidelines



THANK YOU



Resources

- African Union (AU) Commission- Department of Rural Economy and Agriculture, 'Continental Strategy for Geographical Indications in Africa 2018-2023' (2017)
https://au.int/sites/default/files/documents/36127-doc-au_gis_continental_strategy_enng_with-cover-1.pdf (AU-EU Continental Strategy).
- 'Protection of Intellectual Property Rights in Ghana's Kente Textiles: the Case for Geographical Indications' (12 February 2021) online in the Journal of Intellectual Property Law and Practice (JIPLP).
- Interview with Afya's Kloset (Kente Producer)