



Branding of Tourism-Related Products and Services
for a Competitive Advantage in Sri Lanka: An
Intellectual Property Perspective

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Received 27 July 2020

Revised 5 January 2021

Accepted 10 January 2021

Abstract

The purpose of this paper is to examine whether and to what extent branding and the trademark regime can be used in a business way to extract value from tourism-related products and services in Sri Lanka. From an intellectual property perspective, the study highlights the importance attached to distinctive signs, namely; trademarks, collective and certification marks, and geographical indications in the context of tourism promotion. With the objective to investigate the application of the trademark system to brand touristic offers, this study elucidates the most recent scholarly contributions by employing a systematic literature review method. The findings of this study reveal that, even though Sri Lanka is a top tourist destination, it has barely scratched the surface of its true potential for tourism promotion by the using of branding and the trademark system of the country. This paper offers relevant information to tourism stakeholders for effective use of the trademark rights in the tourism business and proposes avenues for future research in the scholastic field. In terms of originality, to the best of the author's knowledge, this is the first research article that explores the use of branding and trademark system in the tourism sector in Sri Lanka.

Keywords: Intellectual Property, Branding, Trademark, Tourism.

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INTRODUCTION

“The future of the nation depends in no small part on the efficiency of industry, and the efficiency of industry depends in no small part on the protection of intellectual property.”

Judge Richard Posner in 1991 (Summers, 1993)

As lucidly illustrated by Judge Richard Posner, a leading US jurist and economist, intellectual property is a vital asset for businesses of all sizes in today’s global economy, *Rockwell Graphic Systems, Inc. v. DEV Industries* (1990). Intellectual property (hereinafter referred to as ‘IP’) is all around us and reaches into everyone’s daily life (European Patent Office, 2017, p. 4). Perhaps even more importantly, understanding of the IP law becomes crucial for business leaders in the tourism sector. Therefore, protecting IP rights has become a top priority for business success. The term ‘IP’ refers to types of property that result from creations of the human mind, the intellect. Therefore, the idea of IP embraces the finest creations of the human mind that include inventions, literary and artistic works, product design, symbols, brand name, logo, manufacturing process, secret formula or ingredients, website content, promotional material, to name a few. The concept of IP is traditionally divided into two main branches; namely, “industrial property” and “copyright” (WIPO, 2008, p.3). The category industrial property (the term “industrial” is used to cover technology-based subject areas) includes patents, trademarks, industrial designs, geographical indications, undisclosed information and protection against unfair competition, etc. The areas mentioned as literary, artistic and scientific works belong to the copyright branch of intellectual property. Unlike tangible (physical) assets such as buildings, land, vehicle and machinery, IP assets are intangible when first created, but become valuable in tangible form as products (Idris, 2003, p. 8).

A brand is a set of mental associations held by the consumer, which add to the perceived value of a product or service (Smith, 2012, p. 30). In other words, a brand is something that resides in the mind of the consumer and it is a tool used to market tourism-related products and services. The trademark regime is utilized to protect and promote brands in the fiercely competitive marketplace. From a business standpoint, tourism is one of the fastest-growing industries around the world and is a dynamic field. In fact, the tourism sector is one of Sri Lanka’s success stories of the post-war economy. As a central pillar

of the economy and the third largest foreign exchange earner before the Covid-19 pandemic, tourism made up about 5 percent of the Sri Lanka's US\$ 87 billion economy and the Sri Lankan policymakers expect to increase the annual tourist arrival figure to seven million by 2030, while also making it a US\$ 10 billion industry (Silva, 2020). Uniquely, Sri Lanka is a country which has a glorious historical and cultural heritage that spans millennia; an island like no other, blessed with an abundance of natural beauty and attractions. Nevertheless, much of the literature on tourism, which is one of the thrust sectors for today's economic revival, has ignored the importance IP rights.

Using IP rights tools for tourism and cultural promotion is part of a new business model for the tourism industry – a model which could generate benefits for the country through the creation of new jobs and the reduction of poverty, thus achieving long lasting economic growth. At first glance, a number of IP rights can play a critical role in fostering tourism in the Sri Lankan context. In this regard, exclusive rights attached to copyright, patents, trademarks, designs and geographical indications can be effectively harnessed for the improvement of the tourism industry (Punchihewa, 2017, p. 6). More precisely, trademark rights can be useful for many different tourism stakeholders, including hotels, restaurants, transport, travel agents, tour operators and travel guides. From a business perspective, it is necessary to enhance competitiveness through the distinctiveness of touristic offers.

Although Sri Lanka is one of the fastest growing tourism markets in the world and a top tourist destination, it is yet to reach its true potential in tourism promotion by reaping the benefits of the creative and innovative endeavours of its people. Consequently, the Sri Lankan tourism sector has inadequately explored the effective use of the trademark system for competitive advantage in the tourism business, despite the growing importance of branding and trademark system in the globalized economy. Therefore, the main objective of this paper is to analyse, from a business and IP perspective, the importance of branding and the trademark system for competitive advantage in the fiercely competitive tourism sector in Sri Lanka. It further aims to shed light on different trademark tools that can be effectively used to promote tourism products and services. This study also intends to illustrate, through practical examples, the potential use of origin-linked products for tourism promotion.

The paper is organized as follows: The next section presents the literature review, viewed through the lens of available academic scholarship on

the theme of branding and trademark rights for tourism. Thereafter, the methodology employed in this study is explained, followed by the presentation of findings and results derived from the research endeavour, in particular practical insights and potential use of branding and trademark regime in the tourism sector in Sri Lanka. The author then offers conclusion and recommendations for tourism stakeholders and policymakers for use of the trademark system in the tourism market. Finally, this paper provides avenues for future research.

LITERATURE REVIEW

The researcher was motivated to engage in this research and draft this paper to fill the gap created by a clear lack of relevant legal and academic scholarship on the subject, when there is a rising tide of opinion in favour of using branding and the trademark system to promote the tourism sector in the country. The concept of intellectual property is defined as the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields (WIPO, 2008). A brand is a set of mental associations held by the consumer, which add to the perceived value of a product or service (Smith, 2012). Tourism refers to the activity of visitors and it is defined as a social, cultural and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes (WTO, 2012). Even though intellectual property rights are recognized as the “invisible gold” at the heart of most successful businesses in the 21st century (Llewelyn, 2010), limited academic attention has been paid to examine the importance of using of the trademark system to promote the tourism industry, both from a Sri Lankan and international perspective. In the field of IP law there has been little scholarly literature published pertaining to the use of trademark rights in the tourism sector; hence it is hard, if not impossible, to find legal texts and journal articles comprehensively and directly dealing with the issue at hand. Of the literature available, the following have been selected as sources for this paper.

A research article by Nanayakkara (2011) posits that the intellectual property system provides very powerful tools for strengthening the competitiveness of those operating within the tourism industry. Moreover, Hirimuthugodage (2016) demonstrates how IP rights can be used as a tool for enhancing ecotourism in Sri Lanka. The author argues and emphasises the need for a well-established national policy on tourism focusing on ecotourism as one

of the main subsets of the tourism sector. Most notably are two pilot studies recently conducted by the World Intellectual Property Organization (WIPO, 2020) which are available, namely: *The Role of Intellectual Property in Sustainable Tourism Development - Two Case Studies from Namibia* (2019); and *Intellectual Property in Tourism and Culture in Sri Lanka* (2017). These studies have offered new insights into the use of IP rights in tourism and culture, but they are limited to specific case studies. Another significant paper by Kurniawan (2018) has elucidated in detail the prospect of promoting Indonesia as a wellness tourism destination. However, this paper does not deal with any IP aspects of wellness tourism, neither has it offered any insights on other countries in the region.

Most recently, a study by Linser Hospitality (2020) has picturesquely illustrated Sri Lanka's prospect and potential for wellness tourism compared with leading wellness tourism destinations in Asia; namely, Thailand, Indonesia and India. Nevertheless, the said report has not addressed the critical importance of trademark regime in promoting Sri Lanka as a leading wellness tourism destination. In dealing with the emerging trends in the Sri Lankan tourism landscape, Eliatamby (2020) has elucidated the importance of broadening the definition of Ecotourism into a practical everyday reality among society and the economy by demonstrating and documenting the important role that industries have played in the fostering of conservation in a developing nation through ecotourism projects. However, the said publication has not given adequate consideration to the importance of branding and trademark rights for extracting value from wide ranging ecotourism offers. Therefore, based on the above, it is clear that there is a dearth of relevant and helpful scholarly investigations on the topic in the Sri Lankan and international context. Thus, this paper attempts to fill this information gap by contributing to the above discourse and explore how best the trademark regime and tourism can be linked for the benefit of the tourism sector in Sri Lanka.

METHODOLOGY

The researcher adopted the systematic literature review (SLR) methodology to review and analyse research papers, studies and scholarly contributions related to the use of intellectual property in tourism from both international and Sri Lankan perspectives. Scholars such as Rana & Sharma (2015) and Dewasiri et al. (2018) have strongly advocated the SLR method to advance the frontiers of knowledge when conducting research in the discipline

of marketing and finance. Building research on and relating it to existing knowledge is the building block of all academic research activities, regardless of discipline (Snyder, 2019). As an essential feature of academic research, a literature review can broadly be described as a more or less systematic way of collecting and synthesizing previous research. Fundamentally, knowledge advancement must be built on prior existing work. To push the knowledge frontier, the researcher must know where the frontier is. By reviewing relevant literature, the researcher understands the breadth and depth of the existing body of work and identify gaps to explore (Xiao and Watson, 2019). Therefore, this paper adopted the systematic literature review (SLR) as the basic method of review for purposes of this research. In so doing, the previous research is assessed by studying the year of publication, journal of publication, country of study, citation analysis and content analysis on the literature pertaining to the topic at hand (Kumar & Goyal, 2015).

The researcher followed the SLR approach to investigate the available research papers published and studies conducted in Sri Lanka and other jurisdictions on the topic of using intellectual property rights in tourism. The author used Hein Online, LexisNexis, Emerald, Science Direct, Google Scholar and other frequently utilized databases by researchers across various disciplines for the literature search and the following keywords: “branding and trademark for tourism,” “intellectual property for tourism” and “IP Tools for touristic offers”. This paper spans a time horizon of nearly two decades (2003-2020). The author focused on 2003 as the base year for search criteria because the current Intellectual Property Act of Sri Lanka came into effect in that same year. Furthermore, the author considered the following research papers for inclusion in this study, namely: articles published in peer-reviewed journals; articles published only in English and with full-text access; and different article types including research papers, case studies, review papers, conceptual papers and working papers. Most strikingly, the researcher only found few articles on the basis of the afore-mentioned search criteria. The clear lack of helpful studies and scarcity of research articles on the topic motivated this study.

FINDINGS AND DISCUSSION

The concept of Intellectual property is prominently highlighted in the policy paradigm of the knowledge-based economy in the 21st century. This research ascertains that, although Sri Lanka is a top tourist destination, it has barely scratched the surface of its true potential for tourism promotion by

reaping the fruits of the innovative and creative efforts of its people. It is further observed in this research that the IP system in the country has so far remained an untapped potential for business success in the tourism sector and when properly managed it can be a goldmine. Findings of this research reveal that the emerging areas of tourism such as wellness, ecotourism (birds watching, butterfly tours), nature tourism (wildlife safari, whale watching), adventure tourism and agro-tourism have more potential to benefit from the branding of touristic offers by using the trademark system. Thus, distinctive signs, namely, trademarks, collective and certification marks, and geographical indications are the most important IP tools for the tourism industry in Sri Lanka. More precisely, marks are a very valuable form of IP because they become associated with quality and consumer expectation in a product and service. As previous studies have aptly concluded that using IP rights tools for tourism promotion is part of a new business model for the tourism industry – a model which could generate benefits for the country through the creation of new jobs and the reduction of poverty, thus achieving a sustained economic growth. Undoubtedly, marring the trademark system and the tourism industry will go a long way towards creating new jobs, reducing poverty and achieving a sustained economic growth in Sri Lanka.

In view of the rising interest on branding of tourism-related products and services, it is the distinctive signs that denote origin, quality and improve market differentiation of touristic offers. It is evident that large and small businesses that engage in the tourism sector use brands and different types of marks to achieve greater visibility and clear messaging. In particular, hoteliers/accommodation providers, restaurants owners, the transport sector, travel agents and tour operators and travel guides use trademarks as a part of their “smart marketing strategy.” Marks are a very valuable form of IP because they become associated with quality and consumer expectation in a product and service (Bainbridge, 2012, p. 687). Moreover, geographical indications (GIs) or “labels of origin” as distinctive signs, can add value to different types of products offered to tourists.

For many business entities, the brands they own are their most valuable intangible assets. Invariably, branding is a tool used to market tourism-related products and services. A brand is something that resides in the mind of the consumer (Punchihewa, 2017, pp. 28-29). Most importantly, a distinctive mark allows a business to build public “goodwill” and brand reputation in the goods or services it sells. Therefore, a good understanding of trademarks as “badges

of origin” is necessary for the tourism industry. In fact, creativity in tourism marketing is vital for competitive advantage and business success in the extremely competitive tourism marketplace. Therefore, marks are types of IP that can be used as tools to distinguish different tourism products and services, enhance touristic attraction, add value to business and build up brand loyalty.

Concept of ‘Branding’ and ‘Trademark’

Trademarks are a part of everyday life and almost every business in the tourism industry has a trade name or trademark in its business operations. As observed, a trademark is one of the most valuable marketing tools of a business. More broadly, a trademark, often referred to as a brand, is the identity or face of a business. A trademark is a sign capable of distinguishing the goods or services of a company or individuals from those of others. More precisely, a trademark can be a: word, name, letter, number, drawing, signature, logo, sound, shape, aspect of packaging, or combination of the above. Trademark registration grants its owner an exclusive right to use its trademark in relation to specific goods and services (European Union, 2017). In many countries, the ® symbol is used to identify a registered trademark or service mark. It is also evident that the “TM” or “SM” symbols are applied to certain goods and services. In the legal sense, the “TM” symbol is recognized as identifying an unregistered trademark, while the “SM” symbol is used to identify an unregistered service mark. In any case, the designations TM and SM reflect the owner’s intent to claim trademark or service mark rights in the mark. However, the use of one of these symbols does not necessarily guarantee that the owner’s rights are protected under trademark law.

From a global standpoint, for purposes of trademark registration, most countries allow only signs that are visually perceptible or can be represented graphically. However, it is trending that an increasing number of countries also allow for the registration of non-traditional trademarks such as single colors, three-dimensional signs (shapes of products or packaging), moving images, holograms, audible signs (sounds), olfactory signs (smells), gestures, tactile marks (feeling or touch) and fluid/mutating trademarks (WIPO, 2017, p. 8). Furthermore, taglines, advertising slogans and titles may also constitute trademarks. A distinctive mark allows a business to build public goodwill and brand reputation in the goods or services it sells. Marks also help consumers identify the source of goods and services and make informed choices based on consumer experiences (International Trademark Association, 2012).

Trademarks, often known and used as brand names, are a part of everyday life. Many business owners confuse the concepts of ‘trademark’ and ‘brand’. Brand has a much wider meaning and refers to the proprietary visual, emotional, rational and cultural image that customers associate with a company or product. According to the World Intellectual Property Organization (WIPO, 2017), trademarks are a vital element of a brand, but a brand will usually include other elements such as designs, trade dress, slogans, symbols and sounds, along with the concept, image and reputation that connect consumers with specified products (WIPO, 2017, p. 8). For example, the word MERCEDES-BENZ® and the three-pointed star design are two of the trademarks used to identify the German manufacturer Daimler AG. The Mercedes brand encompasses the cars, technology, innovative design, trademarks and the customer’s feeling of associating himself/herself with an item of quality (WIPO, 2017, p. 8). In a nutshell, a brand is a collection of features that define a company’s identity, whereas a trademark is a symbol used to identify items of IP.

Therefore, brands are critical for creating business value. Strong brands command customer loyalty and premium prices, constituting valuable assets that drive company revenue and growth (WIPO, 2020). In the eyes of the law, a brand, in turn, is a trademark that has been ‘released’ to compete in the socio-cultural sphere of the market. Whereas a trademark is a purely legal entitlement that is used in a commercial context, the brand is a ‘cross-over’ concept (Schwarzkopf, 2008, pp. 2-4). It is an image or a message which is embodied in icons which are protected by trademarks, while being embedded in cultural, as well as commercial contexts. A brand is much more than merely a ‘legally defensible proprietary name’ and it serves more than as a differentiating device, indicating source: brands are essentially identity systems, encompassing a personality, a relationship, and an image in consumers’ minds (Schwarzkopf, 2008, pp. 2-4). A brand builds consumer loyalty and forms certain consumer identity in an increasingly competitive environment for the tourism business. The trademark management should be an integral part of the branding strategy of any business, large or small (WIPO, 2017, p. 6). This is certainly true for business owners in the tourism sector in Sri Lanka.

Use of Branding and Trademark for the Tourism Industry

Trademarks are important tools for tourism stakeholders to distinguish their products and services from others in the tourism business. In the fast-changing business world, the purchasing decisions of consumers are constantly

influenced by brands that are mostly protected by trademark rights. A brand is a living business asset and, in tourism, various branding strategies can be adopted that would result in the branding of countries, places/cities/destinations, and products (including services) (Keller, 2013, p. 142). There is a growing interest in the tourism industry to adopt innovative branding strategies to leverage touristic offers to make them more attractive and appealing to tourists. Undoubtedly, an effective trademark management is important for the tourism sector. A brand builds consumer loyalty and forms certain consumer identity in an increasingly competitive environment for tourism businesses.

Therefore, trademark protection, when efficiently used, is an important tool in creating an image for your business in the minds of current and potential customers and in positioning a business in the market (Sukarmijana & Saponja, 2013, p. 76). Moreover, it is also important to appraise what categories of marks help improve quality standards and competitiveness of tourism-related products and services. There are different types of marks that can be used in the tourism business, namely: trademarks, service marks, collective and certification marks. In reality, trademarks operate as “badges of origin”, denote quality and improve market differentiation. In terms of purposes, trademarks and service marks are used for ‘individual marketing’ while collective and certification marks (“shared marks”) are used for ‘joint marketing’ with reference to the reputation and to certain qualities of the products. In fact, shared marks are viewed as useful additional tools to help the tourism business.

Trademarks and Service Marks

As noted earlier, a trademark is a sign that identifies and distinguishes in the marketplace the products of one enterprise from those of other enterprises. Similarly, a service mark is any word, name, symbol or device (or any combination thereof) that identifies and distinguishes the services of one party from those of others. In fact, a trademark or a service mark is a valuable business asset for your enterprise. In some countries, the term ‘trademark’ is used for goods (for example, COCA COLA, SAMSUNG), while signs for services are called “service marks” (WIPO, 2017, p. 18). For example, VISA, MASTERCARD and AMERICAN EXPRESS are famous service marks for credit card services. In sum, trademarks distinguish between manufacturers of similar goods, while service marks distinguish between producers of similar services.

Collective Marks

A collective mark is generally owned by an association or cooperative whose members may use the collective mark to market their products (WIPO, 2017, p. 18). The association generally establishes a set of criteria for using the collective mark (e.g., quality standards) and permits individual businesses to use it if they comply with such standards. Collective marks may be an effective way of jointly marketing the products of a group of enterprises that might find it more difficult for their individual trademarks to be recognized by consumers and/or handled by the main distributors (WIPO, 2017, p. 18). Most importantly, a collective mark is used to distinguish certain valued characteristics common to the products of the members of an association/cooperative; for example, geographical origin, material, mode of manufacture. Due to the economies of scale (for example registration cost, advertising campaign, enforcement, etc.), collective marks can become powerful tools for enhancement of quality, local development and harmonization of products/services.

Certification Marks

A certification mark is a distinctive sign used to indicate compliance with standards and characteristics pre-established by the owner of the mark. It certifies that products or services meet a particular standard of quality origin, materials, mode of manufacture, accuracy or other characteristics, even though the products may come from various unrelated companies (International Trademark Association, 2012). The main feature of a certification mark is that it is used not by the proprietor of the mark, but instead by his authorized users for the purpose of guaranteeing to the relevant public that the goods or services possess a particular characteristic. Certification marks are given for compliance with defined standards, but are not confined to any membership (Punchihewa, 2017). The defined standards may concern the character or quality of goods or services, working conditions of production or performance, classes of persons producing or performing, the area of origin, etc. (WIPO, 2017, p. 18). The owner of a certification mark licenses it to others to identify their products that meet the defined standard, and the mark may be used by anyone whose product meets the established standard. The message conveyed by a certification mark is that the products have been examined, tested, inspected or in some way checked by a person who is not their producer, by methods determined by the certifier/owner (WIPO, 2017, p. 18).

This research finds that the Sri Lankan Tea Board registered ‘Ceylon Tea,’ together with the lion logo as a certification mark in January 2011 (Reg. No. 153931). The lion logo is, therefore, used by authorized tea producers as a symbol of quality. The ‘Ceylon Cinnamon logo’ has been registered by the Sri Lanka Export Development Board (SLEDB) as a certification mark (Reg. No. 163008) since 2011 (Punchihewa, 2017, p.49). Therefore, most importantly, the owner of the certification mark is usually an independent enterprise, institution, governmental entity, which is competent to certify the products concerned.

Origin-linked Products for Tourism Promotion

In addition to trademarks, geographical indications (GIs) are distinctive signs which permit the identification of products linked to a place. For example, Ceylon Tea, Ceylon Cinnamon, if used in the proper way, can become an effective marketing tool of great economic value for the tourism sector. The GIs make it possible to add value to the natural riches of a country and to the skills of its population, and they give local products a distinguishable identity (Addor and Grazioli, 2005, p. 885). More specifically, “Indian Basmati,” “French Champagne,” “Greek Feta Cheese,” “Cuban Havana Tobacco,” “Italian Parma Ham” and “Colombian Coffee” are a few prominent examples of internationally recognized GIs. In the global marketplace, GIs are distinctive signs used to differentiate competing goods. They are collectively owned with a strong inherent origin-base, namely the geographical origin to which they refer (WIPO, 2013, p. 7). In terms of a definition, a geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. Most remarkably, if well managed, GIs are intangible assets with interesting potential for product differentiation. Therefore, linking GIs with tourism-related products and services would certainly add value to what tourists purchase (Punchihewa, 2017, pp. 22-23). Because GI products tend to generate a premium brand price, they contribute to local employment creation, which ultimately may help to prevent rural exodus (WIPO, 2013, p. 7).

A GI is a source identifier that has great economic potential, especially for a developing economy like Sri Lanka. When compared with a trademark, the uniqueness of a GI resides in the link between the product and the geographical origin (territory or region) it reflects. For this reason, a GI derives its characteristics from the region’s unique environment, namely; the natural (climate, conditions of soil etc.) and human (historical context,

intergenerational skills and know-how) factors. Sri Lanka is well-known for “Pure Ceylon Tea,” as well as its pristine quality and reputation which remain in the minds of global consumers. Ceylon cinnamon, black pepper, blue sapphire from the City of Gems-Rathnapura, Panang Kaddi (palmyrah jiggery), Parithithurai Vadai (Point Pedro spicy flat vades), Malwana Rambutan, Siyane Pineapple, Jaffna Mango and Buffalo curd of Ruhuna, are some of the items that can be added to this list of origin-linked products. From the tourism promotion perspective, when GI protection is granted to a product, this clearly guarantees its quality and value and ensures the satisfaction of customer (i.e., the tourist) expectations. Hence, the GI tags on a product create greater potential for widespread commercialization. A GI symbol offers Sri Lankan producers an opportunity to recognize and market a premium product under their exclusive control. This study discusses two examples of linking GI products with tourism in Sri Lanka. When properly implemented the “Ceylon Tea Trails,” and “Ceylon Cinnamon Trails” have potential to make Sri Lanka shine bright in the global tourism stage.

Potential Use of “Ceylon Black Gold” in Tourism

The concept of Ceylon Tea Trails can offer a unique experience to tourists. The tea trails can be organized as a touristic offer involving high-quality tea, the tea estates and the touristic interest of the place, which is worth visiting for its attraction. Sri Lanka’s tea industry first began 150 years ago when James Taylor, a Scotchman, planted the first tea sapling in Loolecondra estate in Kandy on 19 acres of land in 1867. Ever since, Pure Ceylon Tea is well-known for its pristine quality and reputation, which continue to impress global consumers. The tea industry is one of the country’s major earners of foreign exchange. The Sri Lankan Tea Board registered “Ceylon Tea” together with the lion logo as a certification mark in January 2011 (Reg. No. 153931). The lion logo is therefore used by authorized tea producers as a symbol of quality. From a business perspective, the certification mark may be used in combination with individual trademarks. Any tourist who buys pure Ceylon Tea purchases a quality-guaranteed product. The protection afforded by the certification mark system to a potential GI improves leverage in the tourism market. In addition to marketing tea, the Ceylon Tea certification mark can be exploited in other ways.

Even though GI protection does not apply to the services sector, it can be extended through Ceylon Tea Trails, Ceylon Tea Bungalows, Ceylon Tea

Boutique Hotels and Tea Factory Hotels. The value of Ceylon Tea to develop new commercialization opportunities for their products brand can be further exploited commercially by being linked to the tourism industry. During a Tea Trail tour, the visitor is given a unique experience of a guided tour through beautiful tea gardens that produce certified Ceylon Tea, while enjoying the fragrance of tea bushes, and visits a tea factory for a gentle initiation in the art of tea making. Original tea is served during Tea Trails. The Ceylon Tea Trails concept contributes, moreover, to the promotion of a tea culture, and by extension to a cultural heritage that has developed for more than 150 years. Furthermore, the guided tours of Ceylon Tea Estates may feature various cultural activities, such as traditional music, songs and dances, and artworks and visits to cultural sites, including ancient Buddhist monuments. Undoubtedly, the Ceylon Tea Trails create unique high-end experiences to lure big-spending tourists. Therefore, the use of the Ceylon Tea brand helps Ceylon Tea Trail organizers to gain a competitive edge over their competitors who do not produce high quality original Ceylon Teas that are protected by the certification mark.

Potential Use of Ceylon Cinnamon in Tourism

Cinnamon is one of the reasons for Dutch foreign occupiers to make first contact with Ceylon in 1602. According to historical records, the Dutch sailed across the seas in the search for cinnamon and other spices. Today, Sri Lanka has become globally synonymous with high-quality cinnamon—the Ceylon cinnamon is well-known as the best cinnamon in the world. In order to leverage the reputation of Ceylon Cinnamon, IP tools such as certification marks can be effectively used. In view of that, the Ceylon Cinnamon logo has been registered by the Sri Lanka Export Development Board (SLEDB) as a certification mark (Reg. No. 163008) since 2011. As with Ceylon Tea, the added value of registration can be extracted in the tourism products and services market. According to the guidelines issued by SLEDB, the Pure Ceylon Cinnamon certification mark may be used only on consumer cinnamon packs and value-added products (cinnamon in packets, bags, cartons, canisters tablets, pills, oils, oleoresins, extracts, fractionates, powder, paste or any other form of value-added retail packs and packages) containing Pure Ceylon Cinnamon manufactured in Sri Lanka. The original “best in the world” quality cinnamon can, therefore, be purchased by tourists, on inspecting the logo depicted on the product. Furthermore, the reputation of the Ceylon Cinnamon brand can be exploited through the Spice Safari/Tour to Ceylon Cinnamon Gardens that

produce original and certified Ceylon Cinnamon. Moreover, the Cinnamon Trail, the guided tour to Ceylon Cinnamon Gardens, can offer a glimpse of the art of feeling cinnamon and the traditional methods and know-how used to produce Ceylon cinnamon.

Legal and Institutional Framework for the Protection of Rights

As noted earlier, a trademark is a sign capable of distinguishing the goods produced or provided by one enterprise from those of other enterprises. In Sri Lanka, protection of a mark can be acquired through registration or use. Even though there is an option of protection without registration, it is advisable to register the mark that one wants to protect to obtain a better or stronger protection. This is because the exclusive right to a mark under the Act is acquired by registration. Under the trademark law of Sri Lanka, three main categories of marks are recognized by the Intellectual Property Act of 2003, namely: trademarks (including service marks), certification marks and collective marks (Intellectual Property Act 2003 s. 101 and s. 138-142). As set out in Section 101 of the Act, a trademark is a visible sign serving to distinguish the goods of one enterprise from those of other enterprises. Moreover, the IP Act of Sri Lanka does not provide a registration system for geographical indications (GIs) as such. However, the current law recognizes the concept of Sri Lankan GIs by virtue of section 161 of the Act and provides that “any person who makes a false declaration in respect of geographical indication inclusive of Ceylon Tea and Ceylon Cinnamon shall be guilty of an offence.”

Under the IP Act 2003, only a visible sign can be registered. Therefore, non-traditional forms of trademarks (as discussed earlier) would not qualify for registration under the Sri Lankan law. The term of trademark registration lasts usually for ten years and it can be renewed indefinitely on payment of the prescribed fee (Intellectual Property Act 2003 s. 118 & s. 119). In this sense, a trademark registration can remain valid forever, provided that the registration is periodically renewed. The protection offered by many trademark registrations is limited to Sri Lanka as it is registered in the Trademark Registry of the National Intellectual Property Office of Sri Lanka (NIPO). However, it is possible to file a single international trademark application to obtain registrations in multiple countries under the Madrid System (Madrid Protocol of 1989). In this regard, the relevant law is yet to be passed by the Sri Lankan Parliament. In terms of protection, trademarks are generally protected against confusingly similar trademarks when used for identical or similar products. An

owner of a registered trademark can assign or license out his rights for commercializing IP in Sri Lanka (Intellectual Property Act 2003 s. 121). The various ways of licensing trademarks include franchising and merchandising. Moreover, the NIPO carries out the administration and management of IP rights in Sri Lanka as it the specialized government agency that has the physical and legal infrastructure, and human resources required to administer and manage IP-related issues.

CONCLUSION

Even though the leading travel guides have named Sri Lanka as one of the best tourism destinations in the world to visit, the Sri Lankan tourism sector is yet to reap benefits of its true potential. This research finds that the trademark system has so far remained an untapped potential for business success in the tourism sector in Sri Lanka and when properly managed it can be a goldmine. This paper has provided evidence and practical examples of how to be smart and creative in the tourism business by using ‘smart IP tools’ such as trademarks, service marks, collective and certification marks and signs of geographical indications on goods and services offered to tourists. In particular, hoteliers/accommodation providers, restaurants owners, the transport sector, travel agents and tour operators and travel guides can effectively use trademarks as a part of their ‘smart marketing strategy.’ A trademark not only allows customers to distinguish products or services of one enterprise from those of its competitors in the tourism market, it also gives a business much greater visibility and clear messaging in order to gain competitive advantages over other competitors. It is an important and valuable asset for both businesses and consumers. Similarly, a service mark is any word, name, symbol or device (or any combination thereof) that identifies and distinguishes the services of one party from those of others. While a collective mark is a sign that is used to distinguish certain valued characteristics common to the products of the members of an association/cooperative, a certification mark is a distinctive sign used to indicate compliance with standards and characteristics pre-established by the owner of the mark. Arguably, all the afore-mentioned IP tools can be successfully used to create more value for touristic offers and improve market opportunities for local businesses in the highly competitive global tourism marketplace of the 21st century. Perhaps most desirably, marrying the trademark system and tourism sector will help Sri Lanka become one of the top-ranking tourist destinations in the world, based on its diverse and authentic offerings.

LIMITATIONS

This review is not definitive nor is it intended to be. As with every study, the current research also had a number of practical limitations and compelling challenges. Most importantly, there is a paucity of research on the use of branding and the trademark system for competitive advantage in tourism. Therefore, this research has ventured into an uncharted territory of IP and tourism. The author acknowledges that this review cannot be claimed to be fully exhaustive, but it does provide quite a reasonable insight into the use of branding and trademark system in tourism.

ACADEMIC AND RESEARCH IMPLICATIONS

The aim of this paper is to examine whether and to what extent branding and the trademark regime can be used in a business way to extract value from the tourism-related products and services in Sri Lanka. It is hoped that this review will provide a source of reference for researchers, academicians and readers who are interested in IP and tourism research and help stimulate further interest. In term of avenues for further research, future studies should focus on the emerging areas in the Sri Lankan tourism landscape such as wellness and Ayurveda tourism, ecotourism, sport tourism, nature and adventure as well as agro-tourism as these segments of tourism have more potential to use IP tools to add value to tourism products and services for competitive advantage. From a practical standpoint, this paper offers useful insights for tourism stakeholders and policymakers on how best the IP tools can be effectively used for competitive advantage in the fiercely competitive global tourism marketplace.

ACKNOWLEDGEMENT

The authors would like to thank the anonymous reviewers for their excellent reviewer suggestions in completing this study.

CONFLICT OF INTEREST

The authors declare no conflicts of interest.

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