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'Branding' local art in an effort to enhance its marketability

On a recent trip to Australia, I met an aboriginal artist named Pollyanne Mumu. She creates paintings using traditional symbols and techniques from her tribe in Uluru (Ayres Rock), Australia.

Mumu is fiercely proud of her work, signing her paintings on the back and posing for photographs with her purchased art so owners will remember who created them. Yet at the same time, aboriginal artists such as Mumu credit their inspiration as coming from "the land."

Chicago artists have similarly created new works that reflect the influences of the city. Consider Chicago blues. Or Chicago bungalows. Or the newly emerging art forms and styles from local artisans today.

Just as "the land" or "geography" plays an increasingly important role in protecting aboriginal art, it can also be applied to protect local artisans.

Even more critically, the same technique used to protect aboriginal art internationally can also be used to enhance the marketability of the works of local artists. But to succeed, some careful planning may be required.

Since 1998, the World Intellectual Property Organization has been studying the international protection of "traditional cultural expressions," including aboriginal art and folklore. During this period, various countries have tested diverse techniques for protecting the works of indigenous peoples.

One of the most successful methods for developing new markets for local works is through the use of a well-advertised trademark that promotes the authenticity of the branded product.

Through the use of the "toi iho" trademark, the Maori of New Zealand have developed an international market for Maori-made art. Similarly, the Inuit of Canada use their "igloo" mark to brand items made using Inuit-approved techniques and styles.

The closest U.S. analogy to

these "authentication" marks are certification marks. Certification marks are often used to certify geographic origin, such as "Darjeeling" for tea (Registration No. 2,685,923) or to certify the particular cultural background of a work, such as the Autentico Pemon mark registered in Venezuela for authentic Pemon-culture handicrafts.

Since the owner of a certification mark can establish the specifications for qualifying goods, certification marks can be readily created to market locally produced art and handicrafts.

A recent publication by the United Nations Industrial Development Organization, "Adding Value to Traditional Products of Regional Origin: A Guide to Creating a Quality Consortium," contains useful guidelines for creating such specifications.

Among the critical issues to consider is any style, material or production aspects required, including geographic restrictions on the source of the works covered. Any artist who creates works that fit within such specifications is entitled to use the mark.

Despite the utility of certification marks, many countries do not permit their registration or use. Instead, they allow the use of collective marks for certification purposes. The critical legal distinction between collective and certification marks is the limitation that only members of the given organization can use a collective mark.

Despite this limitation, collective marks might be a better choice from a marketing point of view. They provide the critical benefit of allowing the costs of popularizing the branded product to be spread over a larger number of interested parties. They also provide a critical basis for the development of investment clusters, which can be used to organize and promote local handicraft industries.

For example, the village of Cumbe in Peru sought to promote the Chirimoya fruit raised by the villagers through the reg-

GLOBAL IP



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istration of the collective mark "Chirimoya Cumbe." The village chose a collective mark because the village itself wanted to be in control of its use, including the rules governing the application of the mark to the Chirimoya.

Similar reasons support the creation of collectives of local artists, and the production industries to support their efforts in Chicago.

Internationally, geographically sourced arts and designs are increasingly being protected through "geographic indications" or GIs. They are not trademarks and, unlike trademarks, GIs do not require any level of distinctiveness for protection to attach. They are also not individually owned. Artists who create a work according to the techniques or style represented by the GI can use it to promote and protect their work.

Thus, in Gujarat, India, any creator of unique mirrored shawls made in accordance with registered specifications can use the term "Kutch" to market them. Kutch is the local name for the region from which these shawls arise.

Since GIs do not technically require distinctiveness, advertising is not required to secure or even maintain a GI. Yet the GI "champagne" for sparkling wine

from the Champagne region of France has gained a certain cachet among consumers in the United States as a result of a concerted advertising campaign designed to encourage them to choose French sparkling wine over local equivalents.

Similar to collective marks, a carefully crafted GI can be promoted to support market demand for the relevant works. They can even be created to enhance their market impact.

Under Article 22 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), protectable GIs are defined as "indications which identify a good as originating in the territory of a member, or a region or a locality of that territory, where a given quality, reputation or other characteristic of the good is easily attributable to its geographical origin."

Critically, the term "indication" is not limited to geographically descriptive words such as "Chicago." To the contrary, a GI can be composed of an image having geographic significance, such as the Chicago skyline or the Water Tower. This flexibility allows artists to be creative in the GIs they create for their local works.

Finally, in order to create strong local identities, some countries have created special programs that assist local artists in standardizing their products and securing specialized protection.

INDECOPI, the Peruvian equivalent of the U.S. Department of Commerce, established a new program this year to support local ceramic and textile artisans. It includes technical support for local artisans to create specifications for protected local designs. It also includes promotional assistance, including coordinating campaigns with local tourism boards.

Chicago's vibrant arts and design communities already form a growing base for development. Adopting practices used to protect aboriginal art can only help to strengthen the sustainability of such a vital cultural industry.