

Intellectual Property Rights for Tourism-Related Traditional Knowledge: A Case Study of Sri Lanka

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Abstract

Sri Lanka is blessed with a century-old treasure trove of traditional knowledge and tourism is a key to unlock the hidden potential of Sri Lankan traditional knowledge for socio-economic and cultural development of the country. A prime example in this regard is the indigenous medical system that has prevailed for centuries. In today's competitive business environment, intellectual property is the lifeblood of any industry, and protecting intellectual property assets is imperative to business success. In this sense, the intellectual property system offers the much-needed credibility for Sri Lankan traditional knowledge-based products and services. Undeniably, Ayurveda and indigenous medical systems have the potential to create unique experiences to attract tourists with a higher spending power. Moreover, historical monuments and heritage sites, cultural events, museums and other traditional knowledge-related activities are vital for promoting cultural tourism in Sri Lanka, just as traditional cultural performances constitute a source of tourist attraction and interest. Most significantly, intellectual property tools can help improve competitiveness in wellness tourism and other traditional knowledge-based sectors. It is, therefore, argued that linking intellectual property, traditional knowledge and tourism will significantly help Sri Lanka to become a 365-day tourist destination and ensure repeat visits by overcoming the elements of seasonality. Taking cognizance of the practical insights, this paper explores as to how best a carefully crafted intellectual property strategy can be utilized by traditional knowledge stakeholders to capitalize on

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business opportunities in the Sri Lankan tourism sector. It also highlights some of the important ways in which the intellectual property system can help position Sri Lanka as a global wellness tourism destination.

Keywords: Intellectual property, traditional knowledge, tourism, economic development.

1. Introduction

More than ever before, today it is a trend and global phenomenon that people often travel to different destinations in the world to fix their lifestyle problems such as being overworked, anxious and stressed caused by busy schedules in daily life. As a result, a wave of demand has been created for traditional knowledge (hereinafter referred as TK) based products and services such as authentic Ayurvedic offerings. Sri Lanka is blessed with a century-old treasure trove of TK, and tourism is a key to unlock the hidden potential of Sri Lankan TK for socio-economic and cultural development of the country. The term “intellectual property” (hereinafter referred to as IP) refers to the types of intangible property that arise from the finest creation of the human mind. In today’s competitive business environment, IP is the lifeblood of any industry and protecting IP assets is a key to business success. Clearly, the IP system provides an essential support for an enterprise, whether small, medium or large, in the fiercely competitive marketplace. In the specific market of health and wellness-related tourism-an area where Sri Lanka has a competitive advantage - Ayurveda and indigenous medical systems have the potential to create unique experiences to attract tourists with a higher spending power. The Sri Lankan tourism industry is currently targeting to attract tourists with higher spending power who are willing to pay more than US\$ 300 per day (Nagendra, 2019). From a business standpoint, the strategic use of the IP system can leverage the thriving tourism industry in Sri Lanka. More precisely, the IP system can provide sustainable competitive advantage to TK-based products and services in the tourism marketplace.

Many tourists visit Sri Lanka to enjoy Ayurvedic treatment and specialized spas. Moreover, historical monuments and heritage sites, cultural events, museums and other TK-related activities have the potential of promoting cultural tourism in Sri Lanka, just as traditional cultural performances constitute a source of tourist attraction and interest. Therefore, the value associated with traditional cultural expression (hereinafter referred to as TCE) and products of traditional knowledge can be extracted by using the IP system. In this regard, different types of IP assets can help improve competitiveness in the wellness tourism and other TK-based sectors. Most importantly, linking TK (including Ayurveda and indigenous medicine) and TCE with the tourism sector will undoubtedly help Sri Lanka to become a 365-day tourist destination and ensure repeat visits by overcoming the elements of seasonality. In this sense, a sophisticated use of the IP system by tourism and TK stakeholders can generate tourism outside the traditional peak season securing more jobs, helping whole communities and economic growth and development in the country. Therefore, an appraisal of the value of IP assets is crucial to business success in both the tourism industry and TK-based industries. More precisely, the IP system ensures that people pay for creations and innovations in the same ways as they would at a toll on the road, and the strategic management of IP tools can enhance the competitiveness of all types of businesses. The Sri Lankan tourism sector is no exception to this reality and to remain ahead of the competition among the other popular tourism destinations in Asia such as Thailand, Indonesia (Bali) and India (Kerala), the tourism businesses in the country should make effective use of the IP system of the country.

2. Research Problem

Although Sri Lanka policymakers have positioned tourism as a central pillar of the economy and even the National Export Strategy of 2018-2022 (NES) which clearly identifies wellness tourism to be one of the key focus sectors for innovation and export diversification, the tourism sector has not yet been able to sufficiently utilize the country's rich heritage of traditional knowledge base for tourism promotion. Sri Lanka's regional competitors such as Thailand,

Indonesia and India have drawn more attention on TK-based tourism offers and reaped significant benefits by becoming more attractive destinations for health wellness tourism. It is evident that the Sri Lankan tourism sector has inadequately explored the effective use of the IP system in promoting TK-based unique products for competitive advantage in the fiercely competitive tourism marketplace. In view of the above, it is imperative for the Sri Lankan tourism sector to appraise the use of different IP rights in the tourism industry for its success and property.

3. Objectives

With the increasing challenges posed by the “new normal” triggered by the Covid-19 pandemic, countries around the world explore new ways and means of economic revival. Undoubtedly, innovation, tourism and traditional medicinal systems are high on the agenda for policymakers. However, there is hardly any in-depth analysis on the intersection of IP system, TK and tourism industry. Most strikingly, the linkage and relationship of these three vital fields largely remains an unexplored territory of socio-legal research. Thus, this research was motivated by a clear lack of relevant legal and academic scholarship on the subject. Thus, the main objective of this paper is to illustrate, whether and to what extent, a carefully crafted intellectual property strategy can be utilized by traditional knowledge stakeholders to capitalize on business opportunities in the Sri Lankan tourism sector. It also highlights some of the important ways in which the intellectual property system can help position Sri Lanka as a global wellness tourism destination. This paper also intends to provide practical insights for tourism stakeholders as to how best the IP system can be effectively used to promote the tourism industry as a key pillar of economic development in Sri Lanka.

4. Methodology

Any academic researcher belonging to any respective discipline needs to make a decision at the beginning as to the method and methodology the researcher should follow when embarking on a research journey (Yilmaz, 2013, p. 311). Therefore, this research

was conducted primarily as a library-based critical review of literature. In so doing, primary and secondary legal sources were used extensively. Desk research was conducted by consulting multiple sources of information on the intersection of IP, TK and tourism, including legal literature, case studies, specialized articles and previous research. Moreover, legal research and analysis concerning the domestic legal frameworks was carried out with the support of empirical evidence. In addition to the above, key-informant interviews with legal, tourism and TK experts in Sri Lanka were conducted to ascertain expert views on the issue at hand. The study employed the 'black letter' approach as the dominant form of methodology (Qureshi, 2015, p. 631). The paper also followed the qualitative research paradigm and relied heavily on 'revelational epistemology' as the philosophical basis (Conry & Beck-Dudley, 1996, p. 377).

5. Literature Review

Even though there is no universally settled definition of the term 'traditional knowledge', it is generally understood to mean the know-how, skills, innovations and practices developed by indigenous peoples and local communities, while traditional cultural expressions (TCEs) are defined to mean the tangible and intangible forms in which traditional knowledge and cultures are expressed and, in fact, the TCE is viewed as a sub-set of traditional knowledge (WIPO, 2017,p.9). The protection of traditional knowledge has become a 'hot topic' though there is neither much knowledge about it, nor is there a sound protection mechanism in Sri Lanka (Sumanadasa, 2011, p. 147). 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, 2004). 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 (UNWTO, 2008). Despite its critical importance for socio-economic development and job creation, limited academic attention has been paid to examine the important intersection of IP, TK and tourism both

from a Sri Lankan and international perspective. Profoundly, legal and economic scholarship have recognized IP as the “invisible gold” at the heart of most successful businesses in the 21st century (Llewelyn, 2010,p.2). In the field of IP law there has been little scholarly literature published pertaining to the use of IP tools 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 (2017) 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) 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. In another significant paper by Kurniawan (2018) is elucidated in detail the prospect of promoting Indonesia as a wellness tourism destination. However, this paper does not deal with any IP aspect 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 IP in promoting Sri Lanka as a leading wellness tourism destination. 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 IP, TK and tourism can be linked for the benefit of the tourism industry in Sri Lanka.

6. Discussion and Analysis

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 present Government expects to increase the annual tourist arrival figure to seven million by 2030, while also making it a US\$ 10 billion industry (Silva, 2020). Sri Lanka is blessed with a century-old treasure trove of traditional knowledge, and tourism is a key to unlock the hidden potential of Sri Lankan traditional knowledge for socio-economic and cultural development of the country. In any society, traditional communities develop their own unique set of skills, practices and innovations, carefully passed down from generation to generation. This comprehensive body of knowledge is part of the community's identity and represents a range of economic and cultural assets. Perhaps even more importantly, TK is a great source of touristic attraction for the country. It is often argued that Sri Lanka should reap greater benefits from its rich TK base. Currently, that knowledge is not properly utilized, and its potential remains untapped, although it has huge market potential (Punchihewa, 2017, p 40). From a tourism perspective, Ayurveda and other traditional healing services (ancient healing systems) in Sri Lanka have great potential to develop in the health and wellness tourism industry. Sri Lankan Ayurveda and the traditional medical system is a goldmine to be properly utilized in the tourism sector (Sriyananda, 2015).

As a related concept, TCEs (expressions of folklore) is a subset of 'traditional knowledge', included within the same notion. Succinctly, TCEs are the forms in which traditional culture is expressed. They can be, for example, dances, songs, handicraft, designs, ceremonies, tales or many other artistic or cultural expressions (WIPO, 2015, p. 15). They are seen as integral to the cultural and social identities and heritage of indigenous and local communities, reflecting core

values and beliefs and are constantly evolving, developing and being recreated. Below are examples of TCEs that can be of value for promoting tourism in Sri Lanka (WIPO, 2015, p.16):

- Verbal expressions: stories, tales, poetry, riddles, signs, elements of languages, such as names, words, symbols and indications, etc;
- Musical expressions: songs and instrumental music; Expressions by actions: dances, plays, artistic forms of rituals, etc.; whether or not reduced to a material form; and
- Tangible expressions: drawings, paintings, carvings, jewelry, metal ware, textiles, designs, carpets, sculptures, pottery, terracotta, crafts, mosaic, needlework, basket weaving, woodwork, costumes; musical instruments, architectural forms, etc.

Moreover, owing to its historical and cultural heritage, spanning more than 2500 years, Sri Lanka was known as the “resplendent land” in the ancient world. According to the UNESCO World Cultural Heritage Convention of 1972, monuments, groups of buildings and sites are treated as cultural heritage such as the golden temple of Dambulla and Sigiriya. In fact, cultural heritage sites can be of great importance and attraction for travellers visiting Sri Lanka.

More precisely, the IP system offers a range of tools for creating and maintaining exclusivity over creative and innovative output in the tourism marketplace. In the current business environment, the primary source of competitive advantage for all businesses is innovation and original creative expressions. Therefore, the IP system in its entirety provides useful tools that may be leveraged through appropriate strategies for the benefit of the tourism and TK stakeholders and for the promotion of the local development and sustainable tourism (WIPO, 2016, pp. 2-3). Elucidated below are the aspects of IP that can be of significant value for tourism-related TK:

- TK holders produce creative works that can be protected by copyright law. Copyright, which arises automatically upon a work's creation, applies to products of creativity.
- Patents protect inventions that are new, involve an inventive step and are capable of industrial application. For example, new functional features of items such as woodworking tools, hand-tools, brushes, paints, and musical instruments used by TK-based inventors could be protected.
- A trademark is a sign used to differentiate the goods or services of a particular firm or undertaking, in the course of trade. Registering and using a trademark can increase consumer recognition of authentic TK products and add to their commercial value.
- A certification mark indicates that the goods or services are certified by the owner of the mark to conform to certain standards or characteristics, such as geographical origin, material, mode of manufacture or quality.
- A collective mark distinguishes the goods and services of members of an association, which is the owner of the mark, from those of other undertakings.
- An industrial design protects the aesthetic aspect or outward appearance of a product, such as its shape, patterns, lines or colors, and may be embodied in a wide range of handicraft products. For example, the shape of a basket, the design of a necklace or the ornamentation of a vase may be protected as designs.
- GI protects TK products that are linked to the place. In other words, a GI is a sign used on goods that have a specific geographical origin and possess qualities or reputation that are due to their place of origin. These products are often the result of traditional processes and knowledge, carried forward by a community from generation to generation in a given region.
- Unfair competition law is used to restrain dishonest practices

in the marketplace and can be a useful means of combating false and misleading claims as to authenticity or origin;-for example, where a cheaply made souvenir item carries a label falsely indicating that it is 'authentic.'

From a practical standpoint, and most desirably, the trademark system serves as a critical tool and the Sri Lankan policymakers should consider branding and marketing its Ayurvedic products and services, such as Ayurveda health resorts, Spas, Ayurveda hospitals/clinics, herbal cosmetics, educational institutions, beauty care products and spa equipment, because IP tools can effectively enhance Ayurveda value by standardizing, monitoring and controlling the quality of products and services used in tourism. To that end, the Sri Lankan Ayurvedic Department or any other relevant institution can register its brand/ logo as a certification mark and issue guidelines for using the Certified Sri Lankan Ayurveda/ Sri Lankan Traditional Medicine brand on every product and service that conforms to the set standard, which will not exclude others who practice Ayurveda and traditional medicine in the country. Use of the logo is a guarantee of a better-quality product or service, while use of the certification mark system can effectively prevent dubious practices that are passed off as Ayurveda. Every village practitioner using the protected logo/brand can capture the value of traditional know-how for the tourism market by complying with strict quality standards. IP protection is, therefore, a necessary step in enhancing the sector by preventing misuse and by making Sri Lanka a reliable Ayurveda destination in the world (Punchihewa, 2017, p. 60).

Moreover, IP tools that can be effectively used for marketing, promoting and preserving cultural goods include trademarks, patents, copyright, GIs, trade secrets. For example, the copyright system can accord protection to postcards reproducing images of heritage sites and the use of a video clip of the historical story of the place in a tourism promotion campaign, patent rights for inventive technology for treatment and preservation of heritage sites and temples and monuments, while trademark (logo) for branding

of places and marketing original local handicrafts. All IP rights analysed earlier can be accorded legal protection by provisions of the Intellectual Property Act, No. 36 of 2003 if the relevant conditions for protection are fulfilled. Taking together, all these factors indicate that the use of the IP system is of great significance for promoting tourism related TK.

7. Conclusion and Recommendations

Sri Lanka is endowed with a century-old treasure trove of traditional knowledge and this knowledge is not properly utilized, and its potential remains untapped, although it has huge market potential. From an economic standpoint, the IP system can be used strategically to protect and promote TK and TCE in the context of tourism business in Sri Lanka. For every business, effective marketing of IP can enhance long-term business success and, therefore, it is important to appraise the value of different IP tools for enhancing the competitiveness of TK-related touristic offers, including Ayurveda. Undoubtedly, Sri Lankan Ayurveda and the traditional medical system is a goldmine to be properly utilized in the tourism sector. As it is evident, there is a wave of demand for authentic, high quality, standardized and effective wellness tourism products in most parts of the world. Thus, the Sri Lankan policymakers should foresee branding of its Ayurvedic products and services by using the trademark and certification mark system. As analysed earlier, IP is the lifeblood of any industry in the 21st century and an essential building block of economic development which is now being used to enrich the experience and expectation of tourists.

Viewed through the lens of socio-economic benefits, certainly, the use of the IP system can also serve the interest of the marginal segment of the rural community, especially those involved in handicraft making. Fostering the responsible use of TK and TCEs for tourism purposes can provide new employment opportunities for the country's youth, help alleviate poverty, reduce rural migration among the young by restoring their confidence in a future that has hope for them, and nurture a sense of pride amongst community

members in Sri Lanka. Tourism also offers a powerful incentive for protecting, preserving and enhancing the wealth of TK. There is no doubt that if Sri Lanka aspires to become a 365-day tourist destination and ensure repeat visits by overcoming the elements of seasonality, the strategic use and management of the system is a prerequisite. In this context, the effective use of the IP system by tourism and TK stakeholders can generate tourism outside the traditional peak season by securing more jobs, helping whole communities and economic growth and development in the country. Undeniably, the use of the IP system can add value to the tourism industry in Sri Lanka as it has become one of the top-ranking tourist destinations in the world, based on its diverse and authentic offerings. Most desirably, immense value that is embedded in Ayurveda and traditional medicine (Hela Wedakama) can help position Sri Lanka as a leading global health and wellness tourism destination.

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