

Geographical Indications- Appellation of origin

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What is Geographical Indication ?

- Geographical Indication is a notice which notifies that a product originates from a geographical area which could be an agricultural product or an industrial product. It is a method of IP protection by a decree or by a register.

Why GI ?

@ To inform the consumers the origin and also to protect them from deceptive goods or products.

@To protect the market of the producers

@To Promote the economic prosperity and a fair share of the products and goods of a region which enjoys the reputation.

Appellation of origin

- An appellation is a geographical indication that declares the quality of the goods for which it is used to be derived from essentially or exclusively from the area of production.
- All application of origin are geographical indication, but not all geographical indication are appellation of origin.

Some examples

- Darjeeling tea(India)
- Scotch Whisky (scotland)
- Champagne (France)
- Kancheepuram Saree
(Kancheepuram)

GI and TM -difference

- A geographical indication is used to show that certain products have a regional origin. It must be available for use by all the producers in that region.
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- A trade Mark is a sign that an individual trader or company uses to distinguish its own good or services from the goods or services of its competition.

International position

- Internationally GI can be protected by reciprocal arrangements between countries or in the case of appellation of origin by the Lisbon Agreement.
- TRIPS agreement requires all members of the WTO to protect geographical indication if their unauthorized use would be misleading or would constitute an act of unfair competition.

Geographical Indications of Goods (Registration and Protection) Act 1999

- Geographical Indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods, or manufactured goods as originating, or manufactured in the territory of a country or a locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing to preparation of the goods concerned takes place in such territory, region, or locality as the case may be.



- The office for registration of Geographical indications for the whole of India is located only at Chennai.
- Any Association of persons or producers or any organization or any authority established by or under any law for the time being in force representing the interest of producers of the concerned goods can apply for registration.
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Contd...

- Once the application is accepted, it is advertised in a journal and can be opposed by any interested party within a total period of four months from the date of advertisement

- If the mark is not opposed or the opposition is dismissed, the mark will proceed to registration with effect from date of filing of the application. The certificate of registration would be issued.
- The registration is valid for a period of 10 years and can be renewed from time to time.



Contd....

- The most important feature of this Act is the provision for registered users. If a co-operative Society registers Darjeeling for tea or Coorg for coffee, every plantation owner in Assam or Kodagu can become registered user authorise to use the name indicating the origin of the product with particular quality, characteristic and distinctiveness.

International position

- In Europe Geographical Indications is popular among wine growers to indicate wine from a particular territory or locality. In Germany, there are more than 300 geographical indications registered in respect of wines.

Indian GI

- In India there are several internationally well reputed indications such as Kancheepuram for silk sarees, Monsoon Coffee for the coffee exported from Malabar Coast, Darjeeling Tea, Pochampally Cotton, and may be Tirunelveli Halwa.
- In order to register these internationally well known geographical indications, you should have standards fixed, the geographical areas defined and a proper apex society formed, which should be the owner of the named and the actual users become registered users.

- For Eg. If you take Kancheepuram saree there should be available standards fixed such as quality of zari used, the weight of the silk, the quality of the dye whether eco friendly vegetable dye or chemical dye with certain parameters regarding toxicity, the weave and the waft and the districts of Tamil Nadu wherein only Kancheepuram saree can be woven. May be any of you are not aware that a Kancheepuram saree can be only of lengths 6 yards, 8 yards and 9 yards. You cannot have a saree of the length of your choice – a genuine Kancheepuram Saree.



- The standards should be fixed by Textile experts in consultation with the weavers who are involved in day to day weaving of sarees. The standard should be published and should be easily accessible.
- After the standards are fixed, an Apex body should be formed, which would become the applicant and proprietor of the geographical name, Kancheepuram in respect of silk saree.
- Each co-operative society and may be the individual weavers can become registered users authorised to call their saree, Kancheepuram Saree provided, the standards of quality are followed. Otherwise, in the international market, you cannot maintain monopoly over the word “Kancheepuram”.



MAIN REQUIREMENT FOR FILING A GI APPLICATION

- STATEMENT OF CASE**
- CLASS**
- MAP**
- PARTICULARS OF PRODUCERS**
- AFFIDAVIT**
- STANDARD BENCH MARK AND ELABORATE THE UNIQUENESS**
- HOW QUALITY / INTEGRITY OF PRODUCT IS MAINTAINED?**
- SPECIAL HUMAN SKILL**
- GEOGRAPHICAL ENVIRONMENT**
- INSPECTION STRUCTURE**

AGRICULTURAL GOODS

- RICE - BASMATI, NELLORE, DEHRADUN
- WHEAT- PUNJAB
- FRUIT- ALPHONSO, DASERI, RATNAGIRI, BIHAR
LICHIS, NAGPUR ORANGES
- VEGETABLES, BANGALORE BRINJAL, CALICUT
GINGER
- MILK - ANAND
- SPICES- MALBAR PEPPER

NATURAL GOODS

- COAL - NEW CASTLE
- LIGNITE- NEYVELLI
- GOLD - KOLAR, JOHANNESBURG, S. AFRICA
- PETROLEUM - ARABIAN

MANUFACTURED GOODS

- SARI - BANARAS, KANCHIPURAM
- SLIPPER - KHOLAPUR
- LOCK - ALIGARH
- SHIVAKASHI - MATCHWORKS
- SHOLAPUR - BEDSHEETS
- MYSORE - SANDAL WOOD
- GOA - FENI

FOOD STUFFS

- BENGAL - RASGOLLA
- BIKANER - BHUJIA
- ANDHRA - PICKLES
- VARANASI - SHRIKAND
- AGRA - PETHA

IMPORTANT CONCEPT UNDER GI ACT:

REGD. PROPRIETOR S. 2(1) (n)

PRODUCER S2(1)(k)

AUTHORISED USER (s. 17)

COLLECTIVE REFERENCE RULE 32(1)(5)

WHO CAN APPLY (SECTION 11)

RIGHTS CONFERRED BY REGISTRATI ON

GI GENERIC

ADDITIONAL PROTECTION TO NOTIFIED GOODS

HOMOYGENOUS GI

TEN STEP GUIDE FOR REGISTRATION

1. FILING OF APPLICATION
2. PRELIMINARY SCRUTINY
3. CONSTITUTION OF CONSULTATIVE GROUP OF EXPERTS
4. EXAMINATION
5. SHOW CAUSE NOTICE
6. PUBLICATION IN GI JOURNAL
7. OPPOSITION
8. REGISTRATION
9. APPEAL
10. RENEWAL

Loosing GI significance

Geographical names which have become devoid of geographical significance:

Some geographical names have by common usage, been accepted as being devoid of geographical significance and have become mere trade descriptions. Such geographical indications cannot be registered as trade marks even on evidence of distinctiveness. Illustrations of such words are given below:

Roman candles; Plaster of Paris; Portland cement; India Rubber; Chinese Lanterns; Amritsar Shawls; French Polish; Turkish Towels; Eau de Cologne.

The INTERNATIONAL CONVENTIONS

The International Conventions relating to geographical indications or appellations of origin are as follows:

- The Paris Convention for the Protection of Industrial Property of 20th March, 1883;
- The Madrid Agreement for the Repression of False and Deceptive Indications of Source on goods of 14th April, 1891;
- The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958; and
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15th April 1994.

Section 2 (k) Producer

Section 2 (k) states that “**producer**” in relation to goods, means any person who, -

i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;

ii) if such goods are natural goods, exploits the goods;

iii) if such goods are handicraft or industrial goods, makes or manufacturers the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods;

Section 9

Section 9 prohibits the registration of certain GIs –

a) the use of which is likely to deceive or cause confusion. This clause is framed to cover a wide range of acts which are likely to cause confusion or deception. (It is submitted that it may not be prudent to limit such likelihood of confusion or deception occurring only by means of visual or phonetic test);

or

b) the use of which would be contrary to any law for the time being in force;

or

c) which comprises or contains scandalous or obscene matter;

or

d) which comprises or contains any matter likely to hurt the religious feelings of any class or section of citizens of India;

or

e) which would otherwise be disentitled to protection in a court;

or

f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country;

or

g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

Explanation 1 to Sec. 9 states as to what is meant by the expression “generic names or indications” in relation to goods under sub-section (f) of S. 9:

Expln.1: For the purposes of this section, “generic names or indications”, in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

Expln.2: In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

GIs regd in India by foreign proprietor

GI's registered in India by foreign proprietors or producers till September 2011 are :

- 1.**PISCO** for alcoholic beverage in class 33. It is a liquor of grape. Registered by **Republic of Peru**.
- 2.**CHAMPAGNE** – France
- 3.**NAPA VALLEY** – **U.S.A.** for Wines. Wines from Napa Valley fetched 61% higher premium than California Wines.
- 4.**Scotch Whisky** – **U.K.**
- 5.**PROSCIUTTO di PARMA** – **Italy**. Italian cured Ham .
- 6.**COGNAC** - France

Assignment, Mortgage, Licensing:

Assignment, Mortgage, Licensing: A GI is in the nature of **public property** belonging to the producers of the concerned goods. The GIs do not grant a single holder the right to benefit from the protection but rather limit the protection to a specific area. It shall **not** be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreements. However, on the death of an authorized user his right shall devolve on his successor- in-title. **(Section 24).**

Infringement

22(1) A registered GI is infringed by a person who, not being an authorized user thereof-

- a) uses such GI by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or
- b) uses any GI in such manner which constitutes an act of unfair competition including passing off in respect of registered GI. c) uses another GI to the goods which although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered GI relates.

TRIPS AND GI

- Article 22 deals with GIs at a general level.
- Article 23 offers an additional level of protection to wine and spirit GIs
- Additional level means that member states are to protect against incorrect usage of the relevant GI even without the requirement of deception and confusion
- Under Article 22 they are to protect against misleading and incorrect usage.

To illustrate....

■ Article 22

- The expression “ Indian Gruyere cheese” actionable only on proving that:
 - Gruyere as a cheese is well known in India
 - The said expression would be misleading as to geographical origin

■ Article 23

- The expression “ Indian Champagne” actionable:
 - Merely on the ground that such usage is incorrect (despite the de-localizing factor ‘Indian’)
 - Not necessary to prove that it is well-known in India.

Ground realities of Article 23

■ Scope of Article 23 protection

- Wine and spirit GIs are protected against qualifiers such as ‘kind’, ‘type’, ‘style’, ‘imitation’ etc., as well as de-localizing elements. There is no need to prove deception and confusion
- Hence, these GIs are spared from varying and subjective interpretations of ‘unfair competition’ by various national courts thereby leading to an equal and even legal status of the GI.
- Consequently, the GI never becomes generic

■ What is not under the purview of Article 23?

- Protects only identical GIs - Champagne v. Champagne
- Does not protect expressions deceptively similar to a GI - Cognac v. Calognac

Practical effects of protection under Article 23

- Wine and spirit GIs get an additional level of protection and will never become generic once protected
- Other GI owners have to invest huge resources to defend their GIs in foreign markets
- WTO members can also enter into negotiations for increased level of protection of wine and spirit GIs with other members without letting the exceptions in Article 24 affecting them
 - For instance, if France wants to hold negotiations with US for Champagne, US can't use Art. 24.4 exception
 - Whereas if India wants to hold negotiations with the US for Darjeeling or Basmati misuse, US can use the 24.4 and 24.5 exceptions
- The protection offered to GIs under TRIPS amounts to having double standards

Additional points

- The initial Registration of a Geographical Indication shall remain valid for a period of 10 years each. A grace period of 2 years has been provided for restoring the registration of geographical indications that has lapsed due to non payment of renewal fee.

Civil Remedies

- *Civil remedies* include injunctions (Interim and permanent), damages, delivery up of the infringing goods for destruction and forfeiture of the goods that bear false representation of an existing Geographical Indication. [L]
[SEP].

Criminal remedies

- The *criminal remedies* may involve punishment to the offender which can be a minimum mandatory sentence of 6 months imprisonment and maximum of 3 years and the minimum mandatory fine of Rs.50,000/- and a maximum of Rs.2 lakhs. In case of subsequent convictions of the same offence, the minimum mandatory sentence will be one year imprisonment and fine of Rs.2 lakhs

Law of limitation

- The law provides that the right to initiate a criminal case comes to an end after the expiration of 3 years from the commission of offence charged or 2 years after the discovery thereof by the prosecutor, whichever is earlier.
- The infringement of geographical indicator is a cognizable offence and the investigation has to be carried out by an officer with the rank of a Deputy Superintend of Police.

- Slides – Courtesy-Mr.A.A.Mohan – Mohan associates
- https://www.aippi.org/download/.../WS_II_TNDaruwalla.pptx