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Original Research Paper

HISTORY AND EVOLUTION OF GEOGRAPHICAL INDICATION AS INTELLECTUAL PROPERTY IN INDIA

Management

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ABSTRACT

The study of history and evolution of a subject matter is important to gain deep knowledge of the specific area of study and the same has been explored as a part of the study on IPR management system in India. This paper presents in a short and concise manner the history and evolution of Geographical Indication as Intellectual Property in India.

INTRODUCTION

Geographical Indication is the indication which identify a good as originating in the territory or a region or a locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin, are called Geographical Indications. Geographical Indications are similar to trademarks as they function as source indicators. However, the key distinction lies in the fact that while a trademark identifies a good or service as originating from a particular producer, a geographical indication identifies not the producer of the good concerned, but the geographical region from where the product originates.

DEFINITION:

Protection of Geographical Indication (GI) has, over the years, emerged as one of the most contentious IPR issues in the realm of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The term geographical indication was used for the first time in international Intellectual Property laws in the TRIPS Agreement of the WTO, which came into force in 1995. Geographical indications are defined in Article 22(1) of the TRIPS Agreement, as "*indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.*"

Prior to TRIPS Agreement some international treaties such as the Paris Convention, the Madrid Convention & the Lisbon Agreement contained provisions on the protection of indication of source and appellations of origin.

Geographical Indication as an Intellectual Property is governed by the Geographical Indication of Goods (Registration and Protection) Act, 1999 and the definition according to Section 2(e) of this Act is: *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 region or 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 or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.*

Geographical Indications are similar to trademarks as they function as source indicators. However, the key distinction lies in the fact that while a trademark identifies a good or service as originating from a particular producer, a geographical indication identifies not the producer of the good concerned, but the geographical region from where the product originates.

Given its commercial potential, legal protection of GI assumes enormous significance. Without suitable legal protection, the competitors who do not have any legitimate rights on the GI might ride free on its reputation. Such unfair business practices result in loss of revenue for the genuine right-holders of the GI and also misleads consumers

HISTORY OF GEOGRAPHICAL INDICATION IN INDIA

Earlier Geographical indications were not registrable in India and in the absence of statutory protection, Indian geographical indications had been misused by persons outside India to indicate goods not originating from the named locality in India. Patenting turmeric, neem and basmati are the instances which drew a lot of attention towards this aspect of the Intellectual property. Mention should be made that under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), there is no obligation for other countries to extend reciprocal protection unless a geographical indication is protected in the country of its origin. India did not have such a specific law governing geographical indications of goods which could adequately protect the interest of producers of such goods. To cover up such situations it became necessary to have a comprehensive legislation for registration and for providing adequate protection to geographical indications and accordingly the Parliament has passed a legislation, namely, the Geographical indication of Goods (Registration and Protection) Act, 1999. The legislation is administered through the Geographical Indication Registry under the overall charge of the Controller General of Patents, Designs and Trade Marks.

The salient features of this legislation are as under:

- Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor","authorized user", etc.
- Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
- Registration of geographical indications of goods in specified classes.
- Prohibition of registration of certain geographical indications.
- Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.
- Compulsory advertisement of all accepted geographical indication applications and for inviting objections.
- Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.
- Provisions for higher level of protection for notified goods.
- Prohibition of assignment etc. of a geographical indication as it is public property.
- Prohibition of registration of geographical indication as a trademark.

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- Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation.
- Provision relating to offences and penalties.
- Provision detailing the effects of registration and the rights conferred by registration.
- Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

EVOLUTION OF GEOGRAPHICAL INDICATION IN INDIA

The legislations which deal with protection of GI's in India are 'The Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). India enacted its GI legislations for the country to put in place national intellectual property laws in compliance with India's obligations under TRIPS. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement. In India a GI may initially be registered for a period of ten years, and it can be renewed from time to time for further periods of ten years. Indian law has certain restrictions that a registered GI cannot be of assignment, transmission, licensing, pledge, mortgage or any such other agreement.

Geographical indication as a concept is very new in India coming into paper in 1999 and into practise on 15 September 2003 and the first registered GI was of Darjeeling tea, applied in 2003 and officially registered in Oct 2004. This is a classic example of the indication of geographical origin which helped in tremendous brand recognition of India in the International market. Worldwide Darjeeling tea is synonymous with fine quality tea with uniqueness in extraordinary flavour and colour flooring all other competitor tea variants in the globe. There was once upon a time a tremendous amount of infringement happening where both internal domestic producers as well as foreign producers used to pass-off their tea produce as Darjeeling tea for obvious commercial reasons and resulting in substantial harm for the original Darjeeling tea growers share of revenue and market goodwill. Hence was the reason which made Govt. of India implement GI Act to come in practice and the tea was the first product to be taken for registration due to constant initiatives taken by the Tea Board and Darjeeling Tea Association. Hence registration of Darjeeling tea for GI was entirely an Industry driven initiative for ethical and commercial reasons and to control the passing-off infringements.

ABOUT DARJEELING TEA:

Tea is India's oldest industry in the organized manufacturing sector and has retained its position as the single largest employer in this sector. Around 28% of the world's tea is produced in the country and India also is the world's largest consumer of tea.

Among the teas grown in India, Darjeeling tea offers distinctive characteristics of quality and flavour and has a global reputation for more than a century. Broadly speaking there are two factors which have contributed to such an exceptional and distinctive taste, namely geographical origin and processing. These tea gardens are located at elevations of over 2000 meters above sea level. The history of Darjeeling tea dates back to the 1840's, when India was a British colony. Even after the Indian independence from British rule in 1947, the British ownership continued in many tea gardens of Darjeeling, however by the end of the 1970's most of the tea gardens of Darjeeling were in Indian ownership. The major portion of the annual production of Darjeeling tea is exported to the key markets of Japan, Russia, USA, UK and other European countries like France, Germany and Netherlands.

NEED TO PROTECT DARJEELING TEA AS GEOGRAPHICAL INDICATION:

An adequate legal protection is necessary for the protection of legitimate right holders of Darjeeling tea from the unfair business practices of various commercial entities. For instance, tea produced in countries like Kenya, Sri Lanka or even Nepal has often been passed-off around the world as 'Darjeeling tea'. Appropriate legal protection of this GI can go a long way in preventing such misuse. Without adequate GI protection both in the domestic and international arena it would be difficult to prevent the misuse of Darjeeling Tea's reputation, wherein tea produced elsewhere would also be sold under the Darjeeling brand, causing damage to consumers and denying the premium price and recognition to Darjeeling tea growers. The industry has realised the fact that unless Darjeeling Tea is properly marketed and branded, the survival of the industry may be at stake and GI protection along with stringent enforcement can go a long way in helping the industry to improve its financial situation.

The first attempt from the Tea Board of India towards protection of the 'Darjeeling' brand was undertaken in 1983, when the 'Darjeeling' logo was created.



Darjeeling Tea logo

The Tea Board obtained home protection for the Darjeeling logo as a certification trade mark under the Indian Trade and Merchandise Marks Act 1958 (now the Trade Marks Act, 1999). The registration was granted in class 30 in the name of the Tea Board in 1986. In the same year, the logo was registered as a trademark in several other countries like the UK, the USA, Canada, Japan, Egypt, and under the Madrid Agreement covering Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia. In the absence of a separate law dedicated exclusively to GI's in India during that time, the word 'Darjeeling' was also registered under the Trade and Merchandise Marks Act 1958 in class 30 in the name of Tea Board in 1998. When the Geographical Indication Act in India was enacted in September 2003, the Tea Board applied for GI protection of 'Darjeeling' in October 2003. In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a Geographical Indication.

The registration of a geographical indication is not compulsory; however, it offers better legal protection to facilitate an action for infringement. The registered proprietor and authorized users can initiate infringement actions. The authorized users can exercise the exclusive right to use the geographical indication. The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each.

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