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Study on the importance of geographical indication and its registration review in India

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Abstract

In this research paper the registration of regional specialty under GI (geographical indication) an element of IPR (Intellectual property right) is been highlighted). In India specially agro-based goods are getting registered under GI. 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. Explanation. —For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the Geographical Indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

Keywords: country region, TRIPS (trade related intellectual property rights), GI (geographical indication), registration procedure

Introduction

^[1] Geographical Indications (GI) have emerged as a significant form of Intellectual Property Rights (IPR) issue in the Indian context. GI helps a community (regional) of Producers to differentiate their products from competing products in the market and build goodwill around their products, often fetching a premium price. From buyers' point of view, GIs act as a signaling device, which helps them identify genuine quality-products and also protect them against counterfeits. In view of their commercial potential, adequate legal protection of GIs becomes necessary to prevent their misappropriation. Although India has had in its possession a considerable number of products that could qualify for legal protection as geographical designators, the initiatives to exploit this potential begun only recently when the country established as sui generis system of GI protection with the enactment of 'the Geographical Indications of Goods (Registration and Protection) Act, 1999, coupled with the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002. The Act, which became operational with effect from 15 September 2003, was drafted as part of the exercise in the country to set in place national IPR laws as much in compliance with India's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organization (WTO) so as to take advantage of the 'minimum' standards of GI protection that the TRIPs sets out for the WTO members to comply with in their respective national legislations. Interest in GIs has thrived in recent years. The obligation, under the TRIPs Agreement, for Members of the World Trade Organization (WTO) to protect GIs has, to a large extent, triggered this attention. But beyond that, what creates the attraction? The short answer is that they are seen as useful tools in marketing strategies and public policies, for which there has been growing interest in the last two to three decades. Geographical Indications as differentiation tools in marketing strategies: from mere source indicators to brands Consumers pay increasing attention to the geographical origin of products, and care about specific characteristics present in the products they buy. In some cases, the "place of origin" suggests to consumers that the product will have a particular quality or characteristic that they may value. Often, consumers are prepared to pay more for such products.

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This has favored the development of specific markets for products with certain characteristics linked to their place of origin. Brand recognition is an essential aspect of marketing. Geographical Indications convey information about the origin-bound characteristics of a product. They therefore function as product differentiators on the market by enabling consumers to distinguish between products with geographical origin-based characteristics and others without those characteristics. Geographical Indications can thus be a key element in developing brands for quality-bound-to-origin products.

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003. Darjeeling Tea was the first Indian product to get the Geographical Indication.

Article 22.1 of the TRIPS Agreement defines Geographical Indications as ...indications which identify a good as originating in the territory of a member [of the World Trade Organization], or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Conceptual details relevance to study the geographical indications of goods^[2]

(Registration and protection)

ACT, 1999 ACT NO. 48 OF 1999 [30th December, 1999.]

An Act to provide for the registration and better protection of Geographical Indications relating to goods. It enacted by Parliament in the Fiftieth Year of the Republic of India as follows:

1. Short title, extent and commencement

- a. This Act may be called the Geographical Indications of Goods (Registration and Protection) Act, 1999.
- b. It extends to the whole of India.
- c. It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions^[3] and interpretation: (1) In this Act, unless the context otherwise requires

- a. "Appellate Board" means the Appellate Board established under section 83 of the Trade Marks Act, 1999 (47 of 1999);
- b. "Authorized user" means the authorized user of a Geographical Indication registered under Section 17;
- c. "Deceptively similar" A Geographical Indication shall be deemed to be deceptively similar to another Geographical Indication if it so nearly resembles that other Geographical Indication as to be likely to deceive or cause confusion;
- d. "District court" has the meaning assigned to it in the Code of Civil Procedure, 1908 (5 of 1908);
- e. "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. Explanation. For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the Geographical Indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

- f. "Goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;
- g. "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;
- h. "name" includes any abbreviation of a name; 1. 15th September, 2003, vide notification No. S.O. 1051(E), dated 15th September, 2003, see Gazette of India, Extraordinary, Part II, sec. 3(ii).5
- i. "Package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;
- j. "prescribed" means prescribed by rules made under this Act;
- k. "Producers", in relation to goods, means any person who,
 - if such goods are agricultural goods, produces the goods and includes the person who
 - Processes or packages such goods;
 - if such goods are natural goods, exploits the goods;
 - if such goods are handicraft or industrial goods, makes or manufactures 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;
- l. "Register" means the Register of Geographical Indications referred to in section 6;
- m. "Registered" (with its grammatical variations) means registered under this Act;
- n. "Registered proprietor", in relation to a Geographical Indication, means any association of Persons or of Producers or any organisation for the time being entered in the register as proprietor of the Geographical Indication;
- o. "Registrar" means the Registrar of Geographical Indications referred to in section 3;
- p. "Tribunal" means the Registrar or, as the case may be, the Appellate Board before which the Proceeding concerned is pending.
 - Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999(47 of 1999) shall have the meanings respectively assigned to them in that Act.
 - In this Act, unless the context otherwise requires, any reference—

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- a. to the use of a Geographical Indication shall be construed as a reference to the use of a printed or other visual representation of the Geographical Indication;
- b. to the use of a Geographical Indication in relation to goods shall be construed as a reference to the use of the Geographical Indication upon, or in any physical or in any other relation whatsoever, to such goods;
- c. to a registered Geographical Indication shall be construed as including a reference to a Geographical Indication registered in the register;
- d. to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;
- e. to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

3. The register and conditions for registration ^[4]

Registrar of Geographical Indications. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

- The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorize them to discharge.
- Power of Registrar to withdraw or transfer cases, etc.— Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.
- Geographical Indications Registry and offices thereof.—(1) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.
- The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating there registrations of Geographical Indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.
- The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.

4. Procedure for and duration of registration ^[5]

Application for registration.

1) Any association of persons or Producers or any organization

or authority established by or under any law for the time being in force representing the interest of the Producers of the concerned goods, who are desirous of registering a Geographical Indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the Geographical Indication.

2) The application under sub-section (1) shall contain

- a. A statement as to how the Geographical Indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;
 - b. The class of goods to which the Geographical Indication shall apply;
 - c. The geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
 - d. The particulars regarding the appearance of the Geographical Indication as to whether it is comprised of the words or figurative elements or both;
 - e. A statement containing such particulars of the Producers of the concerned goods, if any, proposed to be initially registered with the registration of the Geographical Indication as may be prescribed; and
 - f. Such other particulars as may be prescribed.
- 1) A single application may be made for registration of a Geographical Indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.
 - 2) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the Geographical Indication relates is situated: Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limits the place mentioned in the address for services in India as disclosed in the application, is situated.
 - 3) Every application under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.
 - 4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.
 - 5) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at this decision.

Opposition to registration: (1) Any person may, within three months from the date of advertisement or re-

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advertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner Andon payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner.

Registrar, of opposition to the registration^[6]

1. The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall sent to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.
2. If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.
3. Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within the such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.
4. The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.
5. Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.
6. The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.

Correction and amendment

The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under section 11, permit the correction of any error or in connection with the application or permit an amendment of the application: Provided that if an amendment is made to a single application referred to in sub-section (3) of section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

Registration

1. Subject to the provisions of section 12, when an application for registration of a Geographical Indication has been accepted and either
 - a. the application has not been opposed and the time for notice of opposition has expired; or
 - b. the application has been opposed and the opposition has been decided in favor of the

applicant, the Registrar shall, unless the Central Government otherwise directs, register the said Geographical Indication and the Authorised users, if any, mentioned in the application and the Geographical Indication and the Authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 84, be deemed to be the date of registration.

2. On the registration of a Geographical Indication, the Registrar shall issue each to the applicant and the Authorised users, if registered with the Geographical Indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indications Registry.
3. Where registration of a Geographical Indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.
4. The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Application for registration as authorized user

1. Any person claiming to be the Producers of the goods in respect of which a Geographical Indication has been registered under section 16 may applying writing to the Registrar in the prescribed manner for registering him as an authorized user of such Geographical Indication.
2. The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the Producers of the goods referred to in that sub-section and such fee as may be prescribed.
3. The provisions of this Chapter relating to
 - a. The filing and examination of the application;
 - b. The refusal and acceptance of registration;
 - c. Withdrawal of acceptance of application;
 - d. Advertisement of application;
 - e. Opposition to registration;
 - f. Correction or error in an amendment of the application; and
 - g. Registration, shall apply in respect of the application and registration of authorized users referred to in sub-section in the same manner as they apply for the application for registration and registration of the Geographical Indication.

Duration, Renewal, Removal and Restoration of Registration

1. The registration of a Geographical Indication shall be for a period of ten years, but may be renewed from time-to-time in accordance with the provisions of this section.
2. The registration of an Authorised user shall be for a period of ten years or for the period till the date on which the registration of the Geographical Indication in respect of which the Authorised user is registered expires, whichever is earlier.
3. The Registrar shall, on application made in the

⁶ ibid

prescribed manner, by the registered proprietor or by the Authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the Geographical Indication or Authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).

4. At the prescribed time before the expiration of the last registration of a Geographical Indication or the Authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the Authorised user, as the case may be, of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained and if at the expiration of time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the Geographical Indication or the Authorised user, as the case may be, from the register: Provided that the Registrar shall not remove the Geographical Indication or the Authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the Geographical Indication or the Authorised user, as the case may be, and shall renew the registration of Geographical Indication or the Authorised user, as the case may be, for a period of ten years under sub-section (3).
5. Where a Geographical Indication or Authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the Geographical Indication or the Authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the Geographical Indication or the Authorised user, as the case maybe, to the register and renew registration of the Geographical Indication or Authorised user, as the case maybe, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

Effect of removal from register for failure to pay fee for renewal

Where a Geographical Indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another Geographical Indication during one year, next after the date of removal, be deemed to be a Geographical Indication already on the register, unless the tribunal is satisfied either

- a. that there has been no bona fide trade use of the Geographical Indication which has been removed within the two years immediately preceding its removal; or
- b. that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the Geographical Indication which

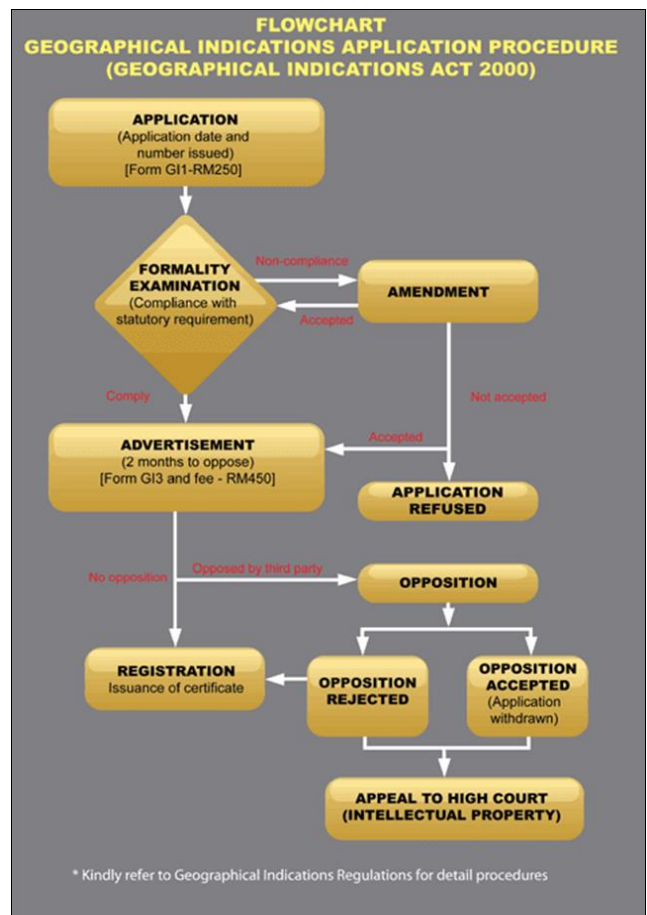
has been removed.

The registration process

In December 1999, Parliament passed the Geographical Indications of Goods (Registration and Protection) Act 1999. This Act seeks to provide for the registration protection of Geographical Indications relating to goods in India. This Act is administered by the Controller General of Patents, Designs and Trade Marks, who is the Registrar of Geographical Indications. The Geographical Indications Registry is located at Chennai.

The Registrar of Geographical Indication is divided into two parts. Part ‘A’ consists of particulars relating to registered Geographical indications and Part ‘B’ consists of particulars of the registered authorized users.

The registration process is similar to both for registration of geographical indication and an authorized user which is illustrated below:



Flowchart Geographical indication application procedure (Geographical indications Act 2000)

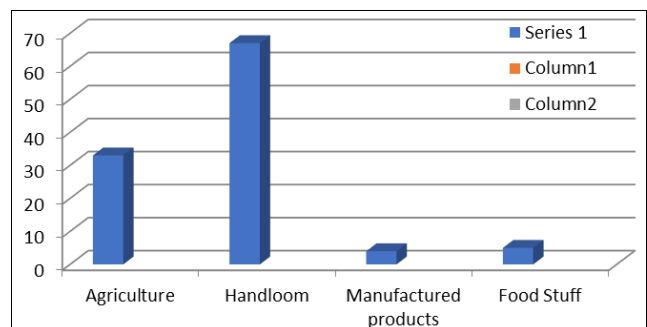


Fig 1: Product -wise Registration under GI

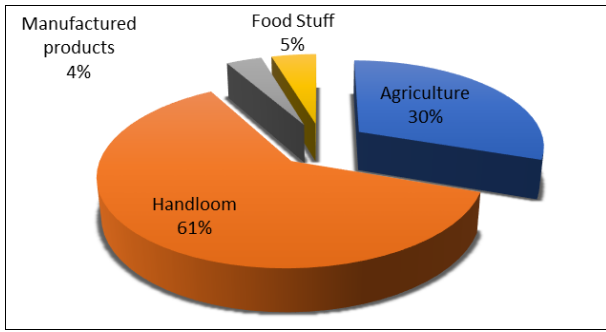


Fig 2: Product -wise Registration under GI

Table 1: State wise and product wise

	Agricultural	Handlooms	Manufactured	Food Stuff
Assam	1	1		
Andhra	1	5		1
Bihar		3		
W. Bengal	4	3		
Chhattisgarh		3		
Gujarat		4		
Goa	1		1	
Himachal P	1	3		
J&k		3		
Kerala	10	7		
Karnataka	10	11	3	1
Maharashtra	4	3	1	
M.P		4		
Nagaland	1			
Odisha				
Punjab				
Rajasthan		3		1
Telangana		5		1
U.P	1	3		

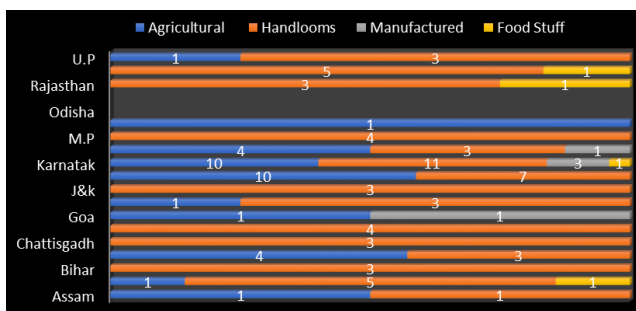


Fig 3: State wise and product wise

Conclusion

Registration of product under GI gives protection as well as raise the market. The traditional or regional specialties needed to be protected by registration under GI. The registration of regional specialties depends on the origin quality of that region climatic condition. The Research paper explains the regional based quality attribute for GI registration.

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