

“GEOGRAPHICAL INDICATIONS AND PLANT VARIETIES IN INDIA”

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Abstract

Intellectual property is the key to India’s expanding knowledge economy. Having grown in leaps and bounds IP Industry is fast reaching new heights with the advent of new knowledge Economy, the old and some of the existing management constructs and approaches would have to change. IP includes Patents, Trade marks, Copy Rights, Geographical Indicators and Trade secrets. This Research paper concentrates on the Geographical Indicators in India and its protection in India. A Geographical Indication (GI) is an Indication, whether in the form of a name or sign used on goods that have a specific geographical origin and possesses qualities or a reputation that are due to the place of origin.

GI includes Basmati Rice, Darjeeling tea, Kangra tea, Alphonso mango, Alleppey green Cardomon, Kondapalli Toys, Kanchipuram silk saree, kohalpuri chappal, Madurai Malli, Thirunelveli Halwa etc., Though registration of GIS is not mandatory in India, it is advisable to register them and be safe under IPR. In recent years, the Indian Economy has opened up and grown dramatically. In almost all sectors, MNC’s play an important role. As a result, Indias IP laws and enforcement regime are being brought in to the limelight and subjected to scrutiny for their adequacy and compliance with established goal standards. The development of IP in India has always been the heated debate and keen interest around the world. In recent years India has made vigorous progress not only in implementing its obligations under the WTO Agreement on TRIPS, but also in developing its own IP regime and to balance the Trade-off between monopoly rights and free access to knowledge. Hence it is the high time to study the challenges and Issues of GI in India.

Keyword: GI, IPR, WTO, TRIPS.

Law of GEOGRAPHICAL INDICATIONS in India

A geographical indication (GI) is an indication, whether in the form of a name or sign, used on goods that have a specific geographical origin and possesses qualities or a reputation that are due to the place of origin. Geographical indications are valuable rights, which if not adequately protected, can be misused by dishonest commercial operators to the detriment of both the consumers and the legitimate users.

The TRIPs prescribes minimum standards of protection of GIs and additional protection for wines and spirits. Articles 22 to 24 of Part II Section III of the TRIPS prescribe minimum standards of protection to the geographical indications that WTO members must provide. India, in compliance with its obligation under TRIPS, has taken legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into effect on September 15, 2003 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

As per the (Indian) 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 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. GIs have been used in India for a wide variety of products, such as Basmati Rice, Darjeeling Tea, Kangra

Tea, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kohlapuri Chappal, etc.

By registering a geographical indication in India, the rights holder can prevent unauthorized use of the registered geographical indication by others by initiating infringement action by way of a civil suit or criminal complaint. Registration of the GIs in India is not mandatory as an unregistered GI can also be enforced by initiating an action of passing off against the infringer. It is, however, advisable to register the GI as the certificate of registration is prima facie evidence of its validity and no further proof of the same is required.

Registration of Geographical Indications

An application for the registration of a GI is to be made to the Registrar of Geographical Indications in the form prescribed under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the GI Act) read with the Geographical Indications (Registration and Protection) Rules, 2002 (the GI Rules).

Duration of Protection

A Geographical Indication is registered for a period of ten years and the registration may be renewed from time to time for a period of 10 years at a time.

Infringement of Geographical Indications

The remedies relating to the infringement of Geographical Indications are similar to the remedies relating to the infringement of Trademark. Similarly, under the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999, falsification of a Geographical

Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with fine which may not be less than INR 50,000 (approx. US\$ 1075) but may extend to INR 2,00,000 (approx. US\$ 4300).

Law of PLANT VARIETIES in India

India, having ratified the TRIPS and in order to give effect to it, have enacted the Protection of Plant Varieties and Farmer's Rights Act, 2001 (the "Plant Act") (based on the recommendations of the International Union for Protection of New Varieties of Plants, Geneva). The Plant Act provides for setting up of a Protection of Plant Varieties and Farmers' Rights Authority (the "Authority") that shall be responsible for promoting the development of new varieties of plants and protecting the plant varieties and rights of the farmers and breeders. The Protection of Plant Varieties and Farmers' Rights Authority has been established and is located at NASC Complex, DPS Marg, Opp. Todapur, New Delhi - 110 012, India.

The Plant Act contains elaborate provisions to safeguard the rights of Indian farmers in addition to plant breeder's rights and researcher's rights. Presently, the Government of India has notified the following crops with their genera eligible for registration of varieties:

"Black gram, Bread wheat, Chickpea, Field pea, Green gram, Kidney bean, Lentil, Maize, Pearl millet, Pigeon pea, Rice, Sorghum"

Procedure for Registration

A new variety shall be registered if it conforms to the criteria of novelty, distinctiveness, uniformity and stability. After an application is made for the registration of the Plant Variety, the Registrar examines the application to see if it fulfills the criteria for registration of a Plant Variety. On being satisfied, the Registrar accepts the application, resulting in publication in the Journal for public objections, if any. The Registrar registers the application if the application remains unopposed or the opposition is decided in

favour of the Applicant.

Duration of Protection

The duration of protection of registered varieties is different for different crops, as given below:

- For trees and vines - 18 years;
- For other crops - 15 years;
- For extant varieties - 15 years from the date of notification of that variety.

Rights under the Plant Act

Under the Plant Act, the researcher has the liberty to conduct experiment with a registered variety, and the farmer has been given the exclusive right to save, use, sow, re-sow, exchange, share or sell his farm produce including seed or a variety protected under the Plant Act. However, the farmer is not allowed to sell the branded seed of a protected variety. Further, a certificate of registration for a variety issued under the Act shall confer an exclusive right on the breeder or his successor, agent or licensee to produce, sell, market, distribute, import or export the variety.

Infringement of Plant Varieties and Farmers' Rights

Any person, who produces, sells imports or exports any variety without the permission of the owner, infringes the rights of owner. Use of a denomination which is similar to a registered denomination and likely to confuse the general public also amounts to infringement. Infringement of any right under the Plant Varieties and Farmers' Rights attracts both Civil and Criminal action. A criminal action under the Act entails punishment up to two years and fine of INR 50,000 (approx. US\$ 1075).

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