
Basmati, pashminas and the law

A guide to protecting geographical indications in India

Geographical Indications (GI) constitute an important category of intellectual property (IP) law and are of particular significance to some countries. Most commonly, a GI includes the name of the place of origin of the goods e.g. Ceylon tea (from Sri Lanka), Champagne (sparkling wine from France), Havana cigars (tobacco from Havana), Bukhara (carpets from Uzbekistan). The protection takes the form of joint exclusive rights allocated to a group of producers within the relevant geographical area in order to protect their interests and combat unfair competition. The statutory protection helps to enhance the value of the product as well as minimize the chances of consumer deception in terms of quality of a product.

Not every country has specific legislation for protection of GI's or Appellations of origin. However, the World Trade Organization (WTO) member countries rely upon various other legislation to provide the necessary legal framework towards protection of GIs to meet their obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement). In the absence of specific legislation, most countries would accept application by a group of traders who represent the combined interests of the producers, and provide protection as a certification mark under the Trademarks Act. However, the GI protection in some countries is restricted to only wines and spirits.

Put Your Own House in Order

Under the TRIPS agreement, the member countries are under no obligation to extend protection to a particular GI unless that GI is protected in its country of origin. Prior to 2003, India did not have specific legislation for the protection of GI's. However, after losing the controversial BASMATI battle against United States (US) based entity Rice Tec Inc. in 1997, the Indian government enacted the Geographical Indications Act, 1999 (that came into force in 2003) to protect its indigenous products.

Basmati: A Lost Battle

In 1997 Rice Tec Inc. was successful in obtaining patent rights from the USPTO for an invention for, 'growing rice plants with certain characteristics identical to Basmati'. According to the USA Rice Federation and RiceTec 'Basmati' was a generic term to describe aromatic rice, rather than a term for a specific type of rice produced in India and Pakistan. There was uproar from India and Pakistan against the grant of the Basmati patent, which enabled Rice Tec to market its Basmati-type rice with brands such as Kasmati and Texmati. It was feared that the grant of the patent would jeopardise the global market positions of the two countries in relation to significant export of the aromatic rice. It is reported that around 45,000 tonnes of BASMATI (10% of the total exports) goes to the US from India and Pakistan.

Although the issue in the Basmati dispute was not strictly related to its protection as GI, the lack of a GI did limit the options for the stakeholders to object to its use by Rice Tec and the grant of the patent.

Despite several efforts from the India and Pakistan challenging the grant of the patent to Rice Tec, they could not oppose use of Basmati and its deceptive variations. One of the impediments was the limited scope of protection prescribed under the TRIPS agreement for GIs. Under the general standard prescribed in Article 22 of the TRIPS agreement for all products, the scope of protection of a GI is limited to prohibition of use that would misrepresent or mislead the public about the origin or source of such products or cause unfair competition. In simpler terms, a producer/trader is permitted to use the GI as long as it does not mislead the public about the origin of its product. This implies that if a producer/manufacture clearly states the place of origin (that could be different from the GI) e.g. Darjeeling Tea, produced in Japan or Murano glass, product of Turkey, it would be permissible, unless, of course, there is a case for unfair competition which could be potentially difficult to establish.

Special Protection for Wines and Spirits

However, as per article 23 of the TRIPS agreement, wines and spirits enjoy special protection. In this case, the traders are even prohibited from using a description such as 'Champagne type sparkling wine', as opposed to 'American-type Basmati rice' or 'Ceylon tea produced in China' which is permissible.

In view of the broad protection granted to wines and spirits, the developing nations have been lobbying for an amendment to Article 22 of the TRIPS agreement so that the same level of protection is extended to all products. The WTO member countries are engaged in negotiations to create equal rights for GIs that would be in the interests of all.

The Geographical Indications Act of India, 1999

The objective of the GI Act of India (the Act) is to provide

- a) better legal protection in respect of GIs
- b) to prevent unauthorized persons from misusing GIs
- c) to protect consumers from deception
- d) to promote goods bearing Indian GIs in the export market.

A GI is defined under the Act as "an indication in relation to goods which identifies such goods as agricultural goods, natural 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".

Indian Treasures Protected

Handicrafts	State
Salem Fabric	Tamil Nadu
Chanderi Fabric	Madhya Pradesh
Kotpad Handloom fabric	Orissa
Mysore Silk	Karnataka
Kota Doria	Rajasthan
Kancheepuram Silk	Tamil Nadu
Kullu Shawl	Himachal Pradesh
Kashmir Sozani Craft	Jammu & Kashmir
Kashmir Pashmina	Jammu & Kashmir
Agricultural products	State
Darjeeling Tea (word & logo)	West Bengal
Kangra Tea	Himachal Pradesh
Coorg Orange	Karnataka
Mysore Betel Leaf	Karnataka
Nanjanagud Banana	Karnataka
Mysore Jasmine	Karnataka
Navara Rice	Kerala
Laxman Bhog Mango	West Bengal
Fazli Mango	West Bengal
Malabar Pepper	Kerala

Broadly, the GIs as defined in the Act cover not only agricultural and natural goods originating out of a specific geographical location, but also extend to manufactured goods. The GIs are of particular significance to India which is essentially an agriculture-based economy. Also, India's handicraft sector is one of the largest foreign exchange earners for the country. With around 23 million people involved in the making of handicrafts, it is the second largest employment sector in India, next only to agriculture.

Overall, with around 80 different languages spoken in 26 states of India, the nation's cultural diversity brings a potpourri of handicrafts, food, fabrics which are unique due to their special characteristics, qualities, methods, and the human skills required to make that product unique and exclusive.

Broadly, the GIs on the Indian GI Register can be classified as:

Agricultural Products

The distinctive character could be due to the type of soil, amount of sunshine, the exact climatic conditions, water, and traditional methods of plantation, all of which contribute to the distinctive characteristics, special taste and aroma of the product e.g. Darjeeling tea, Basmati rice and Alphonso mango.

Handicrafts and Manufactured Goods

Although handicrafts can be protected under the Copyright or Designs Act, most of the Indian traditional handicrafts such as Pashmina, Kancheepuram silk etc., are produced by artisans who belong to a particular geographical location where either the special raw material is found and/or human skills were developed that make the handicraft special and unique. Therefore, the exclusive rights arising out of such products belong to the group of artisans and not a single individual or organization. Thus, the protection of such group rights in the form of a GI is justifiable.

Overall, since the time the Act was passed in 2003, around 105 indications have been registered with the GI Registry in Chennai and the number is growing. The enactment of the Act has helped to provide incentive to the artisans/producers who can now claim exclusive rights in their products and subsequently grow economic prosperity and promote rural entrepreneurship.

Foreign Applicants

The majority of applications and registrations for GIs currently on the Indian GI Register belong to Indian entities. However, the recent acceptance of a GI for PISCO liquor in favour of Peru may encourage other interested foreign applicants who may wish to seek registration in India. PISCO is the first foreign GI application filed in India under Section 84 of the Act that allows goods of foreign origin which have built up sufficient reputation in India to seek registration. PISCO is an indigenous brandy which is prepared from 'Pisquera grapes' by applying traditional production and distillation techniques that are specific to its place and country of origin.

The acceptance of Peru's application seems to have encouraged other foreign applications. Apparently, the Scotch Whisky Association is considering filing for a GI in India. The association has in the recent past faced difficulties in enforcing its rights against Indian whisky

manufacturers using the term SCOT, SCOTCH etc. in relation to non-Scotch whisky. In particular, Scotch whisky lost its case against an Indian whisky sold under the mark PETER SCOT. A GI registration would help the association of Scotch whisky manufacturers to better protect and enforce their rights against the Indian manufacturers who are currently using the word SCOTCH WHISKY even for blended versions.

Kashmir Pashmina gets the GI Tag

KASHMIR PASHMINA wool recently received GI accreditation in India. The development has brought cheers amongst the Kashmiri artisans who will finally be able to claim exclusive rights having perfected the art of making handmade Pashmina. The traditional Pashmina workers have been facing tough competition from low-priced machine-made Pashmina shawls in terms of huge price difference and easy availability of such products across the world. Hopefully the development will help the traders to enforce their rights in the GI against unscrupulous manufacturers that have cropped up in large number over a period of time around the world. For many years, Pashmina imitations, including any soft synthetic viscose, have been in circulation and have been widely traded around the world jeopardizing the exclusivity of the Kashmir region over the speciality of this wool. It will be a challenge to completely curb such illegal trade and will require fat enforcement budgets. Obtaining a GI tag in 'KASHMIR PASHMINA' is a small reason to cheer although it is only a part of the big battle.

India Pakistan Fight over the Goat

It was not easy for the Kashmir handicrafts association to obtain a GI for Pashmina. Its application was strongly challenged by the Pashmina trading organization in Pakistan which sought its share of protection for the Pashmina products produced in the part of Kashmir which belongs to Pakistan. Pashmina is a particular breed of a goat, 'capra hircus' that is found in the high altitudes of Himalayas, including the Pakistan-occupied Kashmir region. Therefore, prima-facie, Pakistan could claim its rights in the 'KASHMIR PASHMINA' GI. Applying similar logic, Nepal has also claimed its rights in "Pashmina" as the Pashmina goat is found in its upper mountainous ranges and Pashmina products have been woven there for a long period. For that matter, even in India, Pashmina goats have not been confined to Kashmir but have inhabited in the higher hills of Himachal Pradesh and Uttranchal as well. Therefore, should not the traders of this region be entitled to GI protection? The grant of a GI to traders based in the Kashmir region only has raised controversy as the Pashmina goat 'capra hircus' is not confined to this geographical location but is found in the Himalayas in general. Therefore, irrespective of the political boundaries between the countries, it would be much simpler if the GI was granted for 'Pashmina' on its own.

For most Westerners, Cashmere is a synonym for wool from the Pashmina goat and genuine Pashmina shawls, scarves and other garments made in Kashmir are traded as Cashmere shawls and scarves. The essence of GIs is essentially the public perceptions as to their origin, quality and characteristics of a product. Therefore, the attempt to further qualify the source of Pashmina by stating Kashmir, Indian, Pakistani or Nepalese Pashmina could possibly cause confusion and encourage other countries to claim a GI in Pashmina e.g. on the basis that the 'capra hircus' goat is bred in their country which would dilute the uniqueness in the brand Pashmina.

Also the BASMATI Squabble

Somewhat similarly to the challenges faced by Pashmina traders, the rights over BASMATI branded rice may never be cleared up. India and Pakistan have both been asserting rights over the

BASMATI brand and as in a number of other areas the countries have failed to arrive at a consensus. The long-grain aromatic BASMATI brand rice is well-known across the world as coming from India and Pakistan. The rice derives its special characteristics, aroma and taste from the climatic conditions, soil, method of production, skills, etc. and comes from north western plains of Punjab in both India and Pakistan soil as well as in the Indian States of Haryana and Uttar Pradesh.

The importance of BASMATI rice in India and Pakistan economy is of particular commercial significance with approximately 1 to 1.5 million tones of production in India, two-thirds of which is exported. Rightly, BASMATI was one of the first applications to be filed for obtaining a GI status when the Indian Parliament passed the Geographical Indications Act in 2003. Since then, the efforts of the traders have met with multiple hurdles. With both India and Pakistan asserting their respective rights in the BASMATI brand, at one point in time, the countries decided to embark upon a joint registration. However, as with Pashmina and a number of other issues, this joint application never materialized.

Pakistan has recently accepted a trade mark application for "Basmati" from a Lahore-based Basmati growers association. Also, India's Agricultural and Processed Food Product Export Development Authority (APEDA) is seeking to obtain a GI status in India for Basmati rice. It is reported that APEDA spends Rs. 30-40 million a year on protecting and enforcing the BASMATI GI against misuse by third parties across the world.

What it takes to obtain a GI in India

- Application on Form GI-1A
- Statement detailing how the indication serves to designate goods as GI
- Class of goods (1-34)
- Names and particulars of the applicants
- Affidavit to establish the applicant's claim of genuinely representing interests of the producers
- Standard bench mark and characteristics of the GI
- Certified copy of the map of the territory
- Special human skill required, if any
- Particulars of inspection structures, if any, to regulate the use of the GI

Future

With the appropriate legislation in place for the protection and enforcement of rights in a GI in India and the success rate of the applications, the future seems promising. It is advisable to register your GI in India as early as possible to ensure exclusivity and stop misuse at an early stage. Further, periodic press releases and cautionary notices to create awareness amongst the trade and public about your GI would help minimize misuse, and spread the message around about your vigilance and interest in safeguarding your rights.

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