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Geographical Indication Infringement

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Geographical Indications (GIs) is a form of Intellectual Property Rights (IPRs), used to differentiate the products of certain areas that have certain specific qualities or reputation that are due to that geographical origin. The GIs are controlled by TRIPS Agreement and the Geographical Indications of Goods (Registration and Protection) Act, 1999. GI include different varieties of goods, mainly agricultural goods like Darjeeling tea and Basmati rice. The legal system assures a guarantee on infringement, unfair competitions and misleading practices. The civil and criminal proceedings can also be used. The paper highlights significance of GI, registration procedure of GI in India, and a few case studies such as Basmati and Darjeeling tea controversy which points to the value of regional heritage and its market integrity. It is also highlighted the need to have strict enforcement mechanisms and ensure harmonization of global recognition whose aim is to safeguard the rights of the producers in order to gain consumer confidence.

Key words: Geographical Indication, legal framework, GI infringement, unfair competition, Darjeeling tea, enforcement

Introduction

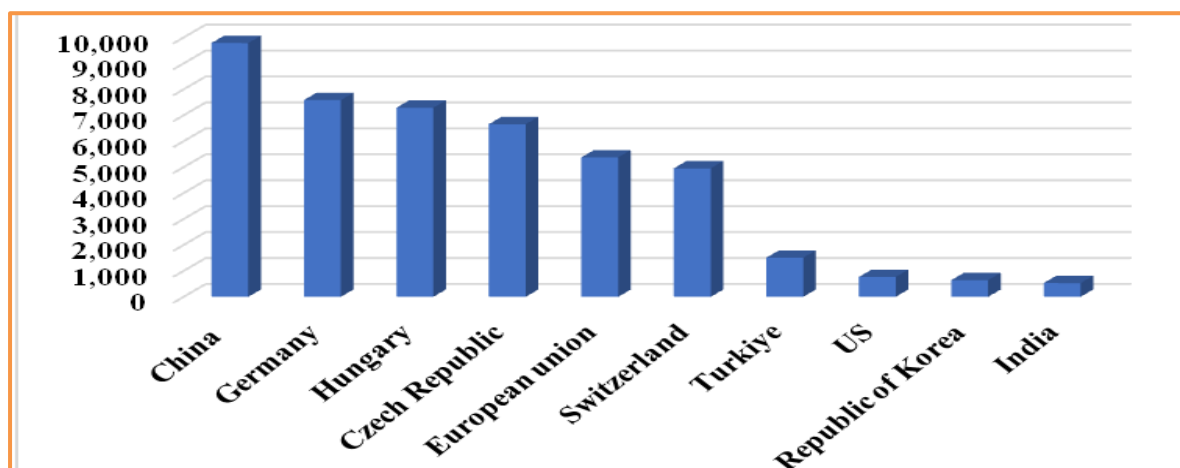
Intellectual property (IP) deals with the creations of the mind- the invention of any kind, the work of art, a computer program, a trademark and other commercial signs. IP is commonly categorized into two: industrial property includes patents for inventions, industrial design patents, trademarks and geographical indications. The works of literature, arts and sciences that are under the protection of the copyright.

World Intellectual property organization (WIPO) defines Geographical Indication (GI) as a sign used on products which have a geographical origin and whose qualities or reputation are due to that geographical origin. The TRIPS Agreement (Article 22.1) 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." Under articles 1(2) and 10 of the Paris Convention for the protection of Industrial Property, geographical indications are covered as an element of IPRs.

The main three functions of GI include, identify the goods as to the origin of a particular region or locality, suggest to the consumers that goods come from a region where a given quality, reputation or other characteristics of the goods are essentially attributed to their geographic origin and promote the goods of producers of a particular region.

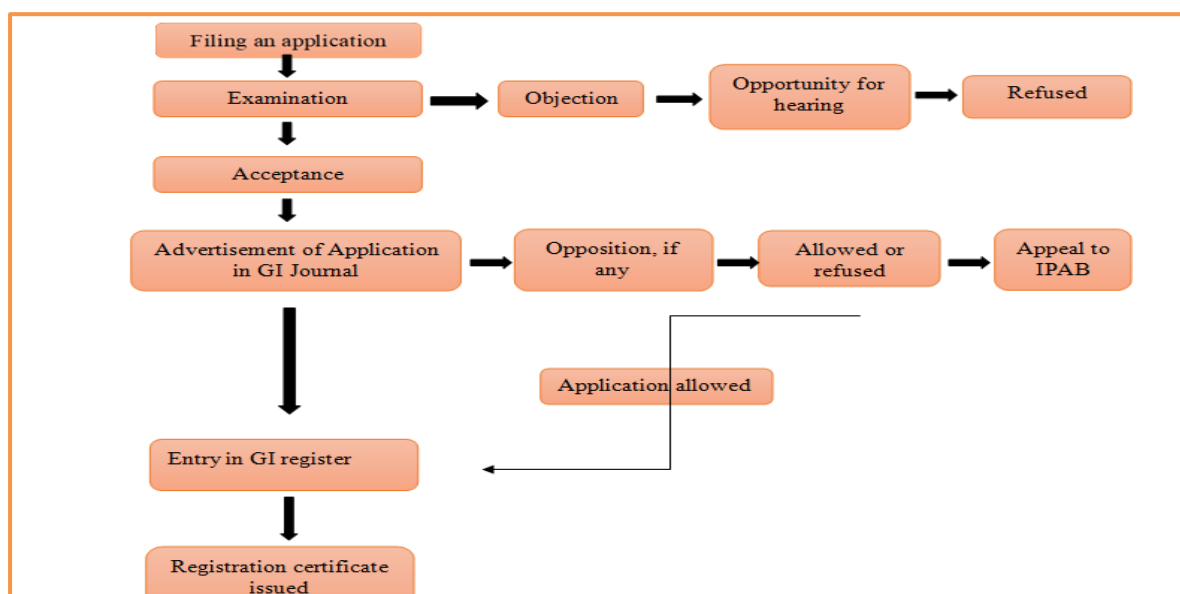
There are different examples of geographical indications-often food and drink, such as Roquefort cheese from France, Darjeeling tea from India and Tequila liquor from Mexico. There are different laws protecting geographical indications and different systems of recognition in different countries, so international law is developing ways to strengthen protection across national boundaries.

Geographical indications in force for selected national and regional authorities, 2023

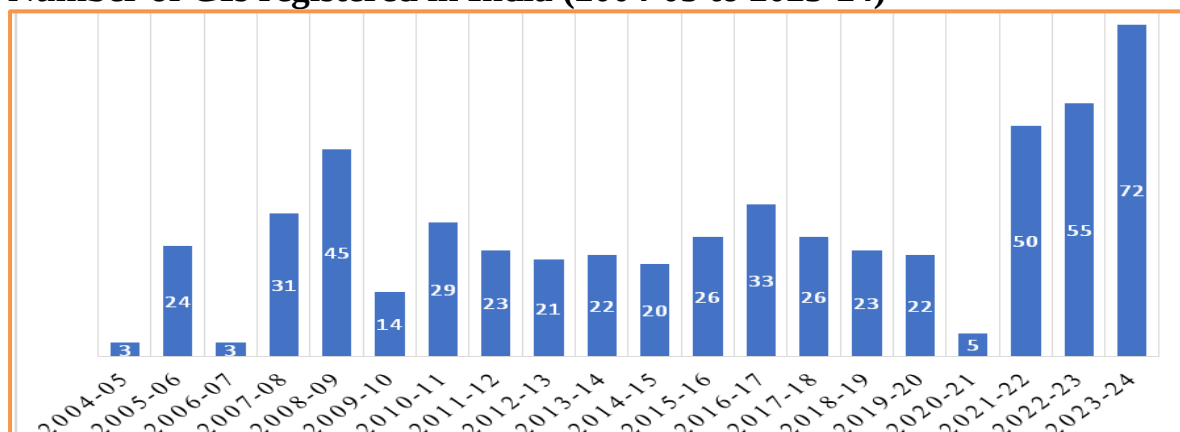


Source: World Intellectual Property Indicators 2024

Geographical Indication- GI Registration process



Number of GIs registered in India (2004-05 to 2023-24)



Major GI registered Agricultural Goods

Products	State/Union Territories	Category
Darjeeling tea	West Bengal	Agricultural Goods
Allahabadi Surkha Guava	Uttar Pradesh	Agricultural Goods
Fazil Mango Varieties	Andhra Pradesh	Agricultural Goods
Alphonso Mango	Maharashtra	Agricultural Goods
Nagpur Orange	Maharashtra	Agricultural Goods
Coorg Arabica Coffee	Karnataka	Agricultural Goods

Source: (Intellectual Property Rights, 2024)

Need for legal protection of GI

Without adequate protective measures provided by the law, there is a danger of misuse of Geographical Indications (GIs) by unauthorized parties who can seize their repute. This not only misleads the consumers but also financially harms the legitimate GI holders and slowly undermines the credibility of the product. Before the Geographical Indications of Goods (Registration and Protection) Act, 1999, there were no specific law in India dedicated to protecting GIs. Some form of protection would still be possible by addressing them through available legal grounds including consumer laws, passing off court proceedings, and by certification marks.

The Geographical Indications of Goods (Registration and Protection) Act, 1999, was enacted to align India's intellectual property laws with the country's commitments under the TRIPS Agreement. This Act came into effect on September 15, 2003, and led to the establishment of the 'Geographical Indications Registry' in Chennai, which has jurisdiction across the entire country. Rights holders can register their geographical indications (GIs) at this registry. Once a GI is registered, any individual claiming to be a producer of that GI can apply to register as an authorized user.

"Infringement" is derived from the Latin word "infringere," which means "to break off, break, bruise, weaken, or destroy." An individual who is not a registered owner or an authorized user who makes use of such information in the goods or suggests that such products originate in a geographical area other than the true place of origin of products which leads the public to mislead is violating a registered geographical indication. This is known as GI Infringement. The Chapter IX, in the GI Act outlines the punishment for the false use of Geographical Indications (GIs).

The fundamental essentials for proving the act of infringement are:

- When an individual makes false accusations or claims against the rightful owner of a registered GI with the intent to tarnish the product's reputation.
 - When someone improperly uses the unique qualities and essential attributes associated with a registered Geographical Indication.
 - When a registered GI is used in a manner that constitutes unfair competition.
- **The rights holder must provide proof in the complaint that-**
- The use of the rights holder's geographical indicator on allegedly infringing items can lead to public uncertainty about their origin. The alleged infringement involves a mark that is identical or similar to the rights holder's geographical indication.
 - The illegal act infringed on the right holder's exclusive use of rights, resulting in financial loss or damage to their goodwill and reputation.

Types of Infringement in Geographical Indications

1. Direct Infringement

Direct infringement occurs when some unauthorised manufacturer is labelling products with a Geographical Indication (GI) although they are not produced in the outlined location or do not satisfy the standards. The labelling of sparkling wine produced in California as "Champagne" is an example of direct infringement.

2. Indirect Infringement

Indirect infringement occurs when logo or a description which, though not exactly replicating the GI, gives an impression to the consumers that the product has true origin. A good example would be using the word 'champagne-like' but the product was not made in Champagne region.

The existence of two very important events made clear the necessity of strict regulation to protect Geographical Indications (GI). (Ashwathy,2024)

Basmati Controversy: Basmati is long grain and aromatic rice which is grown over centuries in the sub-Himalayan region, using the old methods of cultivation. Hence, the other countries should be barred in using the same name. Europe is the major importer of Indian Basmati rice. The US patent and Trademark office issued a patent to Ricetec Inc., (a Texas based company) for new rice lines under the name "Basmati," claiming superior traits and suitability for North American growth on September 2, 1997. This was highly not acceptable to India claiming that the patent was not justified and labeling the product as Basmati was infringement of Geographical Indication (GI) rights.

Darjeeling Tea Controversy: The other major issue that affected India was the misuse of Darjeeling tea name. This unique tea is only produced in the Darjeeling district of West Bengal but some global companies were selling tea under the label "Darjeeling" which was not really produced there. Such misrepresentation resulted in serious loss of market share of the legitimate producers. To counter such problems and protect its Geographical Indications (GIs) India enacted a legal mechanism and enforced it on September 15, 2003, with the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the 2002 Rules. In 2004, Darjeeling tea is the first Indian product to be granted the GI tag.

Remedies for infringement of Geographical Indications

• Civil remedies

Injunction: Injunctions include temporary injunction and permanent injunction. An injunction is granted for the protection of violations of related items, documents, or other evidence in respect of the subject of the suit.

Damages: The remedy of damages or account of profits in the form of compensatory damages is available to prevent infringers from infringement.

Delivery of the infringing labels and indications containing products: It is in the court's discretion to order the infringer to deliver up infringing labels and indications for destroying by taking relevant circumstances into consideration the court may or may not order for such remedy.

• Criminal Treatment

Criminal remedies are more effective as compared to civil remedies because the former can be disposed of quickly. Criminal proceedings directly attacking the violator's honour and social status. In some cases, he comes forward for the Settlement of the matter out of court to save their reputation. Chapter VIII of the Act deals with offences and punishment for such crimes.

The Act contains penal provision for violation of various provisions relating to geographical indications given below:

- Falsifying and deceptively applying geographical indications to goods.
- Selling goods to which false geographical indications is applied.
- Deceitfully representing a geographical indication as registered.
- Improperly describing a place of business as connected with the geographical indication's registry.
- Falsification of entries in the register.

The punishment for the aforementioned violations ranges from six months to three years in prison, and a fine of at least Rs. 50,000, which can further go up to Rs. 2 lakhs.

However, for appropriate and specific causes stated in writing, the court may impose a lesser punishment. The Act also increases penalties for second or subsequent convictions. In such cases, the term of imprisonment shall not be less than one year, but may be extended to three years, and the fine shall not be less than one lakh rupees, but may be increased to two lakh rupees. The courts have the authority to award a reduced punishment after citing appropriate and specific grounds in the verdict.

Infringement cases reported from Indian Jurisprudence: Wadhera and Midha (2024)

The Basmati Rice Case: A US corporation violated the Basmati geographical indicator by selling rice goods labelled as “Basmati” even though they did not adhere to the customs surrounding Basmati rice. The case demonstrated how crucial it is to preserve traditional agricultural goods and resulted in the designation of Basmati as a Geographical Indication (GI), restricting its use in India and its surrounding areas.

Alphonso Mango Case: Alphonso mango growers in Maharashtra sued vendors of subpar mango varieties for unauthorized use of the GI label of “Alphonso” mangoes, aiming to preserve the market value and reputation of authentic Alphonso mangoes.

Conclusion

Geographical Indications (GIs) play a critical role in protecting the identity and quality of products linked to specific regions. **Infringement of GIs** can lead to significant economic losses for producers, undermine consumer trust, and diminish the cultural heritage associated with unique regional products. By ensuring proper legal frameworks and enforcement measures, stakeholders can safeguard GIs, promote fair competition and encourage sustainable practices. In conclusion, **addressing GI infringement** is essential for preserving cultural identity, supporting local economies, and ensuring consumers receive authentic products.

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