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MIP-104
TRADEMARKS, DOMAIN NAMES
GEOGRAPHICAL INDICATIONS



Geographical Indications

4

''शिक्षा मानव को बन्धनों से मुक्त करती है और आज के युग में तो यह लोकतंत्र की भावना का आधार भी है। जन्म तथा अन्य कारणों से उत्पन्न जाति एवं वर्गगत विषमताओं को दूर करते हुए मनुष्य को इन सबसे ऊपर उठाती है।''

— इन्दिरा गांधी

"Education is a liberating force, and in our age it is also a democratising force, cutting across the barriers of caste and class, smoothing out inequalities imposed by birth and other circumstances."

- Indira Gandhi

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MIP-104
Trademarks, Domain Names and Geographical Indications

Block

4

GEOGRAPHICAL INDICATIONS

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BLOCK 4 GEOGRAPHICAL INDICATIONS

This Block consists of 3 units. The Block deals elaborately on Geographical indications.

Unit 13 of this course deals with the history of geographical indications, steps involved in the procedure of recognition of GIs as form of IPR, the need for legal protection, TRIPS and its application in India, the regulation process, benefits of registration, protection of GI in International Law etc.

Unit 14 of this course deals with the infringement of geographical indications, it also discusses famous case laws, the concept of passing off, manner of filing a suit, acts which do not amount to infringement, rectification and connector of the register

Unit 15 of this course deals with the Indian law on geographical indications, the procedure of operation of GI in India, what can be registered as GI, procedure for registration, who can register, product specification, methods of production. This unit also discuss case laws on different aspects of GI.



UNIT 13 INTRODUCTION TO GEOGRAPHICAL INDICATIONS

Structure

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13.2 Objectives

13.3 History of Geographical Indications

13.4 Steps Involved in the Procedure of Recognition of an AOC or PDO)

- 13.4.1 Recognition of GIs as form of IPR and its Global Protection
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"Saving the traditional knowledge heritage of a country depends on its wit and alertness in applying the provisions of various laws in intellectual property rights (IPR). The Geographical Indications Act is one such law enacted in our country which can be used to protect the specialties of different regions in producing goods of high quality and unique fragrance."

13.1 INTRODUCTION

The phrase 'geographical indication' (GI) was for the first time used in the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS Agreement). But the concept is very old and dates back to 14th century when a specific legislation was passed on 'appellations of origin' in relation to '**Roquefort cheese**' in France. In brief, the concept of GIs essentially originated in Europe where it has been mainly related to agricultural products and foodstuffs, and eventually expanding to certain industrial products, such as 'Swiss watches'. Till the TRIPS Agreement, the terminologies used were 'indications of source' and 'appellations of origin'. Geographical indications are instruments to protect a product'sreputation, an associated expression and an embedded knowledge. Consumer confidence on "originality" is tied closely to perceived authenticity, the product's physical attributes, and place of purchase or consumption and communicated heritage. While GI has been in use for many decades in different parts of the world its protection as a form of Intellectual Property Right (IPR) has acquired statutory recognition in most countries only after the TRIPS Agreement was finalized in 1994.

GIs are playing a very predominant role in European economy, the French being one among the pioneers in the development of GIs. The GI label helps in the marketing of the products leading to charging premium prices. In France, quality and geographical link are imperative elements in seeking protection. In that country, around 600 products have been recognized as early as 1997 in which 1,42,000 producers have been involved with an annual income of 19 billion Euros then.

13.2 OBJECTIVES

After reading this unit, you should be able to,

- explain geographical indications;
- history of geographical indications;
- role of GI's as form of IPR and its global protection;
- legal protection in India;
- implementation of the GI Act 1999;
- TRIPS and its application in India;
- difference between GI's and Trademarks; and
- the Registration process.

13.3 HISTORY OF GEOGRAPHICAL INDICATIONS

The *Appellations d'Origine Controlee* (AOC) was established in 1935 after trial and error methods since 1905. AOC products had to present, particular characteristics originating from natural and human factors for recognition. The recognition and regulation of AOCs were entrusted to a public establishment. The INAO (*Institute national de' origine et de la qualite*) and its decision making body is known as the *Committee National*. A brief description of INAO, its tasks, and deliverables are presented in the following Table:

Table 13.1: Ministry of Agriculture

Ministry of Agriculture	**Status as on 1997**	**Tasks of INAO**	**INAO The Deliberative authorities – 1**	**INAO The deliberative authorities – 2 Control and approval council**
INAO (*Institute national de' origine et de la qualite*)	Head office in Paris	Defining the geographical area of production	National Committee for wine, sprits and alcoholic beverages (PDO)	A specific authority
A Governmental Agency	26 regional offices then	Defining the product specifications	National Committee for dairy products , foodstuffs and forestry products(PDO)	Creation due to a new organization of controls
	Around 250 employees	Determining a system of control of the products	National Committee for organic farming	Defines principles of control and approval
	Budget 20M (72 per cent-person, 28 per cent- professionals)	Contributing to the protection of GIs	National committee for label rouge protected geographical indications (PGI)and traditional specialty guaranteed.(TSG)	Gives opinion on control and inspection bodies

The economic success of AOC since 1935 encouraged the legislator to extend the competence of the INAO to all unprocessed or processed agricultural or food products. The stakes were high, as this was the moment when debate was beginning within the European Community as to the future and the development of rural zones and the promotion of products. The Law of 2nd July, 1990 saw the creation of two more National Committees, covering dairy produce and agribusiness products. After the broadening of its competences in 1990 to include dairy produce and agribusiness products, the Agricultural Orientation Law published on 9th July, 1999 entrusted the *Institute National des Appellations d'origine* with the management of Protected Geographical Indications (PGI), and provided for the creation of a fourth National Committee. In ten years the INAO had thus seen its competence extended to all AOCs and to anything concerning origin.

On 14 July 1992, a European regulation established a system of protection for geographic names, involving two notions, namely, Protected Designation of Origin (PDO) and Protected Geographic Indication (PGI). On 3rd January, 1994, a French law containing the following was introduced:-

- only AOCs could become PDOs
- only labels and certificates of conformity could achieve European protection in the framework of the PGI
- The INAO was given responsibility in respect of the geographic names of products under PGI

13.4 STEPS INVOLVED IN THE PROCEDURE OF RECOGNITION OF AN AOC (OR PDO)

Steps involved in the procedure of recognition of an AOC (or PDO) are as under:

Group of producers define their product with precise specifications

↓

Application is sent to the relevant Member state

↓

National authorities study, decide whether to accept the registration of application

↓

Transmit their decision to the Commission

↓

A number of control procedures at EU level

↓

If application meets the requirements, publication in European Union's Official Journal

↓

An up to date list of the product names along with specification information published on its website

13.4.1 Recognition of GIs as form of IPR and its Global Protection

In the last quarter of the twentieth century, international trade has grown tremendously thereby affecting intellectual property rights in all aspects. Nations, communities and individual manufacturers have realized that GIs, intended to designate product quality, highlight brand identity, and preserve cultural traditions, allows producers to obtain market recognition and often a premium price. For example, French GI cheeses are sold at a premium of two Euro, Italian 'Toscano' wine is sold at a premium of 20 per cent since its registration as a GI in 1998. Further, the EU, the biggest producer of wines and spirits, annually exports wines to a total value of Euro 250 billion and spirits to a total value of Euro 660 billion (all based on as early as 1997 as the reference year). French wines like Bordeaux and 'burgundy' are well known world over and of course champagne that has become a symbol of victory and celebration. It is stated that in case of wines and in general GIs and the country where a product originates makes a big difference to sales. Australian wine industry devised their own regional names for wine like 'Goonawarra' or 'Barossa' and built one of the most dynamic wine industry. As of date 85 per cent of French wine exports use GIs and 80 per cent of EU exported spirits use GIs. GIs are the lifeline for 138,000 farmers in France and 300,000 Italian employees. Apart from wines and spirits GIs are also very important to the food products like cheese, tea, coffee, rice and many others.

In most developing countries, legal protection for geographical indications is of comparatively recent origin. These countries need to look into their products which bear geographical indication tags and urge the international community to make the necessary amendments to the TRIPS Agreement so that their domestic producers gain economically. For the large number of artisans engaged in the production of such products, this protection will also be a social boost, leading

to recognition for their skills which have local roots. Further, the protection afforded by GIs for handicrafts, handlooms and food stuffs help, to some extent, the preservation of local culture and traditional knowledge, as these are tangible expressions of culture. Artisans may, perhaps, need help from governments in developing their marketing strategies. But any investment in the sector is likely to boost the rural economy.

Since GI is a late entrant into IPR protection for the artisan class in India, there have been a number of successful civil society initiatives, of course, in addition to the state governments' actions, to check the exploitation of the artisan producers.

In India, the geographical indication products enjoy a reputation which is is available in an oral form. The challenge is in converting these oral knowledge bases into documentary evidence. The handloom and artisan based activities have demonstrated economies of small scale production. While that is an advantage, it has its own limitations, particularly in tackling such complex issues of documenting the knowledge and reputation bases.

GI protection though similar to the Trademarks protection has two unique dimensions in indication of geographical location and appellation of origin that indicates not only the specific location but also the characteristics of qualities brought about by a combination of geographical environment.

13.4.2 Role of World Intellectual Property Organization (WIPO)

WIPO is in charge of the administration of a number of international agreements which deal partly or entirely with the protection of geographical indications. According to the World Intellectual Property Organization (WIPO), a geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods. Agricultural products typically have qualities that are derived from their place of production and are influenced by specific local factors such as climate and soil. Whether a sign is recognized as a geographical indication is a matter of national law. Geographical indications may be used for a wide variety of products whether they are natural, agricultural or manufactured. At an international level, 'Champagne', 'Havana', 'Tequila', 'Scotch Whisky', 'Bordeaux', 'Darjeeling Tea' 'Basmati Rice' 'Irish Whisky', 'Porto', and many others are some of the popular examples. Furthermore, through the work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), made up of representatives of Member States and interested organizations, WIPO explores new ways of enhancing the international protection of geographical indications.

13.4.3 Need for Legal Protection

Given the enormous commercial implications of GIs, the legal protection of this IPR evidently plays a significant role in commercial relations both at the national as well as at the international level. Without such protection GIs run the risk of being wrongfully used by unscrupulous businessmen and others. Because they can misappropriate the benefits emanating from the goodwill and reputation

associated with such GIs, by way of misleading the consumers. Such unfair business practices not only result in huge loss of revenue for the genuine right-holders of the GIs concerned but can also hamper the goodwill and reputation associated with those indications in the long run. For want of adequate legal protection, the legitimate right holders of various GIs of Indian origin, for instance, have long since been adversely affected by such unscrupulous business practices. Innumerable companies and traders have been found to be free-riding on the goodwill and reputation associated with various renowned geographical names of Indian origin, for years. The 'Darjeeling tea' denotes the fine aromatic produces of the high-altitude areas of North-Bengal, from where it received the name. According to a rough estimation, around forty million kg of orthodox tea is being sold worldwide as 'Darjeeling' tea, although the production of authentic 'Darjeeling' tea hovers around a mere ten million kg every year. It is obvious that in the absence of such fake 'Darjeeling' teas, the price premium associated with genuine 'Darjeeling' tea is likely to increase manifold.

13.4.4 Indian History and Development of GIs

As far as India is concerned, the concept of uniqueness of products of certain geographical region has been recognized from ancient times. In the Hindu scripture **'the Ramayana'**, the mythical sanjeevani booti (seabuck thorn fruit) — supposedly a magical berry grown in the Ladakh region of Northern India, was used to bring back Laxman to life when he fell in the battle with Indrajit. Over the centuries, a number of agricultural products, food items as well as handicrafts and manufactured items have emerged as popular products by virtue of the special quality associated with the geographical regions in which they are produced. In recent times, the cultivation of Darjeeling tea has a history of more than 150 years. Going further back, Basmati rice was in frequent use in the Mogul court. Similarly, Bikneri Bhujia (a spicy Indian delicacy) has been sold in the country for decades. In the South, "Tirunelveli Halwa" (a sweet) dish was started by two families in a district by that name. The countless spices of Kerala, pickles from Andhra Pradesh, Feni (liquor) from Goa, Paithani and Banarasi Sarees, Kanchipuram Silk Saree, Nagpur oranges, have all acquired immense reputation; need less to mention other countless treasures of GI.

India is a land of treasure, endowed with rich natural resources of agricultural poducts and other goods of high economic value. India is blessed with diverse culture which reflects the ancient wisdom and tradition of people. However, for decades there have been no legislative attempts or Act to protect our heritage, particularly the fauna and flora and the professional skill of our rural folk. This has led in certain cases to extinction of several invaluable species of plants and some are now on the verge of extinction. Most of these products are a major source of livelihood and income for the rural population who represent more than 70 per cent of our population. Often connected with traditions, practices and culture of rural community, geographical indications are tightly interwoven into rural lives which employ traditional methods, practices and know-how to produce these goods associated with geographical indications. Equally, rural folks in various regions of our country possess unique skill and expertise to produce hand crafted products like handicrafts, jewelleries, textiles other related products and they are involved in the above skill for several generations. It is felt that the quality parameters of the goods are to be consistently maintained so as ensure the reputation of the goods. This will also help to retain the GI area and prevent

it from being lost. This will create a healthy competition both in the domestic and international market to uplift the image of the product and the GI area by legal protection. It is strongly felt that the prosperity of the producers of goods and the nation will be enhanced due to GI registration by maintaining and sustaining quality and standard of the products.

13.4.5 Situation prior to *Sui Genesis* GI Law

The Trade and Merchandise Marks Act, 1958 had provided some protection through certification marks. However, this provision did not extend direct legal protection to all producers. Taking recourse to the provisions on 'passing off' under the same law was another means to protect GIs, but this was a slow and cumbersome process. It required proving that the infringer had deliberately tried to poach on the reputation of a particular product. Besides, success was not always guaranteed.

Unregistered GIs were are also today protected by an action of 'passing off' action which was, first recognized by ***Danckwerts j in Bollinger v. Costa Brava wine Co.*** **[1960] RPC 16.** Under an action of extended passing off it is recognized that a class or group of traders may share goodwill in a name or some other indicator that is distinctive of a particular class of goods such as 'champagne' or 'scotch whisky'. Therefore, what is recognized is some kind of collective goodwill and. GI too is a form of collective goodwill. In ***Bollinger v. Costa Brava wine Co.*** case the plaintiffs who were members of a group of producers from the Champagne district in France who made a naturally sparkling wine, popularly known as 'champagne', brought an action of passing off against the defendant for selling a product called Spanish champagne. The court observed that passing off would restrain a trader who sought to attach to their product name or description with which they have no natural association, "so as to make use of the reputation and goodwill which has been gained by a product genuinely indicated by the name or description". Danckwerts J further added that it did not matter "that the person truly entitled to describe their goods by the name and description are a class producing goods in a certain locality and not merely one individual". Therefore in essence the court recognized that the plaintiffs along with other members of the class had the requisite goodwill in the name 'champagne'. This was because the name champagne indicated a sparkling wine that came from the 'Champagne district in France, was made by a particular method, and from grapes sourced from this Champagne region. As such, the word 'champagne' denotes a distinctive reputation which could only be used by producers from 'Champagne' region.

13.4.6 Why *Sui Genesis* Legislation in India?

The protection of Geographical Indications has, over the years, emerged as one of the most contentious intellectual property right (IPR) issues in the realm of the World Trade Organization (WTO). Notably, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) – an integral part of the WTO Agreement, which was concluded among 117 countries of the world in April 1994, at Marrakesh specifies norms and standards for the protection of GIs, along with six other categories of IPRs.

GIs need not always be geographical names (such as, name of a town, a region or a country) to designate the origin of the goods to which they are associated, but may consist of symbols as well, if such symbols are capable of indicating the origin of the goods concerned without literally naming the place of their origins. One such indication is 'Basmati' for particular varieties of fragrant rice produced in India. 'Basmati' is not a geographical name it is perceived by the public as an indication of rice originating from India; Normally GIs may be associated with manufactured, industrial products, and food items in India other than the vast majority which are agricultural products, mostly food and beverages. The non-agricultural products, which enjoy GI protection include handicrafts, jewellery and textiles. GI serves to recognize the essential role of geographic and climatic factors and/or human know-how which can play in the end quality of a product. Like trademarks or commercial names, GIs are also IPRs, which are used to identify products and to develop their reputation and goodwill in the market. In an increasingly globalised economy, however, GIs have become much more than a mere category of IPR. Given the recent trends in the world market, where consumers, especially those in the developegd world, are increasingly becoming finicky about the quality and authenticity of the products that they are buying and are gradually developing preferences for environmentally sound and/or socially responsible products, GIs are increasingly gaining in importance as weapons for such niche marketing because, the information conveyed by GIs makes it possible to meet the new consumer criteria by identifying products with added value and specific qualities due to their origin. Leaving aside such economic and commercial benefits, GIs also serve to convey the cultural identity of a nation, region or locality, and add a human dimension to goods, which are increasingly subject to standardized production for mass consumption. Often GIs are also associated with other social benefits (community rights). Considering the above importance, a holistic approach was adopted leading to separate *sui genesis* legislation in India.

13.4.7 Implementation of GI Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999 came into force on 15th September, 2003. The enactment of the Act was necessitated by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS, 1994). A Geographical Indication Registry (GIR) with all India jurisdiction has been set up at Chennai on 15th September, 2003, as per the Act. Consequent on its membership of the World Trade Organization and the attendant TRIPS, India explored avenues for extending proper legal protection to geographical indications. While TRIPS Article 24.9 provides that WTO Members have no obligation to protect GIs that are not protected in the country of origin, they must extend protection to goods imported from other countries that do provide such protection. This fact weighed heavily in the government's efforts to extend legal means to protect Indian Geographical indications (GIs).

According to GI Law, a 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 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."

The Act further clarifies that –

"any name which is not the name of 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."

It is interesting to note that in order to remove all doubts about the scope of goods, the Act states that any goods of handicraft or of industry, including food stuffs, fall within the meaning of 'goods'.

The Act provides for a registration system through application. However, unlike with other intellectual property rights, the application must be made by an association of persons or producers or any organization or authority established by or under a law in force that represents the interests of the producers of the goods concerned. The reason behind this is that geographical indications are not built up by one individual but by a community of persons in a particular locality or region. This concept has also influenced the provision which prohibits assignments, transmissions, licensing, pledges and mortgages of any right arising out of registration of a geographical indication. The period of protection is for ten years which can be renewed indefinitely.

The first application received by the Geographical Indications Registry was for Darjeeling tea. Dated 27 October, 2003. It was filed by the Tea Board of India, an authority established by the Government of India. The history of Darjeeling tea goes back to the 18th century, when tea was planted in the salubrious climate of the Darjeeling hills of Eastern India. Due to the special weather and soil conditions in the region, Darjeeling tea has a unique taste. The application was examined by a consultative group comprising legal and technical experts, as well as the Registrar of Geographical Indications. It was also advertised inviting oppositions. After completion of all formalities, Darjeeling tea became the first registered geographical indication of India on 29 October, 2004. This was soon followed by the registration of other products.

Self Assessment Question **(Spend 5 minutes)**

1) Discuss about Geographical Indication, its growth and development.

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13.5 TRIPS AND ITS APPLICATION IN INDIA

The definition of GIs as in TRIPS Agreement is comprehensive and includes industrial products. Section 3 (Article 22 to 24) of the TRIPS Agreement contains provisions in relation to GIs. In general to qualify for protection an indication of a good must:

- Identify the good and its area of geographical origin.
- The good possess a given quality, reputation or some other characteristic which
- Is essentially attributable to its area of geographic origin.

There is no unanimity on the legal definition of GIs across national legislations. Some use a TRIPS-like definition that is at times limited by a list of products. Others use the more restrictive definition under the Lisbon Agreement, requiring the direct use of a geographical name. Most countries require products to meet certain requirements for protection. Some rely on the TRIPS definition, but others have additional requirements, including production methods and product specifications to ensure quality. Measures to ensure the link between the good and the designated area of origin are implemented differently. Some include explicit requirements on all stages of production, some only for raw materials, and some only for the production process. Finally, some countries treat GIs as an extension of trademarks (e.g. the United States), while others have implemented specific (*sui-genesis*) legislation (India).

The definition as given in the Indian GI Act 1999 is in consonance with the definition of GI as given in the TRIPS Agreement (Article 22 (1)) and is specific and exhaustive. According to Section 2 (e) of the Indian Act 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.

The Indian definition explicitly extends the GI protection to not only for agricultural products but also for natural, manufactured goods, handicrafts and food items. The use of GIs is predominantly with respect to agricultural products which typically having the qualities attributable to the specific geographical area, and are influenced by the factors such as climate, soil, etc. The quality parameters play a key role in the recognition of GIs. What constitutes 'quality' is a subjective matter some times especially where food is concerned. Quality attributes normally includes in an agricultural country like India, apart from the basic prerequisites of health and safety, and taste, product characteristics linked to geographical

origin or production method (e.g. organic farming), special ingredients, particular local production methods resulting from local expertise and traditions of that place. It includes preparation, processing, and production methods that enhance the quality and attractiveness of the product.

However, certain geographical locality or region may also have highlighted specific qualities of a product, due to human factors found in the place of origin of the products, such as specific manufacturing skills and tradition. Such place of origin may be a village or town, a region or a country. For example, 'Switzerland' or 'Swiss', which is often perceived as a GI for products like chocolate and watches made in Switzerland. In India 'Kolhapuri' for a particular kind of 'Chappals' made in Kolhapur district of Maharashtra, 'Bikaner' for a specific kind of snack called *Bhujia* made in Bikaner district of Rajasthan, Kanjeevaram for a specific kind of silk saris made in Kanjeevaram district of Tamil Nadu can be examples of manufactured goods with certain qualitities attributable to their places of origin.

Briefly, GIs essentially fulfill two main functions, namely, protecting the goodwill of a producer or a section of producers and imparting consumer information. Often promotion of products having certain characteristics is of considerable benefit to the region or area where the products are manufactured and to the area where they are marketed. GIs protect producers of these region or area against unauthorized exploitation of the goodwill created by the quality of the products and advertising appeal of the respective locality or region by competitors and their products. It should be pointed out that effective GI protection is very important. In ***SMW winzersekt GmbH land Rheinland-Pflaz*** **[1995] 2 CMLR 718** the European court of justice dismissed tCcouncil regulation that prohibited them from designating their sparkling wine as champagne or indicating that the wine was produced using the champagne method. The court in its opinion has clearly indicated that GIs have a purpose beyond that of protecting the consumer against confusion about the origin of goods and that pertains to protection of the goodwill investment of a region, which produces genuine goods against misappropriation by others who have not made the same investment in the goodwill. The court held that the words 'champagne' or 'champagne method' has a value because of the investment of French sparkling wine producers in producing their product, and German wine producers cannot be allowed to have a free ride on this investment.

13.5.1 Post GI Act Scenario in India

After the enactment of GI Act, it is found that the various quality parameters are implemented in all registered GIs – the agricultural products, the textiles, the handicrafts, etc., which are drawn by the producers keeping in mind the Indian situation and the Geographical Indications Act requirements. In that process, various attributes have been analyzed. In most cases, the quality parameters are of observational type under *in-situ* conditions and in certain other cases by bringing the samples to the laboratory for simple analysis. It is interesting to point out that in crops like Coffee, Tea, Cardamom & Cotton DNA finger printing methodologies have been developed by Indian scientists to use them as markers to correctly identify the raw materials for the finished products. Besides, in many cases of edible GI products of plant and animal origin, the bio-chemical characters have also been estimated and the good laboratory practices have been

standardized. In view of the fact that the quality of food items as well as other products like flowers, etc., the Good Agricultural Practices (GAP), Good Harvesting Practices (GHP), and Good Manufacturing Practices (GMP) are being adopted. In the case of Handicrafts, the quality of the raw materials such as wood, metals, leather, cotton, silk, wool, coir, clay, quartz stone, granite stone etc., are given much emphasis. It is found from the official GI journal, that the GI products already registered, those that are recommended by the Consultative Groups, and the possible GI Products that are likely to be registered are analyzed in great depth from the quality point of view from earlier literature and experience. Brief description of the GI products and their commercial value are also normally indicated. The information furnished is mainly from published documents, Internet sources, and discussions with the experts concerned and producer groups.

It is found that in India, most of the registered geographical indications have been for handloom textiles and handicrafts, two areas predominated by the small scale sector. The experience of textile products and handicrafts, like the Chanderi sari, Pochampalli ikat, and Kota Doria which have been given the protection by registration as geographical indications, helped the producers to boost their economic returns significantly. India, therefore, must continue to make efforts to get all products with a geographical indication tag on the register. Getting products on the GI register is only the first step towards realizing their economic potential. Most of the people engaged in the production of such products are small households or small units, although in the same area. Convincing them to organize into associations and to enable them move their application for registration are painstaking and difficult tasks. It is also necessary to draw up standards and inspection mechanisms to ensure quality. These, however, are just preliminary troubles; once the system gets organized and protected, benefits are certain in terms of return and outcome.

13.5.2 Steps to be Taken to Enhance Registration Process

- Collect information from literature and earlier reports and through interaction about the agricultural, natural and manufactured products of traditional and heritage value in different parts of India for identifying the possible candidate products for GI Registration and create a database.
- Study the role of GI areas and their characteristics on the quality of the GI products.
- Identify and document the diagnostic features of the GI products for easy recognition of specifications and descriptions of the products.
- Highlight the key quality parameters of the GI products, which are easy to adopt, to promote the domestic and export market for the products.
- Help in awareness creation and motivate producer groups to protect the products of traditional and heritage value.
- Groups, with a view to further strengthening the movement for protection of Intellectual Property under the purview of the GI Act for the eventual upliftment of rural economy in the country.
- The farmer self-help groups in association with local bodies like the Panchayati Raj Institutions (PRIs) are alternatives waiting to be tapped in a most cost-effective manner.

- A proactive affirmative action, albeit, in a decentralized yet coordinated framework in providing GI protection in the days to come will be the right step and give out the required signals to other developing countries and least developed country members of WTO

Self Assessment Question **(Spend 3 minutes)**

2) Quality is a Key element in recognition of GIs–Substantiate this statement.

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13.6 FUNCTIONS OF GI

The function of a GI is that it points to a specific place or a region of production that determines the characteristic qualities of a product that originates from there. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the geographical place of production, a specific "link" exists between the product and their original place of production. In case of manufactured goods, the link develops over a period of time. It is easy to imagine this concept of GI with respect to agricultural goods as the specific link can be easily seen, understood or perceived. For example, 'Darjeeling' tea is known for its flavour and aroma which are attributable to the Darjeeling area of eastern India. 'Basmati' known for a kind of rice having long grain and sweet aroma are grown in sub Himalayan regions of India. Many other examples of such GIs can be given. The main function of GIs is to identify the origin of goods. They point to a specific place or region of production that confers particular characteristics and qualities on the product. It is important to emphasize that the product derives its qualities and reputation from the place of origin. These signs can acquire a high reputation and commercial value. It may be exposed to misappropriation and, misuse. This is why it is generally recognized that these signs need to be protected. GIs are given different names such as appellations of origin, designations of origin, etc., in different national laws.

13.6.1 Difference between GIs and Trademarks

The relationship between trademarks and GIs is complex. Trademarks generally identify products from a specific manufacturer. GIs do not identify a manufacturer (or producer), but rather the product's place of origin. Trademarks imply human creativity. GIs, on the other hand, are linked to climate, soil and other factors that are largely independent of human ingenuity. They are expressions or symbols (such as a flag) which recognize a product as originating in a certain country with a given quality or reputation or other characteristic which the product has is attributable is attributable to that place or country or region. In effect GIs act as source identifiers; they identify goods originating in a particular territory, or a region or locality in that territory. Also, they act as indicators of quality as they let consumers know that the goods come from an area where a given quality, reputation or other characteristic of the goods is essentially attributable to their

geographic region. In addition, GIs are business interests as they help to promote the goods of particular area while a trademark serves as a 'badge of origin', i.e., a sign or combinations of signs, such as words, numerals, figurative elements, etc., capable of distinguishing goods or services of one undertaking from those of others. Further, a single person, legal or natural, is entitled to use a trademark, the right being accorded in accordance with the principle of 'first in time, first in right' and the first user or first registrant will generally take precedence while in the case of GI, all producers belonging to the particular region or locality are entitled to use it. There is no precedence. Therefore, the notion of trademarks implies individual production of goods while the notion of GIs implies the collective production of goods coming from the same geographical region and having the same quality, reputation or characteristic attributable to its geographical origin. Trademarks are easier to protect internationally though it requires active role of the owner who acquires the right through registration with a competent domestic authority, while in the case of the GIs, the state or an association of producers has to play a prominent role in its protection. Also, trademark is a personal property, which can be transferred by way of assignment, licensing or any other means, while a GI by its very nature cannot be the subject matter of licensing or assignment. For example, the know-how for producing champagne or cognac may be, in principle, transferred to a person producing sparkling wine or brandy outside the region of champagne or cognac, but the right to label the licensed product as champagne or cognac cannot be transferred.

Consumer perceptions of geographical indications and trademarks also differ as could be seen from the following graph on Turron.

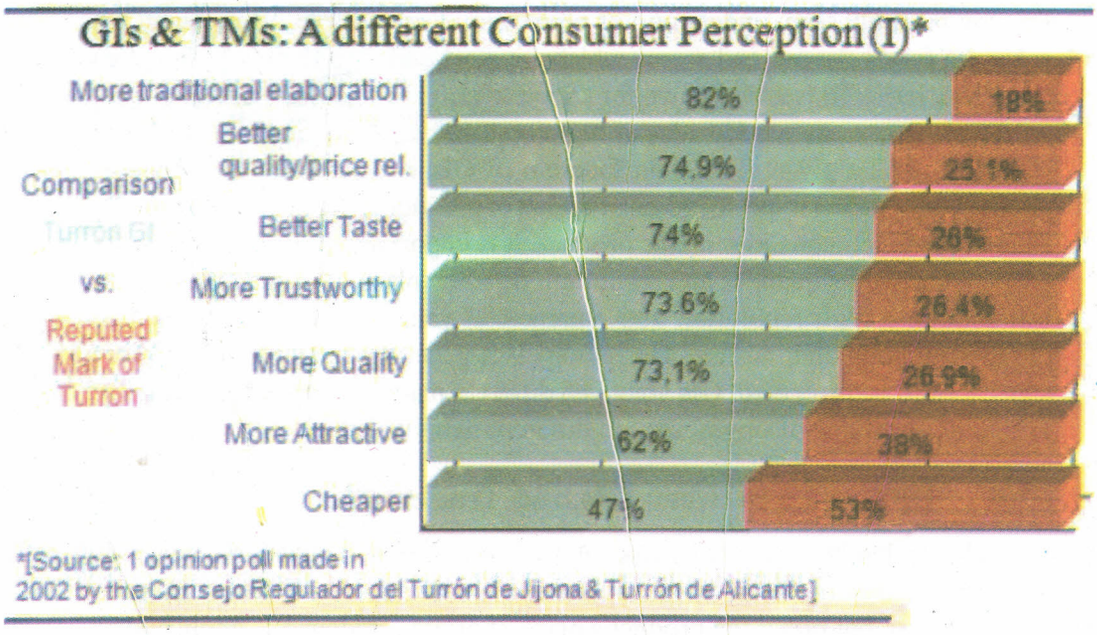


Fig. 13.1

13.6.2 Benefits of Registration

I) It confers legal protection.

II) Prevents unauthorized use of a registered Geographical Indication by others.

III) It boosts exports.

IV) It promotes economic prosperity of producers of goods.

13.7 HOMONYMOUS GEOGRAPHICAL INDICATIONS

The term 'Homonymous', means the same or similar. The use of homonymous names (i.e. products having the same name) is not excluded for registration. The benchmark is whether consumers might be misled or not. In cases were the same name is being used, a distinction must be made, bearing in mind the need to treat producers in an equitable manner and not to mislead consumers. The traditional high quality hams of France and Belgium, while using similar words, are sufficiently differentiated for consumers. Rioja, – wines produced in Argentina and Spain, is a good example of homonymous indication.

Section 10 of the Indian GI Act, 1999 provides for registration of homonymous, i.e., similar GIs subject to the satisfaction of the Registrar. The Registrar after considering the practical conditions under which the homonymous indications will be differentiated form other such homonymous indications, the need to ensure equitable treatment of the producers of the goods concerned and after satisfying himself that the consumers of such goods will not be confused or misled due to registration of such homonymous GIs, may register such homonymous indications This section is in consonance with Article 23(3) of the TRIPS Agreement, which permits each member to "to determine the practical conditions under which the homonymous indications in question will be differentiated from each other taking in to account the need to ensure equitable treatment of the producers concerned and that consumers are not misled".

Self Assessment Questions **(Spend 7 minutes)**

3) Difference between GI and Trademark.

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4) Explain Homonymous Geographical Indications.

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13.8 INTERNATIONAL CONVENTIONS

A GIis a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that origin. An Appellation of Origin (AO) is a special kind of GI. GIs are protected in

accordance with international treaties and national laws under a wide range of concepts, including laws specifically for the protection of GIs or AOs, trademark laws in the form of collective marks or certification marks, laws against unfair competition, consumer protection laws, or specific laws that recognize individual GIs.

13.8.1 The Protection of GI in International Law

In the 19th century, it was felt that national protection was not sufficient as products were often imitated outside of the country of origin. To ensure that GIs were also protected globally, international cooperation was required. The Paris Convention for the Protection of Industrial Property was adopted in 1883 concerning all aspects of intellectual property pertaining to industries including geographical indications.

13.8.2 The Paris Convention on Intellectual Property

This was the first multilateral agreement which included protection for "Indications of source or appellations of origin". It recognizes geographical indications as a separate intellectual property right. However, it does not define this concept clearly.

Article 1(2) of the Paris Convention states:

"The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellation of origin, and the repression of unfair competition", Further Article 10(1) of the Paris Convention provides for the certain remedies in respect unlawful use of indications of source on goods. Also Article 10 of the above convention does mention origin expressly.

However, they are covered by the term "indications of source" as all appellations of origin are considered to be indications of the source of goods.

"**Appellations of Origin**, as defined in the Paris Convention, make a direct link between the product's quality and its geographical origin, in addition to geographical source of the product".

Indications of Source: Indications of source are most commonly labels such as 'Made in America' or 'Product of Mexico.' The idea originated in the Paris Convention and the Madrid Agreement. However, neither document actually defines the concept. It is generally understood that an indication of source is contingent only on the product's geographical origin and not necessarily its inherent quality. The Madrid Agreement provided specific rules for the repression of false as well as deceptive indications of source. *Article 11b is* of the Parris Convention gives the basis for protection against misleading indications of source, including appellations of origin. It provides protection against unfair competition. It contains a non-exhaustive list of acts, which are to be prohibited. It does not provide for any special remedies against infringement.

13.8.3 The 1891 Madrid Agreement on Indications of Source

The Madrid Agreement was the first multilateral agreement to provide specific rules for the repression of false and deceptive indications of source in addition to false indications. A deceptive indication of source can be the true name of the

place where the good originates from, but nevertheless confusing the purchaser in respect to the true origin and quality of the good.

Article 1(1) of the Madrid Agreement provides that:

"All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries."

13.8.4 The 1958 Lisbon Agreement

The aim of the Lisbon Agreement for the Protection of Appellations of Origin was to provide for the protection of appellations of origin, that is,

"The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors".

The Lisbon Agreement provided a proper definition of appellation of origin and extended protection to:

"*any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation" or the like".*

The Lisbon Agreement goes further, stating that the geographical name designates a product, whose quality and characteristics are exclusively or essentially related to the geographical environment, including natural or human factors. Appellations of Origin must contain the name of a country, region or locality. This definition constitutes a higher threshold than for indications of source and narrows the range of products that are eligible for this classification". One of the requirements, as per the Lisbon Agreement for Protection of Appellation of Origin, is that, that appellation of origin has to be protected in its country of origin and it is also to be registered in the international register. Countries are free to adopt their own system for designating appellations, either by judicial or administrative decision, or both. Once registered, an appellation of origin is protected in other member states. At present, there are 25 signatories of the Lisbon Agreement.

13.8.5 The 1891 Madrid Agreement

In some countries, geographical indications are protected thorough trademarks, as collective marks, certification marks or guarantee marks which are of relevance to the protection of GIs, as it can also serve as a means of protection of GIs internationally through the Madrid system for the International Registration of Marks. The Madrid system comprises two treaties: the Madrid Agreement Concerning the International Registration of Marks, and the Protocol Relating to the Madrid Agreement of 1989. The Madrid system of international registration of marks is applicable among the countries party to the Madrid Agreement or the Madrid Protocol. This system gives a trademark owner the possibility of having his mark protected in several countries by filing one application in a single Trademark Office.

13.9 WTO AND TRIPS

The TRIPS Agreement provides the basic framework for protecting all GIs. It specifies the minimum standards of required protection, but leaves members free to determine the appropriate methods of implementing its provisions. WTO members are obliged to provide the legal means for interested parties to protect GI's. The required legal means are not clarified in the Agreement, creating the problem of multiple systems, and the opportunity for members to explore new mechanisms. A specific Section of Trade-Related Aspects of Intellectual Property Rights (TRIPS) deals with geographical indications. It is the first multilateral treaty which contains a separate section on geographical indications. The Agreement also provided a dispute settlement mechanism, periodic reviews and a provision for subsequent negotiations. The TRIPS Agreement incorporated a number of provisions from the Paris Convention and the Lisbon Agreement. Under the TRIPS Agreement, GI's are subject to the same general principles applied to other intellectual property rights in the Agreement, including national treatment.

Definition - It provides definition of GIs in the Article 22.

Basic information - Article 22 of the TRIPS defines GIs and lays down standards of protection. Protects GIs against all uses that are misleading to the public or which constitute an act of unfair competition is to be extended by all member countries.

Additional protection for Wines and Spirits - Articles 23.1 and 24.2 provide for additional protection for wines and spirits. Article 23 requires additional protection for wines and spirits even when GIs used with expressions like "kind', 'type', 'style' and even when there is no risk of public being misled. Roquefort cheese produced in Norway has protection only under Article 22. India is insisting on extending the additional protection to other products in the same footing as wines and spirits. The Indian law under Section 22(2) provides,

The Central Government may, if thinks necessary so to do for providing additional protection to certain goods or classes of goods under Sub-section (3), by notification in the Official Gazette, specify such goods, for the purposes of such protection.

The scope in Indian law is extended to other products also subject to the notification in the official Gazette. The Government of India has already notified the Additional Protection in respect of Wines and Spirits, to comply with TRIPS Obligation. The copy of the notification is at annexure.

Article 23.4 deals with obligation to enter into negotiations for establishing a multilateral register for wine GIs. Article 24.3and 24.9 outlines the exceptions to obligations for protecting GIs. Article 24 deals with requirements for future negotiations.

The TRIPS Agreement definition of GIs is broader than the one contained in the Lisbon Agreement because it includes products that do not possess any qualities specifically due to their origin. However, under the TRIPS Agreement, not every indication of origin can rise to the level of a GI. Only goods whose quality OR reputation OR 'other characteristics' are linked to its geographical origin, and to

consumer's purchasing decisions can qualify. To be protected, goods must originate in the territory with which they are associated. Licensing the name of the good to other growers or processors is therefore not allowed. The TRIPS Agreement does not require the use of a real geographical name. It could be a symbol, such as Taj Mahal. Denominations that are not a place name, such as Basmati rice, can also be a general heading of geographical indications. Article 23 of the Agreement calls for negotiations to establish a multilateral system of notification and registration of GI's for wines eligible for protection in Member Countries participating in the system.

Exemptions: There are two key exemptions under the TRIPS Agreement. These exemptions apply regardless of whether the GI is for a food, or whether it qualifies for additional protection under the wines and spirits agreement. The first relates to terms that have become generic. If a term has become 'customary' for the product in the member's territory, then it is considered generic and is therefore ineligible for GI protection. The corresponding provision under Indian GI Act, 1999 is Section 9(f).

Well known indications that originally had a geographical connection have become generic in many WTO member countries. The TRIPS Agreement does not require a member State to extend protection to a GI if it has become the generic name for the product in that member's territory. The second exception is a *grandfather clause*, which protects trademarks acquired in good faith prior to the registration of a GI or before the TRIPS Agreement was signed. This is essentially the 'first-in-time, first-in-right' principle. The chapter V- special provisions relating to trademarks and prior users under Sections 25 and 26 of the Indian GI Act deals with the above.

13.10 METHODS OF IMPLEMENTATION

The TRIPS Agreement provides the basic framework for protecting all GIs. It specifies the minimum standards of required protection, but leaves members free to determine the appropriate methods of implementing its provisions. WTO members are obliged to provide the legal means for interested parties to protect GI's. The required legal means are not clarified in the Agreement. Members use many different mechanisms, including general business laws, trademark laws, and/or special protections for geographical indications.

13.10.1 Collective Marks and Certification Marks

Collective marks and certification marks provide a certain level of protection for geographical indications. The registration of collective and certification marks provides for the use of more than one person or enterprise. Article 7*bis* of the Paris Convention deals with acceptance filing and protection. The main difference between collective marks and certification marks is that the former may be used only by particular enterprises, members of the association which owns the collective mark, while the latter may be used by anybody who complies with the defined standards. The members of the collective body are eligible to use GI generally. It can be an association or group of manufacturers or producers or traders. It is owned by the collective body which grants its members the right to use it. Certain quality standards have to be met by its members. Once a geographical indication is registered as a collective mark, the association that

owns has the right to prohibit its used by others who are not members of the association.

Self Assessment Question **(Spend 6 minutes)**

5) What are the major provisons regarding Geographical Indications in the TRIPS Agreement?

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13.10.2 Registration of Collective Marks in India

Special provisions have been made for registration of collective marks in Sections 61 to 68 of the Trademarks Act, 1999. "Collective mark" is defined to mean a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of Indian Partnership Act, 1932) which is the proprietor of the mark from those of others" [Section 2(1)(g)].

To be registered, the collective mark must be capable of being represented graphically and meet other requirements as are applicable to registration of trade marks in general. The points to be noted in such cases are –

1) The collective mark is owned by an association of persons not being a partnership.

2) The collective marks belong to a group and its use thereof is reserved for members of the group.

3) The association may not use itself the collective mark but it ensures compliance of certain quality standards by its members who may use the collective mark.

4) The primary function of a collective mark is to indicate a trade connection with the association or organization who is the proprietor of the mark.

13.10.3 Certification Marks

A Certification mark is not owned by a collective body, but by a certification authority. The entity is body "competent to certify" the products concerned. It may be a governmental entity or a private association. It is not to be engaged in production or the trade of the product concerned. The owner of the certification mark must ensure that the goods bearing the certification mark possess the certified qualities. The application for the registration of a certification mark is usually accompanied by regulations which will govern its use. A certification mark may normally be used by everybody whose products comply with the requirements. The institution which owns the registered certification mark has the right to prohibit others whose products do not comply with the standards. It ensures the protection of the public against misleading practices within the geographical area and preventing the illegal use of the mark.

A certification mark is not used by its owner, but by other persons. A certification mark does not indicate an individual commercial source nor distinguish the goods or services of one person from those of another person, but rather informs purchasers that the goods or services of a particular person possess certain characteristics or meet certain qualifications or standards, which may include in particular a geographical origin which is regional in character.

13.10.4 Registration of Certification Marks

In India, Trademarks Act 1999 (Sections 69 to 78) deals with registration of certification trade mark. The purpose of a certification trademark is to show that the goods or services in respect of which the mark is used have been certified by some competent person in respect of certain characteristics such as origin, mode of manufacture, quality etc.

Section 70 of the Act makes it clear that the proprietor of a certification Trade Mark should not himself carry on a trade in the goods of the kind certified or a trade of the provision of services of the kind certified. Besides, the certifying authority who may be an individual or a company or association of persons should be competent to certify the goods in respect of origin, material, and mode of manufacture or performance of services, quality, accuracy or other characteristics.

13.10.5 Unfair Competition Law

Article 10*bis* of the Paris Convention requires the provision of effective protection against unfair competition. It is defined as "any *act of competition contrary to honest practices in industrial or commercial matters*."

In India under Sections 103, 104 and 105 of the Trademarks Act, 1999 unfair competition by applying false trade mark and trade description is a criminal offence. Under Section 28 of the Trademarks Act, 1999 civil action for infringement of trade mark can be taken to stop unfair competition.

13.10.6 Administrative Regulation

Administrative regulation of product may include labelling and food safety standards which represents another means of ensuring fair trade and consumer protection. An administrative mechanism can also aim at preventing misleading use of geographical indications on products. It is the practice that when such misleading use occurs despite the administrative procedures, usually criminal sanctions will apply.

Self Assessment Question **(Spend 6 minutes)**

6) What is Certification Trademark and what are its use as a means of protection of geographical indication?

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13.10.7 European Regulations

European countries have a long tradition in the protection of geographical indications. It includes a variety of product classes, such as cheeses, meat-based products, fresh meat and offal, products of animal origin such aseggs, honey, milk products excluding butter, oils and fats, fruits, vegetable and cereals, Beer, other drinks, bread, pastry, cakes, other confectionary items such as biscuits, dried and processed vegetables and legumes.

The European Commission established a set of regulations related to agribusiness products other than wines and spirits, with the aim of:

- Encouraging the diversification of agriculture production
- Promoting characteristic products
- Improving farmers revenues
- Keeping the rural population in the zone
- Providing the consumers with clear genuine information

This Community Regulation No. 2081/92 was replaced by Council Regulation (EC) No 510/2006 of 20 March 2006 on the ***(Protected designation of Origin(PDO) and Protected Geographical Indication(PGI)of agricultural products and foodstuffs*** (OJ L93,31.3.2006)] and Council Regulation (EC) No 509/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs as traditional specialties guaranteed (OJ L93, 31.3.2006). This replaces Regulation (ECE) No 2082/1992.

Based on precedents from 1992, in 2006 the EU Council adopted innovative regulations on protected geographical indications (PGI) and protected designations of origin (PDO); in addition, they recognized traditional specialties guaranteed (TSG) in a separate regulation.

In respect of a product, the following are the possible identifications:

- The protected Designation of Origin
- The Protected Geographical Indication
- Traditional specialties guaranteed



Fig. 13.2

Protected designation of origin (PDO). This means 'the name of a region, a specific place or, in exceptional cases, a country, used to describe ***an agricultural product or a foodstuff*** originating in that particular geographic environment with its ***inherent natural and human factors***; and the production, processing and preparation of which take place in the defined geographical area'.

Protected geographical indication (PGI). This means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that particular geographic environment with its inherent natural and human factors; As opposed to the PDO, the transformation and/or elaboration processes are not necessarily carried out within the geographical area.

Traditional Specialty Guaranteed (TSG)

For a name to be registered under the TSG provisions, the product must have features that distinguish it from other products. First, it must be traditional and have a specific character and it must be traditional. It has features which distinguish the foodstuff of the same category.

The ***Traditional Specialty Guaranteed (TSG)*** logo is used for products with distinctive features which either have traditional ingredients or are made using traditional methods. Their 'specific' character refers to the feature or set of features which distinguish them clearly from other similar products or food stuffs belonging to the same category.

PDO example; Beaufort



Fig. 13.3

The link, the natural factors



Fig.13.4

A.P.D.O involves

- A relationship between the product and its origin, marked by many specially established natural and human factors. The product cannot be reproduced outside its area of origin;
- Production, processing and preparation phrases that are carried out in the same geographical area in which the natural and human factors are located.

A.P.G.I. involves



Fig.13.5

- A relationship between the product and its origin that is not as strong but is still sufficient to give a certain reputation,
- A geographical area in which only certain phases of production, processing and preparation must take place.

PGI example

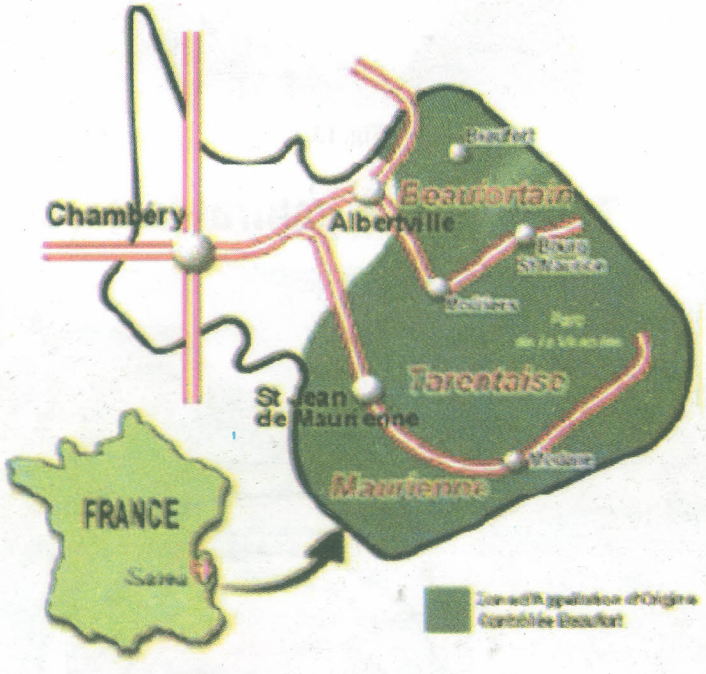


Fig. 13.6: Scotch Lamb the region.

Description:

The product is derived from lambs born, reared throughout their lives, slaughtered and dressed in the designated geographical area. The animals will have been produced and slaughtered in accordance with quality assurance schemes accredited to European Standard EN 45011 (ISO Guide 65) and having the same standards, assessments and assessment frequencies as those set by the applicant. The geographical link is deeper for PDOs than for PGIs. Explanation of the link between the product and the Geographical area is the most important element of the product specification in the case of PDOs and PGIs as it must demonstrate why a product is associated with one particular area and not another. The Colombian coffee Café de Colombia is the first non European PDO, which was recognized in 2007 and followed by others products.

13.11 SUMMARY

The phrase 'Geographical Indications' (GIs) was used for the first time in an international instrument in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), although the concept of protection of geographical indications was within the scope of the Paris Convention on the Protection of Industrial Property of 1883. Prior to that, the expressions 'Appellations of Origin' and 'Protected Designations of Origin' were in use. In France, as early as 1935, the *appellations d'origine conrolle* (AOC) was established to protect designations of origin of products with special characteristics originating from particular regions. An agency named *Institute national de'origine et de la qualite* (INAO) was set up in Paris to administer AOC. In 1992, Europe established system for protection of Protected Designations of Origin (PDC) and Protected Geographical Indications (PGI). With the TRIPS Agreement in 1994, geographical indications found a proper place among the intellectual property rights.

In the case of developing countries, protection of geographical indications as an intellectual property right was a new concept. Some developing countries and some developed countries followed the route of trademark law for protecting geographical indications.

The World Intellectual Property Organisation (WIPO) administers various treaties relating to geographical indications also like other intellectual property right treaties.

The protection of geographical indications is a consumer friendly act in that they are assured of the genuineness of the product they are buying. For example the term 'Darjeeling tea' can be used only on the tea produced in Darjeeling.

India, has apart from Darjeeling tea, a number of products from various parts of the country, which are indicated by terms indicative of their place of origin, such as Basmati rice, Feni, Tirunelveli halwa, Banarasi saree and so on.

Earlier in India, products with geographical indications such as Scotch Whisky got protection through the route of trade mark and passing off. But such protection had its own limitations. Therefore, India decided to go for a sui generis legislation. Accordingly, the Geographical Indications of Goods (Registration and Protection) Act was promulgated in 1999. This was followed by the Geographical Indications

of Goods (Registration and Protection) Rules, 2002. The Act and the Rules were brought into force with effect from 15 September 2003.

A Geographical Indications Registry was set up in Chennai in 2003 to register the geographical indications. The office is under the Controller General of Patents, Designs and Trade Marks, who is also the Registrar of Geographical Indications. The office has all India jurisdiction.

Since the establishment of the Registry, 178 geographical indications were registered upto 15 September, 2012.

A Geographical Indication points to the specific place of origin of the product. It also means that the goods have certain special characteristics or reputation which is attributable to that place of origin.

A trademark is a distinctive mark for the products of a particular concern. It, except the certification trademark, does not have any relation to quality of the product.

Registration of GI confers legal protection to the expression, prevents unauthorised use of the term, boosts exports and brings in economic prosperity to the producers.

Sometimes similar sounding words are used for designating two different products. They are called homonymous geographical indications. Example is Rioja wine produced in Argentina and Spain.

The Paris Convention for the Protection of Industrial Property was the first treaty which provided for protection of indications of source or appellations of origin. This was followed by the 1891 Madrid Agreement on Indications of Source which provided specific rules for the repression of false and deceptive indications of source.

The 1958 Lisbon Agreement for the Protection of Appellations of Origin defined the phrase and extended the protection to prevent any usurpation or imitation, even if the true origin of the product is indication. Terms such as kind, type, make, etc. were also not to be used in the case of protected appellations.

Some countries protect geographical indications as trademarks under the Madrid System.

It was the TRIPS Agreement which provided for comprehensive protection for geographical indications. It, apart from providing for general protection for all products bearing geographical indications, also provided for higher level of protection for wines and spirits. That means, in the case of wines and spirits, the terms such as kind, type, style, etc. cannot be used.

While the TRIPS Agreement provides for protection of geographical indications, it does not provide the special legal means that should be used to protect the same. This leaves the countries free to decide on the means. Some countries use the route of trademark, such as collective trademarks and certification trademarks, to extend protection to geographical indications.

Indian Trademarks Act also provide for registration of collective marks and certification trade marks. These are to be done by organisations or entities who are not to use them.

Unfair competition law is another law that is used in the protection of geographical indications. Sections 103-105 of the Trademarks Act of India provide for this.

Europe has a long tradition of protection of geographical indications. European Commission has promulgated several regulations relating to protection of geographical indications both in agricultural and non-agricultural sectors. The regulations cover protected designations of origin (PDO) such as Beaufort, protected geographical indications such as Scotch Lamb, and traditional speciality guaranteed products. Café de Colombia is the first non European PDO which was recognised in 2007.

13.12 TERMINAL QUESTIONS

1) How were Geographical Indications protected in India prior to the enactment of the Geographical Indications of Goods (Registration and Protection) Act, 1999?
2) As per the TRIPS Agreement, what are the requirements for a Geographical Indication?
3) What are the differences between a Geographical Indication and a Trade mark?
4) What is a homonymous geographical indication?
5) Write a paragraph on additional protection for geographical indications of wines and spirits.

13.13 ANSWERS AND HINTS

Self Assessment Questions

1) Read to Sub-section 13.4.7
2) Read to Sub-section 13.5.1
3) Read to Sub-section 13.6.1
4) Read to Section 13.7
5) Read to Section 13.9
6) Read to Sub-section 13.10.3

Terminal Questions

1) Read to Sub-section 13.4.5
2) Read to Section 13.5
3) Read to Section 13.6.1
4) Read to Section 13.7
1) Read to Section 13.9

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The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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(औद्योगिक नीति और संवर्धन विभाग)

अधिसूचना

नई दिल्ली, 1 अक्तूबर, 2010

का.आ. 2401(अ).—जबकि वस्तुओं का भौगोलिक सूचक (पंजीकरण और संरक्षण) अधिनियम, 1999 की धारा 22 की उप-धारा (2) में कतिपय वस्तुओं या वस्तुओं की श्रेणी या श्रेणियों के लिए यथा-अधिसूचित अतिरिक्त संरक्षण की व्यवस्था है;

और जबकि, केंद्र सरकार संतुष्ट है कि वस्तुओं का भौगोलिक सूचक (पंजीकरण और संरक्षण) अधिनियम, 1999 की धारा 22 की उप-धारा (3) में दिए गए प्रावधानों के अनुसार अतिरिक्त संरक्षण लागू करने के लिए एक अधिसूचना अनिवार्य है;

अत: अब, वस्तुओं का भौगोलिक सूचक (पंजीकरण और संरक्षण) अधिनियम, 1999 की धारा 22 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे दी गई अनुसूची में निर्धारित वस्तुओं की सूची के लिए उक्त अधिनियम की धारा 22 की उप-धारा (3) के तहत अतिरिक्त संरक्षण लागू किया जाता है ।

अनुसूची

क्रम संख्या	वस्तुओं की सूची
1.	शराब और स्प्रिट

[फा. सं. 9(22)/2006-आईपीआर-II]

वी. भास्कर, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Industrial Policy and Promotion)

NOTIFICATION

New Delhi, the 1st October, 2010

S.O. 2401(E).—Whereas sub-section (2) of Section 22 of Geographical Indication of Goods (Registration and Protection) Act, 1999 provides for additional protection for certain goods or class or classes of goods as notified;

And whereas, the Central Government is satisfied that a notification extending additional protection as provided in sub-section (3) of Section 22 of the Geographical Indication of Goods (Registration and Protection) Act, 1999 is necessary;

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 22 of the Geographical Indication of Goods (Registration and Protection) Act, 1999, the list of the goods specified in the Schedule given below are extended additional protection under sub-section (3) of Section 22 of the said Act.

SCHEDULE

Serial No.	List of the goods
1.	Wines and Spirits

[F.No. 9(22)/2006-IPR-II]

V. BHASKAR, Jt. Secy.

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UNIT 14 INDIAN LAW ON GEOGRAPHICAL INDICATIONS

Structure

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14.3 Aim and Objectives of GI Law
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14.13 Illustrations of GI Applications
14.14 Remedies for Violations
14.15 Conclusion
14.16 Summary
14.17 Terminal Questions
14.18 Answers and Hints
14.19 References

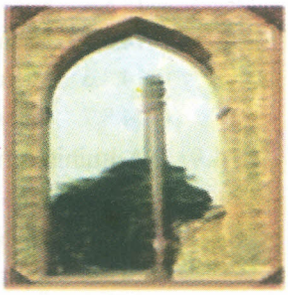
14.1 INTRODUCTION

Association of place name to quality or uniqueness of a product is an ancient practice .The following are some examples of this: i) **Calico** (white or unbleached cotton cloth from Calicut, 16th) ii) **Malacca** (brown cane used as walking stick

from Malacca, 19th) iii) **India rubber** (natural rubber) iv) **Muslin** (light weight cotton cloth from Mosul, Iraq). However, laws controlling association of place names to products are of recent origin. Europe got into the tradition of legal protection for such names (appellations of origin) early. ***Appellation d'origine controlee*** of France, from the early 20th century (1930), protects certain geographic words by designated producers in designated producing regions. ***E.g. Bordeaux wines*** .This is based on a nexus of quality with the land.

India has approximately 17 per cent of the world population. It has only 0.6 per cent of the world trade and 1.4 per cent of the world GDP. 99.4 per cent of world market is outside of India. We must consider an effective and efficient plan to become a resource base for the world. Geographical Indication is, no doubt, one of the timely options. ***It is well known from our existing understanding that no amount of money or technology can ever replace the presence of effective human skill.*** Indian GI Law is peculiar and offer protection to natural Goods also. India has a variety of natural products and resources such as diamonds in Madhya Pradesh (Chattarpur, Panna, Satna, etc), Chhattisgarh (Bastar, Jaspur, etc) quality gold in Karnataka, Tin in Chhattisgarh good quality iron ore, classical building stone, marble (Rajasthan and Gujarat), Kota stone (Rajasthan), granite (Madhya Pradesh, Rajasthan, South India), Dholpur Red stone, Mandi Salt (H.P.), Rock Phosphate (Rajasthan) and many more. These and traitional manufacturing practices have given rise to place oriented reputations for many products such as Diamond cutting techniques, Surat.

- Salem cotton,
- Lucknow chikan works,
- Muradabad utensils and decoration material, and
- NE region unique bamboo and craft work.



Iron Pillar

Fig. 14.1

Similarly, there are a number of handicrafts and handlooms in different parts of the country such as Chanderi Sari in Madhya Pradesh, Pochampally Ikat in Andhra Pradesh, Kanjeevaram silk in Tamil Nadu. India also has food items such as Bengali rasgulla and Bikeneri bhujia.

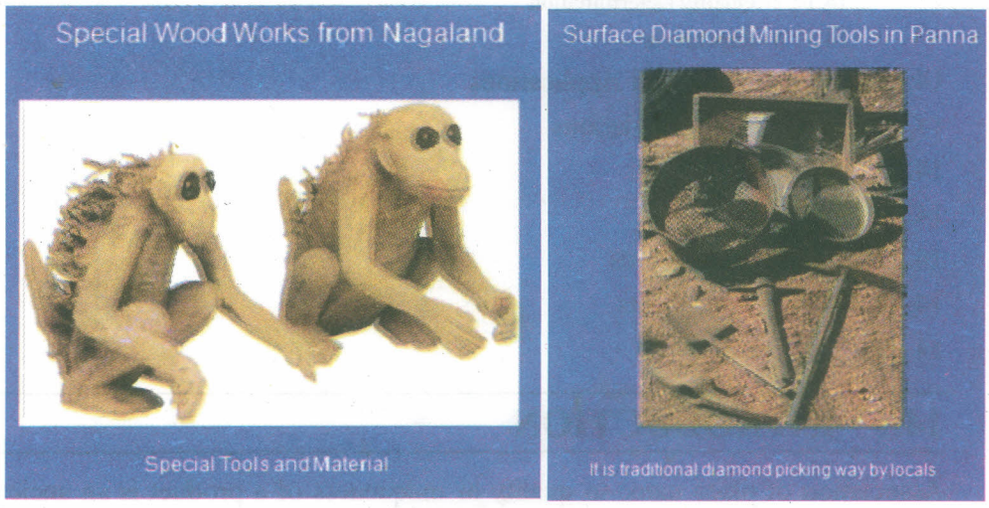


Fig. 14.2

In order to get intellectual property protection for such products which carry a geographical indication tag, the Parliament enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999. It seeks to provide for the registration & better protection of GI relating to Goods. The Act is administered by the Controller General of Patents, Designs and Trademarks, who is the Registrar of Geographical Indications. The Geographical Indications Registry is located at Chennai.

14.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the aim and objectives of the GI Act;
- explain the way of operation of the Act in India;
- describe the criteria for registration;
- explain the procedure of registration;
- describe the administration of the Act; and
- explain the remedies for the violation of GI Act.

14.3 AIM AND OBJECTIVES OF GI LAW

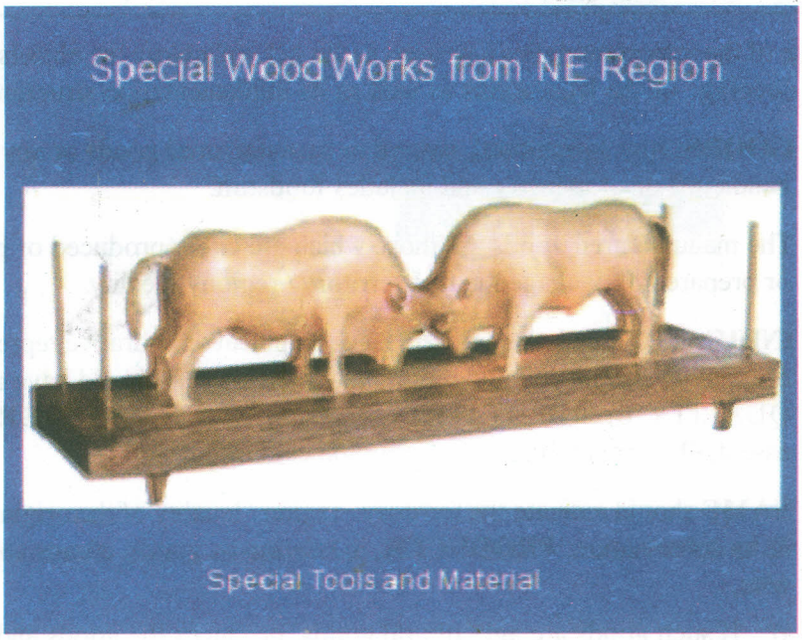


Fig. 14.3

The broad objectives of the Geographical Indications of Goods (Registration and Prtection) Act, 1999 are:

- To give statutory cover
- Extend minimum standard of protection as per the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS Agreement)
- Prevent consumers from being misled or deceived
- Make available only authentic products in the market

- Promote economic prosperity of producers and manufacturers of the GI products
- Standardize the quality parameters, and ensure high value/high quality agricultural and manufactured goods
- Promote regional prosperity
- Spread prosperity among supply chain
- Promote registration of quality neutral GI
- Encourage private inspection structure to verify production standards including origin, quality, and hygiene and encourage quality management discipline.

The Statement of Objects and Reasons for enactment of the law states Tat at present there is **no specific law** governing geographical indications of goods in the country which could adequately protect the interests of producers of such goods. Exclusion of unauthorised persons from misusing geographical indications would serve to protect consumers from deception, add to the economic prosperity of the producers of such goods and also promote goods bearing Indian geographical indications in the export market.

14.4 SOME DEFINITIONS

Some of the important definitions used in the Act will clarify the objects, purpose and coverage of the legislations as well as its implementation structure

- **GOODS**: Any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes foodstuff.
- The manufactured goods are those which are either produced or processed or prepared or packaged in that territory / region / locality.
- **INDICATION** includes any name, geographical or figurative representation originating from a definite geographical territory. It should have a GIVEN QUALITY or REPUTATION or OTHER **CHARACTERISTICS** essentially attributable to its Geographical Origin.
- **NAME** should indicate the territory / region / locality of the origin of goods & its abbreviation. **PRODUCER**, in relation to goods, means any person, who,
  a) If such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;
  b) If such goods are natural goods, exploits the goods;
  c) 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.
- **REGISTRAR** means the Register of Geographical Indications referred to in Section 6;
- **REGISTERED** (with its grammatical variations) means registered under this Act,

- **REGISTERED PROPRIETOR**, in relation to a geographical indication, means any association of persons or of producers or any organization for the time being entered in the register as proprietor of the geographical indication;
- **REGISTRAR** means the Registrar of Geographical Indications referred to in Section 3;
- **TRIBUNAL** means the Registrar or, as the case may be, the Appellate Board before which the proceeding concerned is pending.

14.5 HOW GI ACT OPERATES IN INDIA?

The Act provides for a Register of Geographical Indication to be maintained by the Geographical Indications Registry. This Register is divided into two parts — Part A and Part B. Part A of the register contains details of distinguishing characteristics of the good and of the registered proprietor which would be an association of persons who are producers or a body representing interest of such producers like the Tea Board, Coffee Board, Spice Board, etc. It is possible for such organizations to take on board all the producers in respect of a particular geographical indication by collective reference in the application. Part B of the register contains particulars of 'authorized users' of GI such as those producers (including traders and dealers) who have not been included in the original application for registration. The Indian legislation seeks to establish two purposes. First it fulfils India's obligation under TRIPS agreement by providing public record of the registered GI with defined characteristics. This is done through Part A of the Register. The second purpose, is to ensure an orderly marketing of products bearing a registered GI to prevent various forms of commercial abuses. This is done through Part B of the Register.

The intellectual property inherent in a geographical indication is not an individual property but, a property belonging to a group or community bound by territorial limits. Some GI products have limited number of producers like in the case of Darjeeling Tea which is cultivated in only 87 tea gardensof Darjeeling region. But there are large number of GI products having thousands of producers such as Bikaneri-Bhujia, Basmati Rice, Assam Tea, etc. It is not possible for all of them to join together and come forward to file GI applications The subordinate legislation [Rule 32(1)(5)] accordingly provides that the content of an application which requires a Statement to be furnished containing particulars of the producers may make a collective reference to all the producers of the goods in respect to which the application is made. This will assure that no *bona fide* producer in the region, locality, or territory is left out in the lurch. Thus, even where no such reference is made in the original application, all the left out producers can be registered as authorised users in Part B through an application subsequently.One of the unique concepts under the Indian statute is the provision relating to Registered Proprietor which is defined under Section 2 (1) (n) as follows:

- "Registered Proprietor, in relation to a geographical indication, means any association of persons or of producers or any -organization for the time being entered in the register as proprietor of the geographical indications."

The intellectual property inherent in a geographical indication is not an individual property but a property belonging to a group or community bound by territorial

limits. However, given the socio-economic condition in the country, there are a large number of Indian GIs where the, producers or manufactures have not yet been able to join together and form into an association. Many producers of goods bearing GI in India are generally resource poor and lack the legal awareness to encash on the potential goldmine they are sitting on. It is for this reason that Section I of the Act provides that any association of person or producers or other organization or authority established by or under any law for the time being in force representing the interest of the producers of the goods concerned who are desirous of registering the GI in relation to such goods can apply in writing to the Registrar in the prescribed form. The registered proprietor only gives the initial momentum of securing registration of the relevant GI. The Act also provides that once the GI is registered, an infringement action can be initiated both by the registered proprietor and by the registered authorized users whose names have been entered in Part B of the GI Register.

14.6 SALIENT FEATURES OF THE ACT

- Wide definition of GI
- Registration Procedure
- Authorised user concept
- Collective right concept
- Penalties for infringement and offences
- Higher level of protection for notified goods
- Prohibition of assignment, etc.
- Prohibition of registration of GI as a trademark
- Protection for foreign GIs
- Appellate Board

The Act is divided in to 9 chapters, containing 87 sections. Pursuant to Section 3 of the Act, the Controller General of Patents, Design and Trade Marks has been appointed as the Registrar of GIs who will discharge his function through his officers as appointed the therein. At the moment, the GI Registry has been established in Chennai with all India jurisdiction. A Register of GIs will also be kept at the GI registry under the superintendence and control of the Registrar of GIs (Section 6) in which details of all registered GIs with names, addresses and description of the proprietors, the names, addresses and description of authorized users and such other details would be entered. This register is divided in to two parts namely; part A in which details as to the registration of the GIs has to be entered and part B will contain particulars to the registration of authorized users (Section 7).

The application for registration will have to indicate precisely the goods to which the GI shall apply. The goods are divided in to 34 classes and are mentioned in the Fourth Schedule to the Geographical Indications of Goods (Registration and Protection) Rules, 2002 (hereinafter 'the Rules'). It should also be noted that if the goods for which registration has been applied for fall in more than one class and for which only one application fee has been paid, the applicant may have either to restrict the specification of goods to include in one class or pay the

appropriate additional class fee. The decision of the Registrar as to which class any goods fall in to shall be final. It should be further noted that like the classification of goods under the Trade Marks Act 1999, the classification as given under the Act in the Fourth Schedule, is based on the international classification system established under the Nice Agreement of June 15th, 1957.

Self Assessment Question **(Spend 5 minutes)**

1) Explain the salient features of GI Act.

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14.7 CRITERIA FOR REGISTRATION

The criteria for Registration the GI must fall within the scope of the definition of the expression 'geographical indication'. In addition, such a GI should not fall within the purview of prohibitions as contained in Section 9 and they are:

a) the use of which would be likely to deceive or cause confusion; or

b) the use of which would be contrary to any law for the time being in force; or

c) which comprises or contains scandalous or obscene matter; or

d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India: or

e) which would otherwise be disentitled to protection in a court; or

f) which are determined to generic names or indications of goods and are, therefore, not or ceases to be protected in their country of origin, or which have fallen to disuse in that country; or

g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

14.7.1 What cannot be Registered as GI?

A) The use of which would be likely to deceive or cause confusion

Deception or confusion need not be actual. It may be probable. Protection of public interest is the primary consideration before the Registrar

What the Registrar has to see is whether looking at the circumstances of the case a particular GI is likely to deceive or cause confusion (see National Sewing Thread Company Ltd. v. James Chadwick & Co. Ltd and others AIR 1953 SC 357, pg 364). The court must be satisfied that there is a real tangible danger of confusion if the mark, which is sought to be registered, is

put on the Register (William Bailley (Burmingham Ltd's Application (1935) 52 RPC 136, pg.153). However, the Registrar ought not to refuse to register a mark as calculated to deceive where there is no evidence, intrinsic or extrinsic, of a design to pass off goods as those of another where the marks are distinct, and where registration would be permitted, but for the mere possibility of confusion by inexperienced people (Reddaway & Co. Ltd.'s Application (1925) 42 RPC 397, Pg. 401: Ch. 393.

B) The use of which would be contrary to any law for the time being in force

The Trademarks Act, 1999 prohibits registration of marks that are prohibited under the Emblems and Names (prevention of Improper Use) Act, 1950, the law relating to copyright and the common law tort of passing-off. Similarly, in case of GIs, registration of such GIs is prohibited under these laws with the Trademarks Act, 1999 in addition.

C) Which comprises or contains scandalous or obscene matter

Whether a GI that has been applied for registration is scandalous or obscene has to be decided by the tribunal on the facts and circumstances of each case. The onus is on the applicant to show that the GI applied for registration is not scandalous or obscene.

D) Which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India

In case of GIs, each case has to be seen in its own peculiar facts and circumstances. Use of pictures of Gods, Goddesses and other religious heads as trademarks or GIs, *per se* is not objectionable. However, some sign or word or particular usage may hurt the religious and moral susceptibilities and hence such trademark or GI falls under his prohibition.

For example, the use of Hindu Gods in respect of beef or meat products or such use of Muslim saints for pork products would offend the religious susceptibilities of the respective sections of public and therefore registration of such GIs would fall under the purview of Section 9 (d). Registration of the mark 'HALLELUJAH' in respect of articles of clothing for women was refused as offending against morality and religious susceptibilities of certain people *(Hallelujah TM (1976)RPC 605).*

E) Which would otherwise be disentitled to protection in a court

The established principle of law is that the protection is not to be extended "to persons whose case is not founded in truth" *(Eno v Dunn 7 RPC 311, pg.318).* Apart from equity as mentioned earlier a GI will not be registered if it violates laws relating to copyright, tort of passing off, Emblems and names and other laws also depending upon the circumstances and merits of the case.

F) Which are determined to generic names or indications of goods and are, therefore, not or ceases to be protected in their country of origin, or which have fallen in to disuse in that country.

The sub clause, i.e. Section 9 (f) has to be read in conjunction with Explanations 1 and 2 as given in the Act. According to Explanation 1 'generic

names or indications' means the name of goods which, although relates to the place or the region where the goods were originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristics of the goods. In other words, the name has ceased to be distinctive of a particular source and become common to the trade. This provision corresponds to Article 24(9) of the TRIPS Agreement, which declares "there shall be no obligation under this agreement to protect GIs which are not or cease to be protected in their country of origin, or which have fallen in to disuse in that country". Article 6 of the Lisbon Agreement clearly states that an appellation of origin will not be deemed to have become generic as long as the same is protected in its country of origin.

According to Explanation 2 which states that in determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods. It need not be mentioned that the value of a GI diminishes if the product has no longer the exclusive meaning and its origin loses relevance. The GI no longer indicates to the market place the source of the product and instead it is considered the common general name of the product. Intellectual properties are valuable assets and owners make great efforts to prevent their GIs from becoming generic. Example can be given from India, where the Indian Government has to fight a legal battle to protect its GIs.

G) Which, although literally true as the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be

Geographical indication, which falsely represents to the persons that the goods originate in a locality other than of its true origin, though literally true as to the locality of origin, cannot be registered. **This provision intends preventing deception and falsification of GIs**. Falsity of representation, in absence of any fraud, does not depend upon the meaning which the maker intended or believed it to have or upon the construction which the court itself puts upon it, but upon the way in which it could be reasonably understood by the person to whom it is addressed. In ***Parker Knoll Ltd v. Knoll International Ltd.*** [1962] RPC 265, it was observed, "It is literally truthful for the appellants to say that their furniture is manufactured by Knoll International, but if that statement conveys to a member of the public that the furniture is manufactured by Parker–Knoll, it is a false representation".

14.8 PROCEDURE FOR REGISTRATION

The procedure for registration of a GI is prescribed in Chapter III of the Act read with Chapter II of the Rules. Section 11 of the Act deals with application for registration, its content, filling procedure, acceptance or refusal. It should be noted that unlike an application for registration of a trade mark where an application may be made by any person, an application for registration of a GI pursuant to Section 11(1) can be made only by an "association of persons or producers or any organization or authority established by or under any law for

the time being in force representing the interests of the producers of the concerned goods, who are desirous of registering a GI in relation to such goods." Bodies like the Tea Board, Coffee Board, and the Spices Board are some examples of such associations or organizations. The GI Act covers a wide area. The Indian situation and climatic conditions provide opportunity for 'n' number of products. The various POTENTIALS FOR GI REGISTRATION are as under:

14.8.1 Products Form

- Agriculture
- Horticulture / Aromatic & Medicinal Plants / Bio-Fuels - Plants for Renewable Source of Energy
- Animal Husbandry (Dairy, Meat, Poultry, Wool, Hides & Skin, Ornamental Birds)
- Aquaculture / Ornamental Fish / Seaweed / Salt / Pearl / Shell
- Sericulture, Lac Culture, Apiculture
- Agro-Forestry / Social Forestry / Urban Forestry
- Wines & Spirits
- Cottage Industry, Handicrafts, Textiles
- Natural Products, Food Products, Manufactured Products, etc.

14.8.2 Agricultural Products

a) ***Crop-Based Products***

1) FOOD GRAINS (Cereals, Millets, Pulses)
2) EDIBLE & NON-EDIBLE OILS (Annuals and Trees)
3) FRUITS (Annuals and Trees)
4) VEGETABLES
5) SUGARS
6) SPICES (Annuals and Trees)
7) BEVERAGES (Coffee, Tea, Cacao, etc.)
8) WINES & SPIRITS (
9) NUTS (Cashewnut, Walnut, Pistanut)
10) FLOWERS (Commercial, Ornamental)
11) HERBAL MEDICINES (Cultivated)
12) FIBRES: Cotton,
13) Silk – Mulberry, Eri, Muga, Tropical Tassar, Oak Tassar
14) Jute, Wool, Linen, Ramie, Agave, Coir, Kapok, Pandanus, Banana, Gongra, etc.
15) GUMS AND RESINS
16) MAT GRASSES
17) BIOFUELS

14.8.3 Livestock-Based Products

- Milk Products (Cow, Buffalo, Goat, Yak, Camel, etc.)
- **KHOA BASED:**-Bal mithai, Singori, Mathura Pera, Agra peda, Sandesh, Dharwad Peda
- **CHEESE BASED:**-Chhena poda, Rasabalai, Rasagulla, Kheer Sagar ChomChom, Lalmohan
- **YOGURT BASED:**-Bal misthti doi
- Poultry Products (Layers, Broilers; Ducks, Quails, Turkeys, Ewes, etc.)
- Sheep & Goat Products
- Meat Products
- Skins and Hides
- Earthworm Proteins
- Food Products from Microbes

14.8.4 Fish-Based Products

- Fish / Prawn / Crab / Mussel / Oyster Products (Inland / fresh water, Marine, Estuarine, etc.)
- Ornamental Fishes
- Seaweeds
- Pearls
- Sea Shell Products



Fig. 14.4

Agro-Forestry Based Products:- Neem, Teak, *Pongamia*, Mahua, Bamboo, Casuarina, Palmyra, Acacia, *Ailanthus*, *Morinda*, *Eucalyptus*, Pine, Asafoetida, Camphor, etc.

14.8.5 Natural Products

a) ***Non-Timber Forest Products***

- Wild medicinal plants and products
- Wild Horticultural Produces – Fruits, Greens, Spices, Essential Oils, Shikakai, Soapnuts, Emulsions, etc.
- Edible and Medicinal Mushrooms
- Resins and Gums
- Rock Bee / Indian Bee / Little Bee / Dammer Bee Honey and Wax
- Lac Insect Dye / Cochineal Insect Dye
- Insects of Food and Medicinal Value

b) ***Ores and Minerals*** **– White / Red / Yellow Kaolin**

c) *Granites, Kadapa Stones, Marble Stones*



Fig.14.5

14.8.6 Manufactured Products

A) **HANDLOOM TEXTILES:** Cotton, Silk, Woolen and Jute Textiles; Embroidary, Knitting, Shawl, Carpet,

B) **HANDICRAFTS** – Jewellery, Ornaments, Painting, Mats, Toys & Dolls, Wood, Bamboo, Cane, Leather, Clay, Plaster of Paris, Terracota, Metal, Sea Shell, Palm, Coconut Shell, Coir, Horn, Musical Instruments, Bags, Effigy, Mirror, Motifs, Pierced Silkworm Cocoon Garlands, Toys and Dolls, Paddy Grain Garlands and Raths, etc.

C) **HANDLOOMS AND HANDICRAFTS**

- Textiles & Textile Goods, Waste Products, Embroidery, Furnishing, etc.
- Cane & Bamboo Products, Mats, etc.
- Brass & Bell Metal
- Pottery, Woodwork, Toys, Dolls, etc.
- Musical Instruments, Articles for Games, Stone Carving, etc.

D) **FOOD PRODUCTS** based on grains, fruits, tubers, vegetables, milk, meat, fish, microbes, etc.

14.8.7 Industrial Goods: Wet Grinders

This is a classic example of recognizing a product mainly on the strength of local reputation, in addition to other requirements as laid down by the Act. The granite stone used in the manufacture of Coimbatore Wet Grinder is unique with a hard mass. The wet grinder is used in the preparation of herbal medicine, botanical pesticides and the idly / Dosa dough. There is no heat developed during grinding because of the wet process. Again in spite of continuous grinding for hours, the silicon content of the granite will not come off from the granite, which is peculiar to the type of granite stone of the Coimbatore region.

14.9 ADMINISTRATION OF THE ACT

Pursuant to Section 11(2) read with Rule 32, an application for registration of GI has to be filed on form GI-1 in triplicate along with 5 representations of the said GI and the official fees prescribed in the first schedule which is Rs.5000/- only. The application should also contain a statement of case showing as to how the concerned GI serves to designate the good as originating from the concerned territory of the country or region or locality in the country as the case may be, the class of goods to which it relates, 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, particulars of the producers of the goods and other related details. The rule further prescribes that the applicant has to file an affidavit with the application clearly stating as to how the applicant claim to represent the interest of the producers. Also, the application should clearly state the standards or the industry standard as regards production, exploitation, making or manufacture of the goods having specific quality, reputation or other characteristic of such goods that is essentially attributable to its geographical origin, the particular human skill involved, the uniqueness of the geographical environment or other inherent characteristics associated with the GI to which the application relates, the name and address of the applicants and all other related details along with specification, description and methods of production.

14.9.1 Who can Register?

Any association of persons or producers or any organization or authority established by or under law representing the interest of producers of the concerned goods can apply for registration.

How to Apply?

Application for registration of a GI should be in the prescribed form (GI-1A to 1D whichever is applicable) accompanied by the prescribed fee – Rs.5000/- per class.

It must be made in triplicate along with three copies of a statement of case accompanied by five copies of additional representations

Statement of Case

- GI serves to designate the goods as originating from the concerned Geographical Area, in respect of specific quality, reputation or other characteristics
- Three certified copies of the map of the territory or region.
- Human skills involved or uniqueness of the GI environment or other inherent characteristics of the GI.
- Mechanism to ensure that the standards, quality, integrity, and consistency, or other special characteristics are maintained by the producers.
- An affidavit as to how the applicant claims to represent the interest of the concerned persons, producers, authority or organizations.

Proof of Origin and Method of Production

- Brief description about the origin and the evolution of the GI and its production method.
- Documentary proof Gazetteers & Authentic Texts
- Additional Representation
- Name and address of the applicant and Agent if any.
- Specification and class of goods.
- Period of use.

Signing of the Application

- In the case of Association by the Authorized Signatory
- In the case of Body Corporate / Organizations / Authority by the Chief executive, M.D, Secretary, or other Principal Officer.
- In the case of Partnership by at least one of the partners

Payment of Fees can be by

- Cash
- Money Order
- Bank Draft / Cheque
- Draft and Cheque shall be in favour of the Registrar of GI and payable at Chennai

14.9.2 Product Specifications

The product specification is the key element in the designation of a product name as it establishes the conditions to be observed by all parties thereafter. Producers draw up their own specifications. A product specification has to contain all the technical information necessary to describe the product. It must be sufficiently detailed so as to allow any new producer in that region to start the production of the specific product. It is the main evidence in support of an application. The conditions in a specification are binding on producers of the Registered GI and are the reference point for any inspections. As such it is the determining factors in obtaining registration, and also in maintaining confidence in the system.

The main elements of the specification are:

I) Name of the product

II) Description of the agricultural product or foodstuff (including information on raw materials and physical, chemical microbiological or taste characteristics)

III) Evidence that the product originates in the relevant area.

IV) Definition of the geographical area.

V) Description of how tproduct is obtained, plus any relevant details on local production, processing, packaging, etc.

VI) Details of the link between the product and the geographical area concerned

VII) Any other requirements as per GI law.

14.9.3 Description of the Product

The product description should cover:

- Physical attributes (shape, colour, weight, etc.)
- Chemical features (minimum fat content, maximum water content, etc)
- Microbiological information (e.g., any bacteria present)
- Biological details (race, variety, etc)
- Organoleptic characteristics (taste, flavour, colour, odour, etc)

The description essentially establishes the ways in which a product is specific, and details how it is to be differentiated from other products in the same category. Specification of processing, packaging and presentation may also be important, because methods of cutting, slicing grating or packaging may be essential in maintaining the characteristics and value of the product.

14.9.4 Methods of Production

The description of the method of production must be sufficiently informative to allow any producer within the region to produce the foodstuff concerned, if desired.

The main requirements are for information on:

The method of obtaining the agricultural product or foodstuff

The authentic local method of production

Packaging (where relevant)

It should be noted that a single application can be made with respect to different classes of goods though the applicants have to pay fees with respect to each such class. The application can be filed in the office of GI registry within whose territorial jurisdiction the place mentioned in the address of service in India as disclosed in the application is situated. As mentioned above the GI registry has been established in Chennai with all India jurisdictions. On receipt of the application the Registrar shall cause the application to be examined as to whether the said application meets the requirements of the law.

Self Assessment Question **(Spend 8 (4×2) minutes)**

2) Explain the following.

   1) Product specification

   2) Description

3) Method of Production

4) Uniqueness

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14.9.5 Uniqueness

Peculiar features that make the GI different from other similar goods. For example, Kerala, has different climatic and soil condition leading to three different popular varieties of rice (Navara, Matta and Pokkali) one has medicinal value and the other a very good appetizer and provides strength and the last is grown in a peculiar environment.

PALAKKADAN MATTA RICE

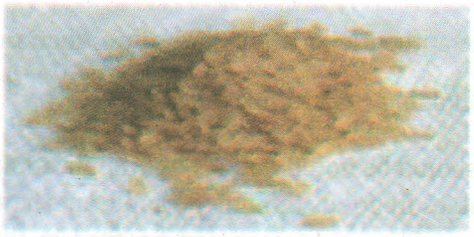


Fig. 14.6

Specification:

- It is a coarse variety of rice with bold grains and red pericarp. The "Palakkadan matta" is a unique cereal having high content of nutrients and is indispensable for those who do hard physical work.

Description:

- The grain is grown on unique black cotton or regars soil, derived from rocks rich in lime peculiar to Palakkad also in "Poonthalpadam"where the soil is heavy, containing 60-80% of clay and silt and posses low permeability and high water holding capacity.
- These soils, the humid weather of Palakkad, easterly winds that blow through the Palakkad gap, the rivers that flow from the Western Ghats, and the bright sunshine determine the unique taste and quality of the Palakkadan Matta Rice.

Uniqueness:

- The rice has got a unique taste. The coarse rice with red pericarp by itself ensures high content of nutrients. "Par-boiling" of the rice further ensures retention of nutritional value.

NAVARA RICE



Fig. 14.7

Specification:

- The "Navara Rice" is an indigenous medicinal rice variety.
- There are two varieties of navara, the black colour and golden.
- Yellow colour. But the rice is purple in colour in both cases.

Description:

- Navara is used effectively in certain ayurvedic treatments in Kerala like in Panchakarma treatment from very olden times. It is also used as a health food especially in rainy seasons.
- The Navara rice plant prefers warm humid conditions.
- As Navara is medicinal rice the cultivation has to be organic otherwise the chemicals used might adversely affect its medicinal properties and thereby the health of the patients and consumers.
- Navara has to be kept at least for a year as paddy before conversion to rice for better results.
- Raw rice of Navara is used. Navara rice is easily digestible and hence a light food and has got a unique taste. The yield of Navara is very poor due to its short duration and susceptibility of the plant to the weather changes.

Uniqueness:

- The rice is known as "Shashtika Rice" for its unique and peculiar characteristic requirement of only sixty days to grow and mature.
- It is valued for its curative properties in circulatory, digestive and rheumatic complaints.

Another example, this time a manufactured good from Kerala is described below:

ARANMULA KANNADI (ARANMULA METAL MIRROR)

Specification

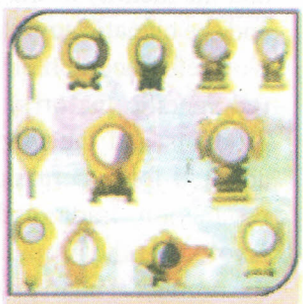


Fig. 14.8

It is a unique metal mirror of reflecting a rich culture as well as mythological heritage.

- This wonderful creation of human skill is made of metal alloys.
- The image of this mirror is similar to silicon synthetic glass mirror image without any distortion.

- This highly brittle high – tin – bronze also known as Speculum Metal yields a highly polished surface and a clear reflection image and is very popular for clarity. This Mirror also has got telescopic effect on its mage (i.e.) distant objects can be seen nearby.

Description



Fig. 14.9

- Produced through lost wax process, but it is entirely different from the usual casting of other areas.
- Each and every stage of the process of its production is being done manually.
- As traditional as the mirror making technology is the artisan's belief that the metallurgical composition of the mirror is divine and that some undisclosed metals alloyed with the copper and tin are responsible for the distortion – free images.

Uniqueness

- Aranmula kannadi is the most unique of the generic metal mirror as no other similar mirror is available anywhere in the world. This is the rarest handicraft. One piece of mirror will take almost six months for the completion and each and every stage of the process if its production is being done manually without any help of the machine. The highly reflecting surface of the mirror is according to the local belief due to the addition of some herbal powders to the moulden metal whose identification is known to few members of the artisans.
- The mysterious component of the local mud (clay) used for moulding purpose to the alloy also to contribute to the uniqueness of this Mirror.
- The world's renowned metallurgists and scientists have tried to produce similar Mirror with the same composition of metals but failed in their attempts.

14.10 KEY POINTS DURING EXAMINATION OF APPLICATION

i) Agricultural goods

The origin of the product in the GI area is first verified and authenticated from publications. The technical details furnished under specification, description, uniqueness and method of production are critically examined for correctness and the identity of the product. The physical and edaphic factors of the GI areas and the climatic conditions prevailed during the cropping seasons are scrutinized with reference to their contribution to the quality parameters of the product and the specific factor(s) identified. Data on chemicals/nutrient contents of the products and the morphological features are examined and the methodology adopted for generating the data chocked with the applicant. In the method, of production, traditional methods practiced in the GI areas and the human skill involved in the production are emphasized. To avoid chemical contamination of the products and to protect the environment, organic farming is given importance.

ii) Handicrafts and manufactured products

The local availability of raw materials, their quality, the traditional or improved methods of production, the skill of the personnel/artisans and their involvement through generations (heriditary) are mainly looked into. It is also stressed that the dyes used in the textiles, the paints and colours employed in the production of toys, paintings, etc. should be of natural (plant) origin, or less toxic as the chemical colours are dangerous and poison affecting the human health. In respect of furniture and wooden handicrafts, use of seasoned wood is given importance.

iii) Food products

The processing methods adopted to get the raw materials for the preparation, their quality, the techniques adopted and the machinery used are the points considered. Maintenance of hygienic conditions in the various stages of preparation and in the machinery unit and avoidance of chemical preservatives are stressed. Apart from the nutritional status of the food, the acceptability test information by the appraisers (including organoleptic test) and the keeping quality shelf life and packaging receive due consideration.

For purposes of examination the Registrar under his chairmanship constitutes a consultative group of not more than seven persons well versed in that particular field. Thereafter the Registrar will communicate his objections to the applicant who within a stipulated time has to meet these objections and if necessary request for hearing for satisfying the registrar as to the merits of the application. In case no response is received to the objections or the applicant fails to attend hearing the application will be dismissed. Thereafter the Registrar may propose to accept the application subject to conditions, amendments, modifications, or any other limitations as he deems fit and direct the same to be advertised in the GI journal (Gazette Publication).

After the GI proposed to be registered has been advertised any person within three months and within a further period not exceeding one month can give in writing to the Registrar, his or her opposition to the said registration pursuant to Section 14 of the Act. Thereafter the procedure is similar as followed in the case of registration of the trademarks. The Registrar shall cause the notice of opposition to be served on the applicant and within a stipulated time the applicant has to file his counter statement to this notice. Thereafter within a certain time frame as enumerated in the Act the parties have to file their evidences and after that the Registrar shall hear the parties if required. The Registrar then on the basis of these documents and hearings take a decision as to whether the registration is to be permitted or not and if to be permitted then subject to what conditions or limitations. The application, if accepted, would then proceed to registration and a Registration Certificate will be issued pursuant to Section 16 of the Act.

A schemeatic description of the procedure of registration is presented below:

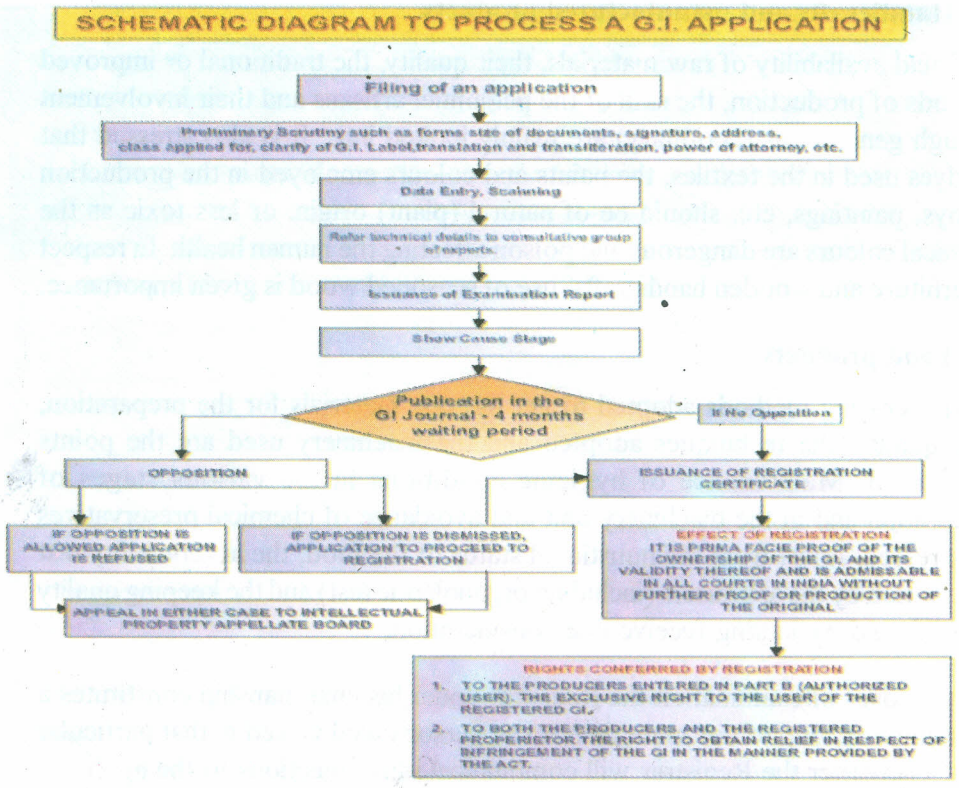


Fig. 14.10

14.11 REGISTRATION OF 'AUTHORIZED USER'

The Act make provisions for two parts, namely, Part A and Part B in the GI Register. Registration details of 'Authorized User' have to be recorded in Part B of the Register. The Act defines Authorized User in Section 2(1) (a) as a person who is the authorized user of a GI registered under Section 17 of the Act. Section 17 states that any person who claims to be the producer of goods in respect of which a GI has been registered under Section 6, may apply in writing to the Registrar for registering him as an authorized user of such a GI. The registration procedure of an 'Authorized User' is broadly similar to the procedure for registration of a GI as discussed above. The application should be on Form GI-3 along with prescribed fees and has to be accompanied by the following documents, namely:

1) Statements of case of how the applicant claims to be the producer of the registered GI along with an affidavit which should include, *inter alia*, since when he has been a producer, the turnover, the extent of cultivation of agriculture land where applicable, the volume of processing, packing, exploitation, production or manufacture of the goods, as the case may be, the extent of export, the regulation governing cultivation or the accepted method of cultivation, production, exploitation, manufacture or the making of the goods may also be relevant.

2) The applicant should also furnish any copy of agreement between the registered proprietor and the proposed authorized user or a copy of the letter of consent from the registered proprietor of the GI. (Where such consent letter is not appended then a copy of the application has to be endorsed to the registered proprietor for information and the applicant has to intimate the Registrar as to service of the application on the proprietor of the registered GI.

Section 17(3) makes it clear that the provisions of chapter III of the Act relating to–

a) the filling and examination of the application;

b) the refusal and acceptance of registration;

c) with drawl of acceptance of application;

d) advertisement of application;

e) opposition to registration;

f) correction error in an amendment of the application and;

g) registration.

Shall apply in respect of the application and registration of authorized users in the same manner as they apply for the application for registration of the GI.

Self Assessment Question **(Spend 5 minutes)**

3) Discuss the Examination Process in a GI application.

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Duration

Section 18(1) of the Act provides that registration of a GI shall remain valid for a period of 10 years, which may be renewed from time to time. Pursuant to Section 18(2) registration of authorized user too shall be valid for 10 years or for the period till the date on which the registration of the GI in respect of which the authorized user is registered expires, whichever is earlier. Therefore, registration of the authorized user depends on the registration of the GI and is co-terminus with the same.

An application for renewal of registration of a GI or an authorized user of a GI the application has to be made in the prescribed manner along with the prescribed fees, i.e., on Form GI-3 or form GI-4 as the case may be and may be made at any time not more than six months before the expiration of the last registration. The renewal shall be for a further period of ten years. The person who is proprietor of the registered GI, failing which by any of the authorized users on record, as the case may be, must file such an application for renewal. (Section 18 (3) Rule 60 (1) & (2)). In case no request on Form GI-3 or Form GI-4 is received within 3 months of the date of expiration then the Registrar shall issue a notice to the registered proprietor or the authorized users as the case may be about the date of the registration and the conditions upon which the renewal of the registration must be obtained. If no such request for renewal is obtained from the registered proprietor or the authorized user the Registrar shall remove the registration or the name of the authorized user from the register provided that the Registrar

shall not take recourse to such a drastic action if such an application along with the surcharge for renewal is received within six months from the expiration date. Similarly, even on expiry of the grace period of six months and within one year from the date expiration the Registrar on receipt of an application for renewal along with prescribed fees and subject to his satisfaction may renew the same. Every restoration or renewal of a GI will be advertised in the Journal. Section 19 of the Act highlights the effects of removal from the register of a GI due to non-payment of renewal fees.

14.12 CRITERIA FOR PROTECTION OF GI GOODS

14.12.1 Element of 'Originating'

- "Originating" in the territory means that the good must be mined, grown or manufactured in that territory (normally there should be some flexibility).

14.12.2 Quality Determination

Standards specified in the law for the product concerned or, through customary use in the respective industry with 3 E in quality.

3E in quality

- **Effectiveness** (doing the right things) - extent to which planed activities are realized and planed results achieved
- **Efficiency** (doing things right) - relationship between the result achieved and the resources used
- **Excellence** - Doing the right things right!!

Manufacturing purposes - the storage, duration or conversion, specific equipment, skills, ingredients (origin, type of cultivation), additives, shapes and sizes, etc.

Verification - Done by the body responsible for geographical indications or the product certification body.(Inspection Structure)

Production if produced by a traditional method or that its production, preparation and processing has occurred in a particular geographical area can contribute to its "quality".

- **Qualitative link** - the definition would lead to a disadvantage for the countries whose geographical indications apply not to agricultural or crafts products but to industrial products. (Link which may have existed at the beginning of the manufacturing of an industrial product, may subsequently be broken to the extend that its existence is henceforth difficult to prove).

14.12.3 Reputation

- Reputation is based on the distinctive character of the product, i.e., its capacity to distinguish itself from other products.
- The stronger a product's identity, the more it will be able to display its established reputation. The economic value of the reputation may also be a key factor in evaluating the element of reputation. It is enough that the public

associates a good with a territory because the public believes the good to have desirable characteristics, i.e., that the good enjoys a "reputation" linked to the identifier of the place. Reputation implies the link to territory may be based on human labour in the place.

14.13 ILLUSTRATIONS OF GI APPLICATIONS

Agricultural Goods

DARJEELING TEA (logo)



Fig. 14.11

Specification:

- Leaves are small, leathery, dark glossy green in colour often covered with a downy silvery pubescence.

Description:





Fig. 14.12

- The botanical name of the plant is *Camellia sinensis.*
- A set of agricultural practices has been developed to sustain growth of shoots, while maintaining bush heights suitable for manual plucking. Plucking begins in March and closes by late November.
- Its rare flavour is a result of combination of plant genes, soil chemistry, elevations, temperature and rainfall. After final grading, nomenclatures are assigned according to the size of the grade.
- This fall into three categories: (a) Whole leaf – FTGOP – Fine Tippy Golden Flowery Orange Pekoe; (b) Brokens – TGBOP - Tippy Golden Broken Orange Pekoe, and (c) Fannings – GOF - Golden Orange Fannings.
- The above gradations relate only to the size of the leaf and not to quality differentiations. All grades are the product of the same green leaf.
- Light body and golden or amber in color, Darjeelings can have a sweet muscat (grape) flavour or a more crisp astringent flavour.
- Darjeelings are the highest grown teas in the world (4000 - 8000 ft).

Uniqueness:

- Darjeeling tea has the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel.

COORG GREEN CARDAMOM(R.G.I)

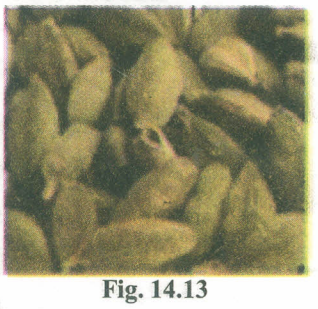


Fig. 14.13

Specification: It is the fully ripened and dried fruit of the perennial plant *Elettaria cardamomum* of the Malabar variety.

- This grade is unique in its colour, size, chemical constituents and oil content. Its colour is ranging from greenish to brown with global shape skin ribbed or smooth and pedicels separated.

Description

- It has the major components of cardamom oil i.e., 1, 8- cineole and a - terpinyl acetate in abundance. Detailed studies on volatile oil reveal that, var. Malabar contains high percentage of 1, 8- cineole compared to other varieties thereby bringing in a fresh campharaceous cool odour with a diffusive taste and a refreshing effect. However the quantity of a - terpinyl acetate is comparable.
- It is having campharaceous cool odour with a harsh taste and a refreshing effect due to the higher amount of 1, 8 cineole (41.0) while the alpha-terpinyl acetate (30.0) content is comparable.
- The cardamom-growing soils of Karnataka are mostly clay loam. The soil pH of Karnataka is higher and also the CEC (Cation Exchange Capacity) of Coorg soils is higher than the soils of other cardamom growing areas.
- The organic carbon content percentage is also at an up. On an average the cardamom soils from Coorg in Karnataka contain much less NH4OAC and HNO3, extractable K compared to soils of other areas though the other soil properties are comparable. Coorg Green Cardamom is one of the oldest, most popular and sought after cardamom from India.

HANDICRAFTS-TEXTILES SILK GOODS

KANCHIPURAM SILK SAREE(R.G.I)

Specification

- The Kanchipuram Silk Saree is hand-woven with dyed silk yarn with interleaved designs made with 'Jari' - a Silk thread twisted with a thin Silver wire and then gilded with pure Gold.

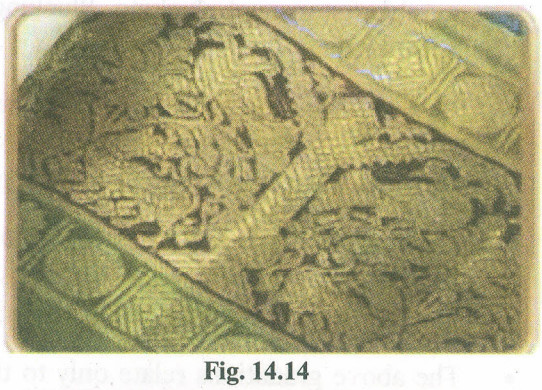


Fig. 14.14

- The silk thread used for weaving Kanchipuram Sarees is made up of three single threads twisted together. Hence, the Kanchipuram Silk Saree is usually stronger and more expensive.
- The total constituents of the Lace: Silver-191 gms (78%), Silk- 51.55 gms (21%), Gold-2.45gms (1%).

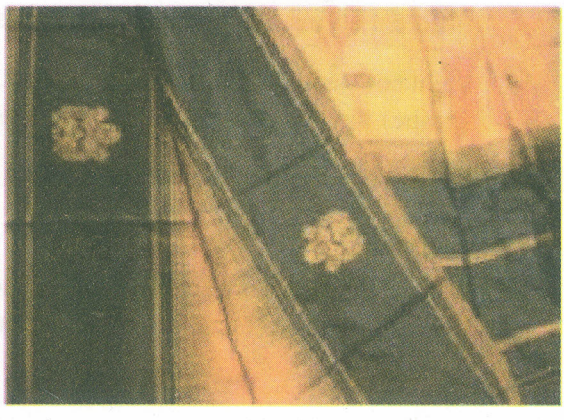


Fig. 14.15

- A typical Kancheepuram Silk Saree is known for its distinguished characteristics of heavy weight, bright colours and solid zari borders with "Pallu" with unquestionable durability.

Uniqueness

- Petni is the unique process of joining the Mundhi of a different colour to the body of the saree in such a manner that the two pieces blend together in harmony of colour and to the naked eye does not betray that they are different pieces of cloth.
- The width of the Mundhi is 18" to 22" in a 6 yards saree and 27" to 32" in a 9 yards saree.
- The lustre of this fabric is attributed to the local water used for de-gumming and dying of raw silk.
- The quality of the silk, the distinguishing characteristics of heavy weight, bright colour and solid zari borders with 'pallu' with durability were the key points.

Manufactured Goods

Comparison of main features of five kinds of Paintings

Mysore Traditional Paintings	Madhubani Paintings	Thanjavur Paintings	Orissa Pattachitra Paintings	Nirmal Paintings
Off shoots of the Vijayanagara school of painting. The painting technique includes gesso or applying a mixture of plaster and glue, gold foil is used for depicting intricate details of jewellery, costumes and architectural details that frame the deity. Mysore painting differs from Thanjavur painting in the application of colours and which are of plant origin.	Heritage rooted in the rhythms of Hindu ritual life. Three forms of paintings, Aripona (worship), Vratas (vows) and Sanskaras (rites of passage) are prevalent. It uses white rice paste, turmeric and sindoor to depict tantric symbolic forms, symbols for the mother goddess and motifs. Colours used are prepared from natural sources. Paintings on wall, floor clothes, and hand made paper, saris, curtains and bed sheets are very popular. No specific dimension.	Off shoots of the Vijayanagara school of painting. Paintings Are done on Wooden, Canvasses, Walls and Glass. Paintings are colourful and bright. Originated during the maratha period from 17 to 19th century. The compositions consist of one main figure, a deity or several deities. Most of the paintings depict child form of Lord Krishna and his various pranks or other deities. Glass painting is done on the glass. Gold paint and aluminium pieces in the place of precious and semi precious stones.	The painting is done on a piece of coarse cotton cloth. It is a living art which has its root since ancient times. The motifs used in the painting symbolises the different poses of oddissi and gotipua dance. The materials needed are cotton cloth, tamarind seeds, chalk and powders. The colours are vegetable origin and mineral sources. Theme of painting range from the incidents in Krishna life and the avatars of Vishnu to the epic tales of Ramayana and Mahabharata.	The medium used in nirmal painting is wood. The sketch of the art is traced and filling of colours is done to make the painting. The appearance is very beautiful and smooth.

MYSORE TRADITIONAL PAINTINGS(R.G.I)



Fig. 14.16

Specification

- A special relief work called "gesso" is done to enhance the jewellery and other embellishments in the paintings. These are later covered with 24-carat gold leaf and then the painting is given the finishing touches.

Description

- The Mysore painting is usually executed now a day on a paper pasted on cloth or wood.
- Pure gold leaf not only enhances the luster of Mysore paintings but also makes the gesso work last longer. Also the gesso work in Mysore paintings is low in relief and intricate. The medium is water colour.

Uniqueness



Fig. 14.17

- The foil work is delicate.
- The Mysore School does not use stones and the relief work is subtle. The foil work is delicate.
- The artist has the flexibility to use a wider spectrum of colours and need not necessarily restrict the painting to the deep primary colour.
- The use of light and shade effect is more predominant.

MADHUBANI PAINTINGS(R.G.I)

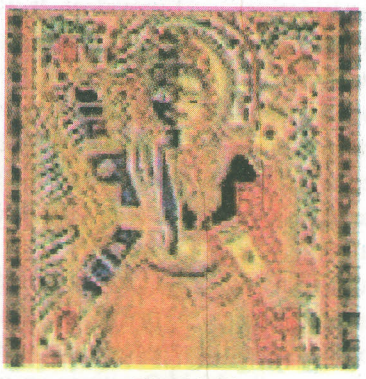


Fig. 14.18

Specification

- Paintings have no specific dimension. They are carved in small sizes as well as in big size on walls, floors, clothes or craft papers. Rectangular size of paintings, generally 2′× 4′ are very popular on silk and craft paper. The decorative style of Madhubani paintings abhors empty space. The women will work out here design by filing it more and more with familiar details which suddenly seen to take on life and power.



Fig. 14.19

Description

- Madhubani paintings have got very important place in Modern paintings in the world. Wall paintings floor paintings, ceiling painting and paintings on clothes, painting on a handmade paper are very popular. Madhubani paintings designed over saris,

curtains and bed sheets, pillow covers are very much popular and lover by every man and woman in present societies.

- Colours used are prepared from natural sources. Originally, these village painters used to collect the soot of the night lamp to prepare black colour and turmeric powder was used for making yellow colour, orange was prepared from Harshingara (Shefali) flower and red flower and red from Kusum, flower, indigo mixed with mustard extract provided another variety of red. Raw materials are mixed with goat milk, gum Arabic and juice from bean plants.
- There are two methods of paintings one in which the sketch is prepared and figures are filled on cloth, paper etc. in with different colours. In other paintings, articles like flute and clothes etc. are shown with numerous small straight lines. This is known as line painting and is more strenuous to make. The outlines are either sketched with black lines or filled with colours.
- The colours are applied flat with no shading. There is normally a double line drawn for the outlines with the gap between the lines filled by cross or straight tiny lines.

Uniqueness

- Madhubani is known all over the world for giving new dimension, new Horizon and new definition of the art of paintings and has become. Synonym to Madhubani Paintings. Madhubani painting is an unique and specialized are of this region.
- Thus retaining the originality and uniqueness of this wonderful tribal art form.

THANJAVUR PAINTINGS (R.G.I)

Specification

- Thanjavur painting consist of one main figure, a deity, with a well rounded body and almond shaped eyes. This figure would be housed in an enclosure created by means of an arch, curtains etc.

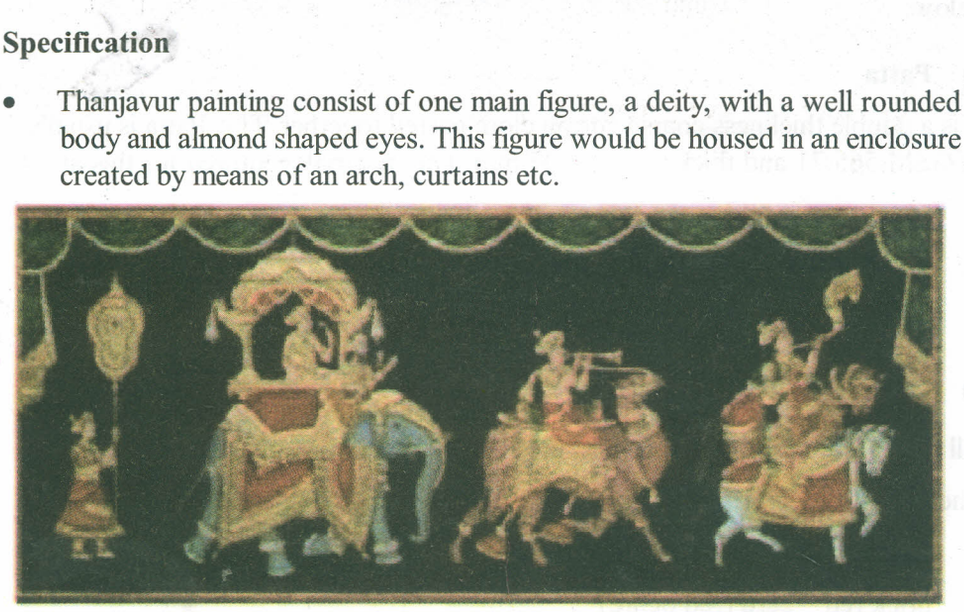


Fig. 14.20

- The painting would be made by the gilded and gem-set technique – a technique where gold leaves and sparkling stones are used to highlight certain aspects of the painting like ornaments, dresses etc. The painting would be bright and colourful and breathtakingly beautiful. The impact in a darkened room is that of a glowing presence.

- Thanjavur Paintings are mainly made on wooden canvasses, apart from glass, and walls which includes miniature form also.

Description

- Thanjavur paintings are one of the India's greatest traditional art forms and the common theme running through these paintings is mythology and demonstrates that spiritually is the essence of creative work.

Uniqueness

- The depiction/description of the main figures in the Thanjavur paintings are with rounded bodies and almond shaped eyes, lighter colour, ornamental.
- The embellishments made over the basic drawings with precious and semi-precious stones as well as the relief work at times give a 3D effect on a two dimensional medium.
- It is a unique kind of painting done with little use of a paintbrush and no two paintings are ever look alike.



Fig. 14.21

ORISSA PATTACHITRA

Specification

Raw materials for Pattachitra can be divided into two broad headings i.e. raw material for patta and raw material for colours. These raw materials are listed below:

1) Patta

It is a double thickness coarse cotton cloth pasted together. This Patta is usually of GSM 565.71 and thickness of 4.07 mm. The materials required for this are:

- Cotton cloth
- Tamarind seeds
- Chalk powder or khadi

2) Colours

All the colours used in Pattachitra are vegetable and mineral colors.

These are available at Rs.40-50 per kg. The source of each color is:

- vermillion red – hingula (cinnabar)
- brick red – geru (red ochre)
- yellow – hartala (orpiment)
- white – sankh (conch shell)
- black – lamp black
- gum resin (limonia acidissimia) – kaintha plant

Other Raw materials which were used in the product diversification process are as follows:

- Card board of two types- thin and thick available at Rs-3-5 per piece
- Fevicol available at Rs.36 per 200 ml
- Glass pieces available at Rs.15 per box
- Fabric-tussar, cotton available at Rs.180 and Rs.45 respectively.
- Lamination sheets available at Rs.24/ sheet
- Fancy yarn available at Rs.2/m
- Buckram cloth available at Rs.30 per m
- Rivets available at Rs.2 per piece

Description

The painting of patachitra is a living art which has its roots since ancient times. The word Pattachitra is derived from the Sanskrit word "patta", which means a painted piece of cloth,or a plate; chitra means paintings or picture The brillinantly coloured patachitra works were produced at puri or souveriers for the pilgrims of the Jaganath temple. Themes for these paintings range from incidents in Krishna life and the avatars of Vishnu to the epic tales of Ramayana and Mahabharata.

Themes used in this art are:

- Lord Jagannath and the triad of deities
- Episodes from the Hindu epics
- Worship of various gods and goddesses
- Folklores
- Erotic Paintings

Uniqueness

- The most important feature of pattachitra is the canvas on which the painting is done, without this base; called patta astra the significance of the art is incomplete. The uniqueness of the Patta chitra i.e. the preparation of patta has been discussed in the method of preparation.
- The motifs used in the painting sybolises the different posses of oddissi and gotipua dance. All the paintings done depicts one or the other story.

BAGH PRINTS OF MADHYA PRADESH

Specification

- The hand block printed fabrics from Bagh are popularly known as Bagh prints. The designs are very typical with geometrical patterns inter placed such that the total effect of the repeating patterns give a very harmonious appearance and appeal to the fabric. It's done totally in black and red on white surface using natural colours (vegetable colours).Now use of other natural colours (vegetable colour) like mustard, khaki is also in vogue.

Description

- Bagh prints are known for their fine quality printing and bright vegetables colours and recognized by their geometric repetitive patterns in different

variations and colours that are mainly red and black block printed predominantly on white base. Khaki and mustard vegetables colours are used for dyeing the fabric after printing.

- The block designs that have managed to survive with time are nearly 200 years old and are still being used; some of them are 100 to 50 years old and on printing still find a market for themselves. New additions are done every six months as per market demand and feel. At the same time care is taken to see that this new design is a new variation of the old one.

Some old blocks and their names that are being still used are as follows:

Nandana, Laheriya, Attha, nandana ki mirache, Nandana ka butta, Aabotcha butta, Khede ka bodh, Indori bodh, Indori saaj, Indori addya, Ahmedabadi saaj, Makhi, Palliwali zanjira, Zanjiri, Jodhpuri, Jawareya, Molya border, Molya bodh, Khirala kaire, Mungphali, Chaukada, Nareyal, Teekoni and Thuddi.

Different types of products that are printed are as follows:

- Cotton bedcovers in two different sizes for single bed and double bed respectively.
- Saris are printed in different materials like cotton, silk and chiffon.
- Cushion covers mainly in cotton, in different sizes.
- Table covers of different sizes and shapes in cotton material.
- Duppattas and stoles in cotton and silk material.
- Recently, durries printing has also been worked on.
- Salwar suit material and yardage dress material.

Uniqueness

- The process of pre-printing, printing and post printing at Bagh as mentioned above in details, itself is unique and imparts quality of colour and print to the fabric. The appearance of the fabric being mainly in black & white and red & white gives it a bold look – still maintains harmony due to the fine designs used in blocks for printing. The above parameters were stressed while granting registration.

INDUSTRIAL GOODS

E.I. LEATHER (R.G.I)

- The product is leather made out from raw hides and skins which are Vegetable Tanned.
- These E.I. Leathers are produced in Tamil Nadu predominantly in Trichy, Dindigul, part of North Arcot District and Pallavaram.
- The Age old process followed to manufacture this G.I. Product is unique with respect to use of pure vegetable extracts and other materials of vegetable origin, combining the Human Skill involved in various stages with traditional recipes.

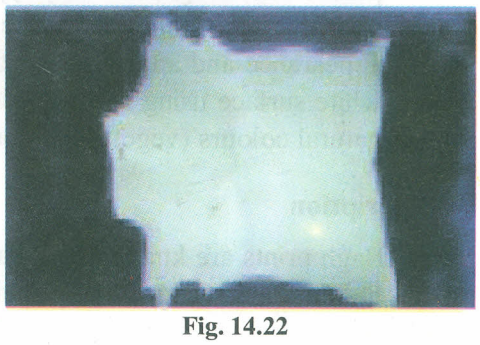


Fig. 14.22

- The uniqueness of Tanning lies in understanding the visual changes that the skin exhibits in various stages on examination in sunlight and quality of water used in the process. Also the weather contributes to its quality.

- E.I. Leather has its own uniqueness that is hidden with in the skin. Its unmistakable sound, its feel, specific fragrance, its natural characteristic light beige colour, all are its individual characters exhibited under the influence of natural Geographical environment prevailing in the E.I tanning area. The specifications are given in Table.

Colour	Characteristic Light Beige/Pale Golden Yellow Colour
Taste	Astringent
Tensile Strenght	About 180 Kg/cm^2
Shrinkage Temperature	About 85U C
Degree of Tannage	About 40%
Smell	Characteristic Fragrance of Vegetable
Tanned Leather Smell Sound	Exclusive Characteristic of crackling sound if handled by hand.

E.I.Tanning is eco-friendly,

- Possibility to generate high gloss on rubbing, flat and smooth surface are its special characters.
- E.I.Leather enjoys the advantage of fullness, Good water perspiration absorption, lends itself for up gradation.
- The colour of the product is very special and the light that lends the natural leather a warm pale golden tone which is unique that is amenable for converting into different uses like garments, shoes, furniture and Leather Goods.
- It is eminently suitable for dressing into semi chrome leather for shoe and garments, leather goods etc.

COIMBATORE WET GRINDER(R.G.I)

Specification

- Wet grinder is a home appliance, which is used for preparing the batter, which is the ingredient for *idlis* and *dosas*.

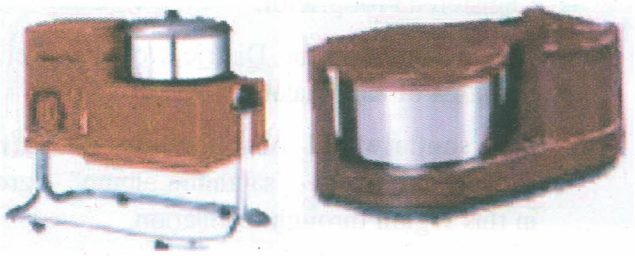


Fig. 14.23

- Various types of wet grinders are produced, starting from 2 l capacity and up to 40 l capacity. Higher capacity wet grinders from 3 l onwards are used for commercial purpose like hotels, marriage halls, commercial batter manufacturers, etc.
- The product consists of mainly three sub-assemblies. These are Drum, Motor and Cabinet.

- These sub-assemblies are assembled together to form a Wet Grinder. The motor drives the drum assembly, which does the grinding action.
- These stones are semi granite in nature with a composition having small quantity of Silica and Mica.
- Traditional, technical and experienced labourers who are skilled in the manufacture of wet grinders are available only in Coimbatore.

Description

- The granite stone used in the manufacture of Coimbatore Wet Grinder is unique with a hard mass. The wet grinder is used in the preparation of Herbal medicine, botanical pesticides and the idly / Dosa dough. There is no heat developed during grinding because of the wet process. Again inspite of continuous grinding for hours, the silicon content of the granite will not come off from the granite, which is peculiar to the type of granite stone of the Coimbatore region.
- It is a home appliance used for preparing batter which is the ingredient for idlis and dosas. Different types wet grinder from 2 l to 40 l capacity are produced. The uniqueness of the wet grinder was examined with reference to the stone used for manufacturing which is semi granite in nature with a small quantity of silica and mica. Despite continuous grinding for hours, the silicon content of the granite will not come off which is peculiar to the type of granite stone available in Coimbatore and Erode districts of Tamil Nadu. There is no heat developed because of wet process. The availability of traditional and experienced skill labourers only in Coimbatore was the other factor examined for granting registration.

Uniqueness

- The uniqueness of these wet grinders is the particular stone used for manufacturing. These stones are available from the hills located in Coimbatore and Erode districts.

MYSORE SANDALWOOD OIL(R.G.I)

Specification

- Karnataka Soaps and Detergents Limited is the Registered Prooprietor.
- Manufactured in the Districts of Mysore and Shimoga of Karnataka.
- The sandalwood oil is made of natural sandalwood trees – "santalum album" – grown in this region through distillation.
- It is colourless to golden yellow, somewhat viscid oily liquid. In perfumery it is valued for its non-varying composition and fixative properties and for its persistent heavy sweet, woody scent.



Fig. 14.24

- The Sandalwood oil produced is tested as per Indian Standard Specification – IS – 329 for its physiochemical characteristics such as colour, appearance, specific gravity, refractive index, santalol content, ester value and solubility etc.

- It has been also awarded Agmark Certification which is an international benchmark for Quality.

Description

- It is largely used in medicine, beauty aids and cosmetic preparation. It would act as an antiseptic, analgesic, antibiotic etc. The sandalwood oil produced in the region is largely used as an excellent fixative in all the heavy and oriental types of perfume.
- Sandal wood oil is obtained through distillation process from sandalwood trees grown in the districts of Shimoga and Mysore. This oil is used as an excellent fixative in he various perfumes. The physio-chemical characteristics such as colour, appearance, specific gravity, refractive index, santol content, ester value and solubility factors were found to be in conformity with IS 329 specifications.

Uniqueness

- Indian Sandalwood Oil especially produced in Mysore region has powerful, pleasant, sweet, woody aroma and long lasting property due to higher santalol content (minimum 90%) which is unique in nature.

14.14 REMEDIES FOR VIOLATIONS

- Common-law Remedies

Registered G.Is

- Action for infringement of Registered G.Is
- Opinion & Criminal Action

14.15 CONCLUSION

"The intellectual property inherent in a geographical indication is not an individual property but a property belonging to a group or community bound by territorial limits. However, given the socioeconomic condition in the country, there are a large number of Indian GIs where the, producers or manufactures have not yet been able to join together and form into a continuous Many producers of good bearing GI in India are generally resource poor and lack the legal awareness to encash on the potential goldmine they are sitting on. It is for this reason that Section 11 of the Act provides that any association of person or producers or other 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 the GI in relation to such goods can apply in writing to the Registrar in the prescribed form. The registered proprietor only gives the initial momentum of securing registration of the relevant GI. The Act also provides that once the GI is registered, an infringement action can be initiated both by the registered proprietor and by producers (authorized users) whose names have been entered in the 'Authorized user' meaning the producers of the goods whose names have been entered in the register.

14.16 SUMMARY

India enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 to provide better protection to Indian geographical indications. It is a sui generis legislation. The Act provides for a system of registration of geographical indications at the Geographical Indications Registry in Chennai. The Act provides wide definition to the term geographical indication. It has also the concept of authorized user. It provides for registration of foreign GIs. The Act also provides for an Intellectual Property Appellate Board to hear appeals against the decisions of the Registrar of Geographical Indications. Other salient features of the Act are concept of collective right, provision for higher level of protection for certain declared goods, prohibition of assignment of the rights, prohibition of registration of GI as a trademark, and provision of civil and criminal remedies in case of infringement of the rights.

The Act lays down detailed criteria for registration. In Section 9, it lists the kind of geographical indications which cannot be registered.

Any association of persons or producers or any organisation or authority established by or under law representing the interests of producers of the goods concerned can apply for registration in the prescribed form. It should be accompanied by a statement of case giving details of the product. The application should also contain proof of origin as well as method of production. Each application is to be accompanied by the prescribed fee.

Detailed product specifications have to be furnished with the application. The main elements of the specification are:

- Name of the product
- Description of the agricultural product or foodstuff (including information on raw materials and physical, chemical microbiological or taste characteristics)
- Evidence that the product originates in the relevant area.
- Definition of the geographical area.
- Description of how the product is obtained, plus any relevant details on local production, processing, packaging , etc.
- Details of the link between the product and the geographical area concerned
- Any other requirements as per GI law.

The product description should cover:

- Physical attributes (shape, colour, weight, etc.)
- Chemical features (minimum fat content, maximum water content, etc)
- Microbiological information (e.g., any bacteria present)
- Biological details (race, variety, etc)
- Organoleptic characteristics (taste, flavour, color, odour, etc)

The description of the method of production must be sufficiently informative to allow any producer within the region to produce the foodstuff concerned, if desired. This should include, the method of obtaining the agricultural product or foodstuff, the authentic local method of production and the packaging (where relevant).

Detailed illustrations from cases of registered geographical indications are given. These include cases of Palakkadan matta rice and Arnmla kannadi.

Key points during examination of the application differ with the kind of goods such as agricultural goods, or handcrafts or food products.

The Registrar sets up a Consultative Group to examine the eligibility of the applied product and if satisfied on the basis of the report of the Group, the same is advertised in the official journal. Objections can be raised by interested parties. These are examined in a quasi judicial way. Where the application meets all the requirements and the objections are settled, the same are registered. Registration is for a period of ten years, but the same can be renewed from time to time indefinitely.

All producers can apply for registration as authorized users. There is a prescribed application form. The procedure is much simpler than that of registration of a registered proprietor.

Illustrations of GI applications in the cases of Darjeeling Tea, Coorg green cardamom, Kanchipuram silk saree, Mysore traditional paintings, Madhubani paintings, Thanjavur paintings, Orissa Pattachitra, Bagh prints of Madhya Pradesh, EI leather, Coimbatore wet grinder, and Mysore sandalwood oil are provided.

14.17 TERMINAL QUESTIONS

1) What are the objectives of the Geographical Indications of Goods (Registration and Protection) Act, 1999?
2) What are the salient features of the Act?
3) What are the indications that cannot be registered?
4) What is the procedure for registration of a geographical indication?
5) What is the procedure for registration of an authorised user?

14.18 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 14.6
2) Refer to Sub-section 14.9.2, 14.9.3, 14.9.4, 14.9.5
3) Refer to Section 14.10

Terminal Questions

1) Refer to Section 14.3
2) Refer to Section 14.6
3) Refer to Sub-section 14.7.1
4) Refer to Section 14.8
5) Refer to Section 14.11

14.19 REFERENCES

GI Registry Journals

ANNEXURE

REGISTERED GI GOODS

Table 1: Comparisons of Characteristic Features of Coffee

Coffee

Monsooned Malabar Arabica Coffee	Monsooned Malabar Robusta Coffee
Monsooned Malabar Arabica coffee is carefully prepared by using the raw coffee beans (green beans), obtained from the whole crop cherry of Arabica coffee (*Coffea arabica* L.). The Monsooned Malabar Arabica coffees are prepared and traded in four different grades viz., Monsooned Malabar Arabica–AAA; Monsooned Malabar Arabica–AA; Monsooned Malabar Arabica – A and Monsooned Malabar Arabica Triage. This specialty coffee derives its name from the region (Malabar) and the special process (monsooning) involved in preparing it. Raw coffee beans (green beans) subjected to monsooning process during South-West monsoon season (June-September). from Mangalore(Karnataka) to Kozhikode in preparing it.	Monsooned Malabar Robusta coffee is carefully prepared by using the raw coffee beans (green beans), obtained from the whole crop cherry of Robusta coffee (Coffea canephora Pierre ex Froehner.). The Monsooned Malabar Robusta coffees are prepared and traded in two different grades viz., Monsooned Malabar Robusta–AA and Monsooned Malabar Robusta Triage. Monsooned Malabar Robusta coffee is a unique specialty coffee from India. This specialty coffee derives its name from the region (Malabar) and the special process (monsooning) involved in preparing it.
Kerala in the Malabar coast region. During the During the monsooning process, many qualitative and quantitative changes occur in the coffee beans which impart a characteristic cup quality. During the monsooning process, the cherry coffee absorbs moisture gradually and the moisture content in the beans goes up to 14-15 and beans swell almost double their size. Colour changes from initial golden brown to pale yellow/straw colour. The density (weight per volume) of the beans also decreases making the beans become light and porous.	The monsooning process makes the beans to swell to almost double their original size, change the colour from the initial golden brown colour to pale yellow/ straw colour. During the monsooning process, the cherry coffee absorbs moisture gradually and the moisture content in the beans goes to14-15%.
The coffees subjected to monsooning process in the Malabar Coast region during South West monsoon alone would acquire the unique characteristics of Monsooned Malabar Arabica coffee. Malabar Arabica coffee exhibit good body/ strength, mild acidity, rich toned sweeter and mellow taste which is the uniqueness of the specialty Monsooned Malabar Arabica coffees. These coffees are mainly used in blends to add body, crema and increase sweetness in the cup.	Monsooning process in the Malabar Coast region during South West monsoon. In the cup Monsooned Malabar Robusta coffee exhibits good body/ strength, mild acidity, rich toned sweeter and mellow taste which is the uniqueness of the specialty Monsooned Malabar Robusta coffees.

Table 2: Comparisons of Characteristic Features of Cardamom Varieties

Cardamom Varieties	Alleppey Green Cardamom	Coorg Green Cardamom
Specification	Alleppey Green cardamom is the dried capsules of Elettaria cardamom, kiln dried, having a reasonably uniform shade of green colour, measuring 5–8 mm in diameter,having minimum splits, mature, ringled, three cornered capsules, having ribbed appearance.	Coorg Green cardamom or Coorg clipped cardamom (otherwise called) is the dried capsule variety of *Eletteria Cardamomum* grown in Coorg. Colour ranging from pale yellow to brown, global shape, skin ribbed or smooth; the pedicels separated, a unique feature of this variety alone.
Description	Cardamom is a shade-loving crop. It is grown extensively in the hilly regions of South India especially in Kerala, at elevations of 800–1300 m. above mean sea level as an under crop in forest lands. One of the prominent post-harvesting measures is retention of green colour which is the soul of Alleppey Green. In Alleppey that the cardamom was processed with the help of skilled labour. Superiority of Alleppey Green (cardamom oil) is its superior sensory qualities, a better total perception of the flavour.	It is cultivated in the Coorg District, Chickmagalur District, Hassan District, and North Kanara District of the State of Karnataka. Cardamom is a shade loving crop. It is grown extensively in the hilly regions of South India , Coorg being one of the prominent destination, at elevations of 800 – 1300 m. above mean sea level as an under crop in forest lands. It is more adaptable and drought resistant.
Uniqueness	Alleppey Green is a grade name that asserts quality. The importance of cardamom as a spice and as a medicine. It is having a sweet fruity floral odour resulting in pleasant mellow flavour. High, retains chlorophyll for a long time during storage. Another unique feature of this grade of cardamom is its size. It stands apart from others in length (21mm) and also in size (5 – 8mm in diameter). The volatile oil in the seeds of Alleppey Green is much higher in percentage (7.5-11.3) when compared to the other grades.	Coorg Green Cardamom is one of the oldest, most popular and sought after cardamom from India. This grade is unique in its colour, size, chemical constituents and oil content. The superiority of cardamom is due to their volatile oil contents. It brings a fresh campharaceous cool odour with a diffusive taste and a refreshing effect.

Table 3: Comparison of Characteristic Features of Textile Goods

1	**characteristics**	Silk is the strongest of all the natural fibers. Dimensional Stability: Silk does not generally shrink due to the fact that its molecular structure is not easily distorted.	Natural fibre of plant origin. The quality depends on the yarn, which in turn depends on the quality of kapas (seed cotton), as influenced by the location, season, cultivars, and method of production and harvesting, post-harvest processing, etc.	Cotton yarn: 80 s to 120 s counts (mainly of combed quality) are used both in warp way and weft way. Silk yarns: 20/22 D to 13/15 D Silk is used both in warp way and weft way. The silk yarns are not de-gummed like other handloom centers and this provides a sheer texture to the fabric.	There are fine wool and coarse wool producing sheep breeds. Males produced more wool than females. Males had higher percentage of medullated fibre as compared to females.
2	**Physical attributes**	Heavy weight (450g–1200 g), bright colours, solid zari borders with "pallu".	Light weight (600gms) They have a smooth finish and have a distinctly original border and pallav. Fish, conch shell and flower motifs are woven into the fabric.	**Warp:** 20/22 Deenier cora silk **Weft:** 2/100 gas mercerized cotton yarn. Border: Half fine jari **Pallu:** 2/100 Mercerized yarn + Half fine jari **Putta:** Half fine jari Extra warp: Half fine jari **Extra welf:** Half fine jari	The average fleece weight is 5 kg per sheep per year. The amount and type of wool that a sheep produces is depend upon its breed and genetics, nourishment, agro-climatic conditions, and shearing interval.
3	**Quality**	The chief attraction of the silk fabric is its lustre. The water used for degumming has certain properties in order to impact lustre to silk. The zari in the border and pallu in sarees is also of unique and excellent quality. They include mainly a simple flame test, and a microscopic test to ascertain the purity of the fabric. It gives the results in seconds. If the fabric burns slowly leaving a black residue and smells like burnt hair, it is pure silk.	**Cotton Fibre Length of staple (mm)** Extra-long staple Exceeding 32.5 mm Long and Medium staple (25 – 32 mm) used in the production of fine and medium-fine yarns. Medium and Short staple (24.5 mm) used in the production of coarse yarns.	The peculiar quality of the goods is joining the body warp with the pallav warp which is locally called as TOPE TENI. Three types of different yarns namely Silk x Silk, Silk x Cotton, Art silk x Cotton.	The yarn used to manufacture the goods is still spun by traditional methods and fabricated on Khaddis (traditional Handlooms). Textures, method of weaving are its unique quality features.
4	**Uniqueness**	The designs are mainly embossing type in many other silk fabrics. These fabrics are washable any number of times due to the unique structure and processes of these fabrics.	The motifs used on the fabric, ie., Crab, Fish, Conch, Boat, Axes, Fan, Bow and Temple which reflect the cross cultural heritage of the area.	'khat' that is present in the base fabric besides any other type of value addition by weaving or any other process such as embroidery, printing, painting, dyeing etc. The Khats are made in the fabric so skillfully that the fabric becomes transparent.	Woolen yarn is woven into the warp for colourful pattern worked into indigo blue, deep green, chrom yellow, deep red and black etc. in different coloured according to customers demand, taste.

Table 4: MARBLEDEPOSITS IN INDIA (In million tons) Estimated

It can be protected under GI Law (Natural Goods. Subject to compliance of other requirements. It appears no marble application has been received by the registry)

State	Total
Rajasthan	1144
Jammu & Kashmir	405
Madhya Pradesh (estimated)	400
Gujarat	95
Chhattisgarh	83
Maharashtra	59
Haryana	22
Uttaranchal	6
Sikkim	2
All India Total	2216

Table 5: Comparison of Characteristic Features of Rice

Rice Varieties	Navara Rice	Palakkadan Matta Rice	Pokkali Rice
Specification	Two varieties of navara the black glumes and golden yellow colour glumed. The rice is purple in colour in both.	It originates from the definite territory of Palakkad district. The grains are bold and the pericarp is red.	Rice produced in the pokkali tract in Ernakulam, Alappuzha and Thirissur dts of Kerala is called pokkali rice. Grain is medium bold, good cooking quality, special taste and average protein content of 7.5 to 8.5% and intermediately amylase (20 to 27.7%) content. Volume expansion of high yield mg varieties is between 3.1 to 4.5. Hulling% is more than 80; Milling% more than 75% pokkali rice and value added products have special taste and cooking qualities with medicinal value.
Description	An indigenous medicinal rice variety of Kerala. Used effectively in certain ayurvedic treatments and also used as a health food especially in rainy seasons. Known as 'Shashtika Rice' for its unique and peculiar characteristic, matures in 60days after planting. Valued fort its curative properties in circulatory, digestive and rheumatic complaints.	Indigenous cereal of Palakkad in Kerala. It is a coarse variety of rice with bold grains and red pericarp. The Palakkadan Matta is a unique cereal having high content of nutrients and is indispensable for those who do hard physical work.	Pokkali cultivars are famous for salinity tolerance pokkali, cheruvirippu and chettivirippu are the traditional ruling cultivars. They have yield potential of 1000-1500 kg/ha. Most of the land races are tall and lodging type. They have kneeling ability to keep the panicles above flood water level. The genotypes show special ability for internodal elongation to overcome tidal and flood water. Pokkali varieties have very good initial seedling vigour, luxuriant growth and tillering capacity (12 to 16 tillers/plant). Panicles long (25 cm) and have 120 to 160 grams.
Uniqueness	Indigenous medicinal plant in Kerala, used in ayurvedic treatments. Has a unique taste and easily digestible.	The rice is bold and red in colour. It has unique taste. Parboiling of the rice further ensures retention of nutritional value. The grains is grown on unique black cotton or regar soil, derived from rocks rich in lime peculiar to Palakkad and also in Poonthalpadam where the soil is heavy, containing 60 to 80% clay and silt and possess low permeability and high water holding capacity.	Organic farming cultivation. Has very good cooking quality. Bold grain with medium amylose content and distint organeoleptic characteristics of taste, flavour etc. Make the consumers preference more, for these varieties and the value added products. Traditional cultivators have high digestibility and mainly used as parboiled rice. Red kernel colour makes pokkali products more nutritious. They have medicinal properties. Used in

		These soils, the humid weather of Palakkad gap and the rivers that flow from the Western Ghats and the bright sunshine determine the unique taste and quality.	the treatment of piles, Cholera and typhoid.
Method of production	Normal cultivation practices are adopted. Prefers warm humid conditions. As it is a medicinal variety, organic farming practices are adopted.	Cultivation starts on vishu day. Fields are ploughed 4 to 5 times. During the full moon night the seeds spread in the court yard and exposed to moon light. Seeds cured like this is kept in the special rooms with wooden panels. After doing pooja the seeds are sown by broad casting. Direct sowing is adopted for the first crop. Harvested in Sep-Oct during Onam, the harvest festival. Simultaneously the preparatory activities for the second crop begin. Transplanting is usually done for the second crop. The second is harvested coinciding with a variety of local festivals including 'Kongan pada' which is the only war festival of Kerala.	The system of prawn filtration/ rice –fish culture/rice-shrimp culture adopted by farmers. During summer months, due to ingression of salt water from the sea, the soil salinity is washed off in heavy monsoon rains the inherent acidity of soil regenerators. The soil is acidic and the PH is 3 to 4.5. The surface soil is disturbed. When the soil and weather conditions become favourable for sowing, the baskets containing the dried seeds are re-soaked for 3-6 hrs. The mounds are then raked and the top levelled. The sprouted seeds are sown on the top of mounds or ridges, which act as nursery *in situ*. The sown seeds will be pasted to mounds or ridges with clay to avoid removal of seeds by flooding and to reduce damage by birds. Paddy from *Pokkali* tract is processed by traditional system.

A ten step guide for registration of GI in India

Step 1 : Filling of application

Step 2 : Preliminary Scrutiny within three months from the date of the order or decision.

Step 3 : Examination Case. Thereafter, an Examination Report is issued. If the Registrar accepts an application it will be published in the GI Journal. The Registrar

Step 4 : Show cause notice

Step S : Publication in the geographical Indications Journal

Step6: Opposition to registration

Step 7 : Registration

Step 8 : Renewal

Step 9: Additional protection to notified goods

Step10: Appeal : Any person aggrieved by an order or decision of the Registrar under this Act or the Rules may prefer an appeal to the Intellectual Property Appellate Board (IPAB).

UNIT 15 INFRINGEMENT OF GEOGRAPHICAL INDICATIONS

Structure

15.1 Introduction

15.2 Objectives

15.3 Suit for Infringement and Passing Off

- 15.3.1 Spanish Champagne Case
- 15.3.2 Indian Case Laws

15.4 Difference between Passing off and Infringement

15.5 The Concept of Passing Off

15.6 Evolution and Development of the Concept

15.7 Judicial Decisions

15.8 Infringement

- 15.8.1 Meaning of Infringement
- 15.8.2 Remedies for Infringement

15.9 Manner of Filing the Suit

- 15.9.1 Acts not Amounting to Infringement
- 15.9.2 Trans-border Reputation

15.10 Criminal Prosecution

15.11 Rectification and Correction of the Register

- 15.11.1 Correction of the Register
- 15.11.2 Alteration of Registered Geographical Indications
- 15.11.3 Adaptation of Entries in Register to Amend or Substitute Classification of Goods
- 15.11.4 Appeals to the Appellate Board
- 15.11.5 Appearance of Registrar in Legal Proceedings

15.12 Summary

15.13 Terminal Questions

15.14 Answers and Hints

15.15 References and Suggested Readings

15.1 INTRODUCTION

The Need for Enforcement

The Geographical Indications of Goods (Registration and Protection) Act, 1999, like the Trademarks Act, 1999 and Copyright Act, 1957 contains specific provisions as to the place; procedure and also the relief that can be craved form the courts in such a suit for infringement and passing off. The Act also provides for criminal prosecution of persons who indulge in falsification of GIs.

Steps have been taken to ensure adequate legal protection for 'Darjeeling Tea' in India and abroad at heavy cost. The actual instances of misuse from within and outside the country are galore for Indian handicrafts and handloom products,

posing serious threats to their survival. Duplicate of Kanchipuram and Banarasi sarees is available in Indian market. Poor quality imitations are also being produced at cost only one-tenth of the price of an original saree. In the case of 'Kashmir Pashmina' (shawls), a registered GI, Silk-pashmina and various other categories of woollen shawls are produced within India as well as from neighbourhood with an Asian species of mountain goat called Chyangra or Capra Hiracus. However, enforcement of GIs associated with such traditional arts and crafts products would be an extremely challenging venture even within India, let alone in other countries. Handlooms and handicrafts are sold from a variety of formal and informal outlets in India making it a Herculean task to keep vigilance on imitations. Notwithstanding difficulties, it is encouraging to see that the right holders of some of the registered GIs in India have started taking initiatives towards enforcement of their legal rights within the country. The experience of 'Pochampalli Ikat' is worth mention here. In May, 2005 it came to the notice of the right holders of this GI that a retailer in Hyderabad was selling imitations of 'Pochampalli Ikat' sarees, while a Mumbai-based manufacturer was manufacturing and selling these imitations. In June 2005, a case was filed in the Delhi High Court against the manufacturing and selling of these imitations. Importantly, this was the first ever infringement case filed under the GI Act in India. However the defendants (both the manufacturer and the retailer) accepted the charge of infringement and pleaded for out-of-the-court settlement. Declaring their unawareness about the GI protection of 'Pochampalli Ikat', they claimed to have destroyed all the fake sarees and undertook that thereafter such sarees would not be available in the market or else they would be ready to pay the requisite penalty. Finally, the matter was resolved out-of-the court.

The right in respect of "Geographical Indications" is an intellectual property right and is protected in the same manner as right in a trade mark. *Section 20 of GI Act states-*

No action for infringement of unregistered geographical indication—(1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

The law recognizes the common law rights of the owner to take civil and criminal action against any person for passing off goods of another person or the remedies thereof.

There is no definition of the expression "passing off" in the GI Act, though the expression "passing off" is used in the following sections:-**Section 20(2)** - As indicated above, this section preserves the common law right of action against any person for passing off goods as the goods of another person provided by another person and recognizes the owner's rights to obtain remedies under the common law. **Section 66(c)** - In this section, the right of a GI owner is recognized to file a suit or an action for passing off arising out of the use by the defendant of any GI which is identical with or deceptively similar to the plaintiff's. The district court is having jurisdiction to try the suit. **Section 67(3)(b)** - This sub-section sets out the circumstance in a passing off suit where the court shall not grant relief by way of damages or on account of profits for passing off action under GI Act, 1999. An unregistered GI is placed on the same footing as a registered GI in respect of offences, penalties and procedures (vide Sections 37 to 41) and in respect of all civil actions as contemplated in Section 66 and 67, apart from the specific provision in Section 2(3). In Erven Warnink BV & Anor v. J Townend &

Sons Ltd. (1980 RPC 31), the House of Lords laid down the characteristics of passing off action:-A misrepresentation made by a trader in the course of his trade to prospective customers of his or ultimate consumers of goods or services supplied by him which is calculated to injure the business or goodwill of another trader and which causes actual damage to a business goodwill of the trader by whom the action is brought or will probably do so.

15.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the need for enforcement of the GI Act;
- describe suits for infringement and passing off;
- difference between passing off and infringement;
- meaning of infringement;
- remedies of infringement; and
- acts not amounting to infringement.

15.3 SUIT FOR INFRINGEMENT AND PASSING OFF

A suit for infringement or relating to any other right in a registered GI pursuant to Section 22 of the Act is to be instituted before a court not inferior to a District Court. Similarly a passing off action too has to be initiated before the District Court. Sub-section (2) clearly states that the 'District Court having jurisdiction' shall mean a district court within the local limits of whose jurisdiction, at the time of institution of the suit or other proceedings, the person instituting the suit or proceeding, i.e. the plaintiff voluntarily resides or works for gain. This is in contrast to Section 20 of Civil Procedure Code, 1908 (CPC) which lays down that a suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant at the time of the commencement of the suit actually or voluntarily resides or works for gain. Therefore this jurisdictional clause is a departure from the normal law as contained in the CPC. With this clear provision the combination of the causes of action, viz. infringement of GI, passing off, has now become easy. It should also be noted that the jurisdiction for filling a suit for infringement or passing off is not based on or linked with the operative jurisdiction of the GI Registry where it is situated as held in ***P.M. Diesels Ltd v. Patel field Marshal Industries (1998)*** PTC 260 Del (DB). Also the place where the cause of action arose will determine the jurisdiction of the court. This implies that the court in a district where normally, spurious goods were sent for sale on a commercial scale has jurisdiction to entertain the suit.

The period of limitation for filling a suit for infringement and passing off is three years from the date of the impugned act under the Limitation Act, 1963. However, the Supreme Court in ***Bengal Waterproof v. Bombay Waterproof*** AIR 1997 SC 1398 held that as an act of passing off is an act of deceit and tort and every time when such tortuous act or deceit is committed by the defendant the plaintiff gets a fresh cause of action to come to the Court by appropriate proceedings. Similarly infringement of a registered trade mark would also be a continuing wrong so long as the infringement continues. Therefore, whether the earlier infringement has continued or a new infringement has taken place, cause of action for filing a fresh suit would obviously arise in favour of the plaintiff who is aggrieved by such infringements of trademark or passing off action alleged against the defendant.

In a suit for infringement and passing off, the following reliefs may be given to the plaintiff by the court. Such relief may include an order for injunction (subject to such terms which the court may think is fit in the facts and circumstances of the case) and at the option of the plaintiff, either damages or accounts of profits, together with or without any order for the delivery of the infringing labels and indications for destruction or erasure. The order for injunction may be made *ex parte* and may include interlocutory orders on the following matters namely:

a) For discovery of documents;

b) Preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit;

c) Restraining the defendant from disposing of or dealing with his assets in a manner, which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Clearly no distinction is made as to kind of relief granted in a suit for infringement or a passing off. Also it is pertinent to note that the explicit provision as to the ex-parte relief are in nature of Anton Pillar Orders or Mareva Injunction as granted in U.K and other common law countries.

A list of defences which the defendant may plead to avoid paying damages (other than nominal damages) or an account of profits in a suit for infringement are:

Where the defendant satisfies the court –

- That at the time he commenced to use the GI complained of in the suit he was unaware and had no reasonable ground for believing that the GI of the plaintiff was on the register; and
- That when he became aware of the existence and nature of the plaintiff's right in the GI, he forthwith ceased to use the GI in relation to good in respect of which it was registered.

Such defence can also be pleaded in a suit for passing off. It should also be mentioned that generally in such suits for infringement whether copyright or trademarks or GI a successful plaintiff is entitled to either an inquiry as to damages or at his election an account of profits. i.e., at his choice or election he is entitled to any one of these remedies. The reason is that since account of profits is more in the nature of an equitable remedy, the plaintiff by taking the profits made by the infringer by use of his property condones the acts of infringement. (***Caxton Publishing Co. Ltd v. Sutherland Publishing Co. Ltd*** [1939] A.C. 178 at 198).

Scotch v. Scot: Delhi High Court upholds rights in the unregistered geographical indication "Scotch Whisky"

In perhaps a first case of passing-off under the newly enacted Geographical Indications of Goods (Registration and Protection) Act, 1999, the Delhi High Court upheld the claims of the Scotch Whisky Association in the unregistered geographical indication 'Scotch' for a fine whisky originating from Scotland. The defendant, Golden Bottling Limited, a local liquor company, was using the mark 'Red Scot' to describe its Indian whisky. The plaintiff sued the defendant on the ground that its use of the mark 'Red

Scot' was bound to pass off its whisky as Scotch whisky. While passing the order, the High Court observed that Scotch whisky can be produced only according to the conditions under the Scotch Whisky Order, 1990. The Court further observed that all whiskies that are produced in Scotland need not necessarily fall within the definition of Scotch whisky. Most countries, particularly of the common law tradition, protected GIs under 'passing off'. There is an array of case laws on 'passing off' in Commonwealth countries.

15.3.1 Spanish Champagne Case

- ***J Bollinger & Ors v. The Costa Brava Wine Co Ltd.*** (1960) RPC 16
- Case against manufacturing and selling sparkling white wine under the name 'Spanish Champagne'
- Decision protected collective rights and good will
- "It ought not to matter that the persons truly entitled to describe their goods by the name and description are a class producing goods in a certain locality and not merely one individual."
- Held persons "who from time to time want to purchase Champagne, as the wine with the great reputation, is likely to be misled by the description "Spanish Champagne." Hence, defendants were injected from passing off.

Unregistered GIs were are also today protected by an action of 'extended passing off' a variant of the classic passing off action, first recognized by ***Danckwerts j in Bollinger v. Costa Brava wine Co.*** **[1960] RPC 16.** Under an action of extended passing off, it is recognized that a class or group of traders may share goodwill in a name or some other indicator that is distinctive of a particular class of goods such as 'champagne' or 'scotch whisky'. Therefore what is recognized is some kind of collective goodwill and of course GI too is a form of collective goodwill. In ***Bollinger v. Costa Brava Wine Co.*** case the plaintiffs were members of a group of producers from the champagne district in France who made a naturally sparkling wine, popularly known as 'champagne', brought an action of passing off against the defendant for selling a product called Spanish champagne. The court observed that passing off would restrain a trader who sought to attach to their product name or description with which they have no natural association, "so as to make use of the reputation and goodwill which has been gained by a product genuinely indicated by the name or description". Danckwerts J further added that it did not matter "that the person truly entitled to describe their goods by the name and description are a class producing goods in a certain locality and not merely one individual". Therefore, in essence the court recognized that the plaintiffs along with other members of the class had the requisite goodwill in the name 'champagne'. This was because the name champagne indicated a sparkling wine that came from the 'champagne' district in France, was made by a particular method, and from grapes sourced from this champagne region. As such, the word champagne denotes a distinctive reputation which could only be used by producers from 'Champagne' region. The Bollinger decision was followed in other cases namely in ***vine products v. Mackenzie [1969] RPC 1 (Sherry- wine produced by the Solera process in the province of Jerez de la Fontera in Spain); John***

Walker & sons v. henry ost [1970] RPC 489 (scotch whisky distilled, but not necessarily blended, in Scotland); Taittinger SA v. Allbev [1993]FSR 641 (Champagne); Consorzio del Prosciutto di parma v. Marks & Spencer [1991]RPC 351; Consorzio del Prosciutto di parma v. Asda Stores [1988] FSR 697 (Parma ham) in ***Chocosuisse v cadbur [1998]RPC 117; [1999] RPC 826*** wherein Laddie J. recognized that the Swiss chocolate industry had collective goodwill in the words 'Swiss Chocolate'.

15.3.2 Indian Case Laws

India has also followed the common law path. There are some important case laws from different High Courts

- ***Dyer Meakin Breweries v. Scotch Whisky Association***, AIR 1980 Del 125
- ***Scotch Whisky Association v. Paravara Sahakar Shakar Karkhana***, AIR 1992 Bom 295
- ***Khoday Distilleries v. Scotch Whisky Association,*** AIR 1999 Mad 274

Dyer Meakin Breweries v. Sctoch Whisky Association (SWA)

- Case of Highland Chief whisky
- Spanish Champagne case ratio was relied upon by SWA.
- Held that the words 'Highland Chief'…"would be likely to deceive or confuse unwary purchasers in thinking that the whisky is Scotch whisky."

This appeal under Section 109 of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the 'Act') is directed against the order of Assistant Registrar of Trademarks, Delhi dismissing the opposition filed by the appellant and ordering the registration applied for by the respondent.

Case History-The respondent filed an application to register a trade mark consisting of a label containing the bust portrait of a Scottish Highlander and the words "Highland Chief" in Class 33 in respect of Whisky. The appellant filed a notice of opposition, after its advertisement in the Trade Marks Journal of 16th March, 1964.

The appellant is a body corporate, incorporated under the United Kingdom Companies Act, 1948. It does not itself carry on the trade but includes amongst its members leading producers and sellers of Scotch whisky. One of the principal aims of this Association is to protect the interests of the producers and sellers of Scotch whisky. It is stated in the notice to opposition that the description 'Scotch Whisky' is not generic but relates solely to the geographical origin of the product in relation to which it is used. It is also stated that the brand name 'HIGHLAND CHIEF' when used in relation to a product described as 'malted whisky' will be assumed by the purchasers to relate to a product of Scotland since the highlands of Scotland are an area world famous for the production of whisky. It is further stated that the impression of the purchasers that the words 'HIGHLAND CHIEF' indicate that the whisky in relation to which they

are used comes from Scotland will be confirmed, if they see these words used on the labels the subject of the application of the respondent, since it bears prominently the device of the head and shoulders of a gentleman dressed in Scottish highland costume wearing inter-alia feather bonnet and plaid and edged with tartan a well known symbol of Scottish origin. **It is thus submitted that the mark in question would be likely to deceive or cause confusion; its use would be contrary to law for the time being in force and it would be disentitled to protection in the Court.**

The respondent resisted the notice of opposition and stated that the label in question bore its name and place of manufacture and bottling clearly in bold letters also stating that the product is a 'Produce of India'. It was also pleaded that the consumers would not be deceived into believing that their product came from Scotland. Especially as there were many brands of whisky produced in India both by respondent and others. However, it was conceded that the appellants consist of members who were leading producers and consumers of Scotch whisky and one of its principal aims was to protect the interests of the producers and sellers of Scotch whisky. It was also conceded that Scotch whisky is not generic but relates solely to geographical origin of the product.

The contention that the multi-coloured label having the words "Highland Chief" also contains the name of respondent and the words "Produce in India" and so there can be no confusion in the mind of the public that the whisky has been produced in Scotland has no force. In this label, as already described by me, the words 'Highland Chief are shown in very bold letters on the top of this label in a scroll underneath which is the portrait of a "Highland Soldier". Under the portrait is another scroll wherein, in bold words, the words 'malted whisky' are written. The rest of the description stating that it is manufactured by 'Kasauli & Lucknow Distilleries Bottled at Lucknow Distillery' is in fine type and the words "DYER Meakin Breweries LTD" is slightly bolder than the words 'Produce in India' but definitely far less significant than the words 'Highland Chief' and 'Malted Whisky'. The words 'Produce of India' is barely visible and is not at all legible in the advertisement which appeared in the Trademark Journal. This label is surrounded by tartans design. The over-all impression created by the words as well as the design is that the whisky is manufactured in Scotland and is one of the brands of 'Scotch Whisky'. May be experienced persons will not be taken in but this seems to have been designed for taking in somebody. The reason given by the respondents that the portrait of a Highland Soldier as well as the tartan design around this label has been adopted only because the object was to give something colourful but not to confuse anyone is a baseless one. I cannot imagine that if the purpose was simply to give something colourful in the said label and not to mislead or confuse anyone then the respondents failed to find out any colourful design of an Indian Motif and had to go all the way to 'Scotland' to do so. In this country those citizens who like to drink whisky will prefer Scotch whisky over the Indian product. Unless persons examine the label minutely which usually a customer does not do and goes by the over-all impression created by the name and the multi-coloured label, is definitely going to confuse it with the Scotch whisky. It would be more so when a person is familiar with

Highland Nectar, Highland Cream, Highland Queen, and Highland Club. He is more likely to conclude that 'Highland Chief' is one of the similar brands of whisky.

I find the approach of the learned Assistant Registrar of Trademarks was wholly erroneous. The un-rebutted affidavit of David Banks, as discussed above, had established the case of the appellant that the word 'Highland' when used in relation to whisky was synonymous with the whisky produced in Scotland and that it was thus understood by the public of India. The appeal is, therefore, allowed and the order of the learned Assistant Registrar of Trademarks is set aside and the application no. 214480 of the respondent for registration of the trademark in question in Class 33 is hereby dismissed. The appellants will be entitled to costs.

SWA v. Paravara Sahakar Shakar Karkhana

- Whisky blended with Scotch sold under names Drum Beater and Gold Tycoon.
- Held, "the action in passing off would be maintainable where the plaintiff could prove injury to its business or goodwill which could take a variety of forms even though the defendant was not passing off its goods as the goods of the plaintiff."

Khodey Distilleries v. Scotch Whisky Association

- Peter Scot Case
- Held, 'Scot' would be evocative of 'Scotch Whisky' and would lead to confusion and / or deception.
- Hence it would be ineligible for registration in itself or in combination with Peter.

15.4 DIFFERENCE BETWEEN PASSING OFF AND INFRINGEMENT

For a passing off action registration is not a factor. It is based on the goodwill acquired through use. Passing off action is based on well established common law principle that nobody has any right to represent his goods as somebody else. Such action is recognized both in respect of unregistered as well as registered marks'. In Durga Dutt Sharma V. N.P. Laboratories, the Honourable Supreme Court has laid down that "An action for passing off is a Common law remedy, being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another person". In case of a passing off action, the defendant's goods need not be same as that of the plaintiff. In an action for infringement, the goods may be for similar goods. In passing off action identity or similarity of marks is not sufficient; there must also be likelihood of confusion. In case of infringement, if the marks are identical or similar no further proof is required. An action for infringement on the other hand is based on the right acquired by registration under the Act and is possible only in respect of registered GIs.

An action for infringement is a statutory right. It is dependent upon the validity of the registration and subject to other restrictions laid down in the GI Act. On the other hand, the gist of the passing off action is that A is not entitled to represent his goods as

the goods of B but it is not necessary for B to prove that A did this knowingly or with any intent to deceive. It is enough that the get-up of B's goods has become distinctive of them and that there is a probability of confusion between them and the goods of A. The case of neither actual deception nor any actual damage may be proved. "In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is so close either visually, phonetically or otherwise and the Court reaches the conclusion that there is an imitation, no further evidence is required-to establish that the plaintiff's rights are violated. In the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff."

15.5 THE CONCEPT OF PASSING OFF

Passing off – Passing off is a form of tort. The law of passing off, based on common law, has remained substantially the same over more than a century though its formulation has changed over the time. The object of this law is to protect the goodwill and reputation of a business from encroachment by dishonest competitors. 'No man is entitled to represent his goods as being the goods of another man, and no man is permitted to use any mark, sign or symbol, device or other means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is ultimate customer'. To put it in short, it is an actionable wrong for any person to pass off his goods or business as and for the goods or business of another person by whatever means that result may be achieved. The law of passing off can be summarized in one short general proposition that no man may pass off his goods as those of another. More especially it may be expressed in terms of elements which the plaintiff in such an action has to prove in order to succeed. Passing off is a wrong, a common law tort which protects the goodwill of a trader from misrepresentation. It is a way of misleading the public into believing falsely. The goods are projected as if well known, which is actually not so. It is popularly known as the tort of "passing off".

As held in the famous case of N. R. Dongre v. Whirlpool Corporation

"A man may not sell his own goods under the pretence that they are the goods of another man."Law aims to protect traders from this form of unfair competition. Legally, classifying acts under this tort aims to protect the right of property that exists in goodwill. Goodwill is defined as the part of business value over and above the value of identifiable business assets. Basically it is an intangible asset.

The Dutch Advocate case was the first case where the basic elements of the wrong of passing off were put forth by Lord Fraser. They were as follows:

- a misrepresentation
- made by a trader in the course of trade,

- to prospective customers of his or ultimate consumers of goods or services supplied by him,
- which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence) and
- which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a *quia timet* action) will probably do so.

Later in the Jif Lemon case, Lord Oliver reduced these principles to three basic features(now known as the classical trinity) which included reputation misrepresentation damage to goodwill. To sum it up, the tort of passing off covers those cases where one trader falsely misrepresents his goods as those of another trader/brand, which has a good reputation/goodwill in the market and thus leads to damaging his goodwill. In a passing off action, the plaintiff must prove that there is a similarity in the trade names or marks and that the defendant is passing off his goods as those of the plaintiff's. Remedies could include injunction or damages or both. Damage or likelihood of damage form the core all passing off actions.

15.6 EVOLUTION AND DEVELOPMENT OF THE CONCEPT

- Liability in the tort of passing off revolves around misrepresentation. In the 17th century, Southern vs how and Dean v. Steel, it was categorized under deceit or defamation.
- In the eighteenth century, all cases of passing off were classified as cases of deceit, limiting the tort to cases where there was a proof of bad faith. In the nineteenth century, in the case Millington v. Fox, it was decided that proof of fraud was not necessary in such a wrong and it was from here that the actual tort of passing off began building its own definition.
- In the case Cartier v. Carlile, it was decided that "mere proof of likelihood of deception was sufficient to prove".

15.7 JUDICIAL DECISIONS

Southern v. How

The earliest documented case where there was an indication of passing off, this one dates back to 1618. In this case mark of an eminent clothing brand was used to dupe a customer, who bought the defendant's low grade clothing thinking it was the plaintiff's brand. The defendant was held liable.

Calvin Klein Inc. USA v. International Apparel Syndicate

- In this case, the plaintiff, an internationally reputed US company with a tremendous goodwill for designer clothing brought an action for passing off and trademark infringement against International Apparel Syndicate, an Indian company to stop

them from using the trade name Calvin Klein and the mark CK.

- Calvin Klein did not have a market in India, but their goodwill was based on their reputation earned through advertisements. They also had worldwide trademark registrations in 136 countries including India. In India, their registration covered only textile goods, while their application for trademark registration for clothing, footwear and headgear was still pending. False representation by the Indian company that they were official CK licensees and marketing their products under the trade name of Calvin Klein led to the Calcutta High Court passing an interim order for injunction, stopping International Apparel Syndicate from using the name Calvin Klein and the mark CK, which subsequently became permanent.

- The defendants' contention that the plaintiffs could not bring an action because they did not sell their goods in India was disallowed. The court said that the marks were used with an intention to deceive the customers and to trade riding on the international reputation of Calvin Klein.

Honda Motors Co. Ltd. v. Mr. Charanjit Singh and Ors

- The defendants manufactured pressure cookers under the name "Honda", in India. Their application for registration had already been rejected once before and they had applied for registration again, while continuing to sell their products.
- The plaintiffs, popular all over the world for their motor goods and electrical appliances brought an action against the defendants. In India, they ran a joint venture with the Siddharth Shriram Group.
- In the judgment, it was held that with an established business and sale of quality products, the name "Honda" had become associated with the plaintiffs' reputation and its goods. It was said that it is very easy for the public to associate the plaintiffs with any product that carries the name of "Honda". Further, the honourable judges also held that by using the name "Honda" the defendants were creating confusion in the consumers' minds, which was indirectly affecting the business of the plaintiffs in an adverse way. An injunction was ordered to stop the defendants from using the name "Honda".

Colgate Palmolive Company and Anr. v. Anchor Health and Beauty Care Pvt. Ltd.

- Both the plaintiffs and the defendants manufacture well known toothpaste brands. The plaintiffs sued the defendants for passing off. The contention of the plaintiffs was that the defendants' use of colour and pattern of colours in their dental products was dangerously similar to the plaintiffs'. According to the plaintiffs the proportion of colours (red and white) used by the defendants was almost identical to that of the plaintiffs (1/3:2/3). The reason for bringing in such an action was that the plaintiffs were established in the Indian market since 1951, and had a

tremendous goodwill in the country, while the defendants had entered the market only in 1996.

- It was held by the court that though there cannot be any monopoly over colour, in a country with a huge number of illiterate and semi-literate people, by marketing a new product with a design closely resembling that of the older product, it is easy to create confusion in the minds of the public, especially when a similar product has been prevailing in the market for close to half a century. It was adjudged that the defendants were using the trade dress of the plaintiffs. The court ordered an injunction, restraining the defendants from using the red/white combination in the disputed order.

- Passing off is not defined, but various courts have tried to follow the common law in helping build an idea of passing off. Passing off is said to take place when a GI, registered or unregistered is infringed in a manner where not only is the indication dangerously similar to that of the plaintiffs', but also it rides on the plaintiffs' goodwill to help establish a market and thus ruin the plaintiffs' market. "Goodwill" plays a big part in instituting an action against the tort of passing off.

- GI infringement is restricted by Section 45 of the GI Act, 1999, as its ambit stretches up to registered indications only.

In a country where a considerable percentage of the population lives in rural areas, it is very easy to pass off goods. Thousands of instances of passing off can be found out throughout India. Passing off has come a long way through the common law system and now has some well defined principles and ambit.

Action for Passing Off is a common law remedy, in substance being an action for deceit that is passing off by a person of his own goods as those of another. It is a remedy available to the owner of an unregistered GI who obtains reputation and goodwill by long use of the same. An action for Infringement is a statutory remedy, available to a person who acquires right in a GI on its registration.

15.8 INFRINGEMENT

15.8.1 Meaning of Infringement

Infringement of GI is defined in *Section 22* of the *GI Act, 1999* (**"the Act"**). It is similar to the law of passing off except that it is concerned mainly with the use of the indication. On the other hand, passing off is a misrepresentation by the user calculated to injure the goodwill of the original trader. Nevertheless, the protection against infringement is absolute. Once it is shown to offend the owner of the indication the offending user cannot escape liability. In the case of infringement, the burden of proof is on the plaintiff, as the plaintiff will have to prove that the various aspects listed under *infringement section* have been violated.

15.8.2 Remedies for Infringement

The Act provides civil as well as criminal remedies for infringement. A suit for infringement of GI can be instituted in any court that is not inferior to a District Court. In addition, infringement proceedings may be initiated in High courts by invoking their original jurisdiction. The provisions of the *Code of Civil Procedure, 1908* determine the jurisdiction of the court for the purpose of infringement suits. A registered proprietor or the authorised user can sue for infringement. The suit is generally filed against the infringer. An *infringer* is one who uses, or contemplates or threatens to use an indication that is similar to the plaintiff's registered indication. The person who intends to sue does not give any notice to the alleged infringer.

There are two examples of this situation:

- In the case *Castrol Limited and another* v. *P.K. Sharma and others*, the plaintiff was the registered owner of the trademarks.
- *Castrol*, *Castrol GTX*, and *Castrol GTX 2* in respect of oils for heating, lighting and lubricating. In December 1994, the plaintiffs came to know that the defendant was carrying on the business of selling multigrade engine oils and lubricants under the trademark *'Castrol GTX'* and *'Castrol CRB'* in identical containers as used by the plaintiffs. The plaintiff filed a suit for perpetual injunction. The court held that the use of the said trade marks by the defendants is clearly dishonest and is an attempt of infringement.

In ***Ranbaxy Laboratories Limited v. Dua Pharmaceuticals Limited***, the plaintiff company manufactured drugs under the trade name "Calmpose". The defendant company subsequently floated its similar product under the trademark "Calmprose". The said marks appeared phonetically and visually similar and the dimensions of the two strips were practically the same including the type of packing, the colour scheme and manner of writing. The court held it to be a clear case of infringement of trademark and issued a permanent injunction against the defendant.

15.9 MANNER OF FILING THE SUIT

There is no particular form of filing the pleading except that it must contain a clear and concise statement of material facts. The claim should include issues relating to the likelihood of confusion, counterfeit marks, and the dilution. The registered proprietor or authorised user has the right to prevent its use in ways that would lessen its uniqueness. The main criterion for dilution is that the unauthorised use which would create a likelihood of confusion or misleads the end user as to the source of the goods. As *per* the *Limitation Act, 1963*, the period of limitation for filing a suit restraining the infringement of a indication by injunction is three years from the date of infringement.

15.9.1 Acts not Amounting to Infringement

Generally, the registered proprietor or an authorised user can sue the offending user for infringement. However, exceptions to this are as follows:

1) If the use of the GI has been in accordance with honest practices.
2) If the user has indicated the character, quality, or geographical origin of the goods and when it is not attracted under Section 22 of the GI Act.
3) When the registration of the GI is not valid and liable to be expunged.
4) If the registered proprietor has consented to the use of the indication.
5) Innocent Infringement — where the defendant's use of the indication is shown to be innocent, he is still guilty of a legal wrong. Relief by way of injunction, but not to damage or an account of profits to the plaintiff.
6) The plaintiff is debarred from suing or claiming the reliefs sought by his own conduct, for example, the plaintiff's trade is fraudulent.

15.9.2 Trans-borderReputation

In ***Kornai Trading Co. & Others v. Gillette UK Limited***, the Division Bench of Bombay High Court held as follows:-In our judgment, it is not possible to conclude that the goodwill or the reputation stands extinguished merely because the goods are not available in the country for some duration It is necessary to note that the goodwill is not limited to a particular country, because in the present days, the trade is spread all over the world and the goods are transported from one country to another very rapidly and on extensive scale. The goodwill acquired by the manufacturer is not necessarily limited to the country where the goods are freely available.

In ***Whirlpool Corporation and another v. N.R. Dongre and Others,*** after referring to several cases, the judge observed as under: "These cases recognized that the reputation of a trader, trading or carrying on the business in another country, can travel to a country where he had carried no business. The traders' trans-border reputation can be on the basis of extensive advertisements and publicity. Such a trader could obtain injunction in a court where he was not trading to protect his reputation. The Indian courts also recognize the existence of trans-border reputation. a product and its trade name transcends the physical boundaries of a geographical region and acquires a trans-border or overseas or extra-territorial reputation not only through import of goods but also by its advertisement. The knowledge and the awareness of the goods of a foreign trader and its trademark can be available at a place where goods are not being marketed, and consequently not being used."

Self Assessment Question **(Spend 7 minutes)**

1) Discuss the history and development of Passing Off.

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15.10 CRIMINAL PROSECUTION

Chapter VIII of the GI Act details certain acts as offences punishable by imprisonment or with fine or with both. The following are the acts deemed as offences:

d) Falsifying and falsely applying GIs as listed in Section 38.

e) Selling goods to which false GI is applied as outlined in Section 40.

f) Falsely representing a GI as registered as listed in Section 42.

g) Improperly describing a place of business as connected with the GIs Registry as listed in Section 43.

h) Falsification of entries in the Register as listed in Section 44.

The chapter apart from listing penalties for the above-mentioned offences also details the penalty and procedure of prosecution. In the context of offences under this chapter an important question is as to what constitutes meaning of 'applying geographical indication'. The expression geographical indication has been defined in Section 2 (1) (e). Section 37 elaborates the meaning of expression 'applying geographical indication' and accordingly a person is deemed to apply a GI to goods when he:

- applies it to the goods themselves; or
- applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- places, encloses or annexure any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade manufacture, in or with any package or other thing to which a GI has been applied; or

- uses a GI in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that GI; or
- in relation to the goods uses a GI in any sign, advertisement, invoice, catalogue, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the GI as so used.

Sub-section (2) further clarifies that a GI shall be deemed to be applied to goods, whether it is woven in, impressed on, or otherwise worked in to, or annexed or affixed to, the goods or to any package or other thing.

Section 38 lists two kinds of offences, namely:

- falsifying a GI and
- falsely applying a GI.

Subsection (1) states that a person shall be deemed to falsify a GI who,

- without the assent of the authorized user of the GI makes that GI or deceptively similar GI
- falsifies any genuine GI, whether by alteration, addition, effacement or otherwise

The section is applicable to both registered and unregistered GI. In the case of the registered GI, the complainant may obtain form the Registered a certified copy of entry in the register in respect of the GI to establish proprietorship. The request has to be made on **Form GI-7**, along with the copy of the registered GI as per Rule 96. In case of unregistered GI the Proprietor has to establish his title by evidence of prior of use.

Sub-section (2) further states that a person shall be deemed to falsely apply to goods a GI when he without the assent of the authorized user of the GI:

- applies such GI or a deceptively similar GI goods or any package containing goods;
- uses a package bearing a GI, which is identical with or deceptively similar to the GI of such authorized user, for the purpose of packaging, filling or wrapping therein any goods other that the genuine goods of the authorized user of the GI.

Any GI falsified as mentioned above is a "false GI" and the onus lies on the prosecution of proving the offence as committed by the accused as mentioned above. However, the burden of proving the assent of the proprietor lies on the accused.

The penalty for falsification of GIs and the circumstances in which a person applies false GI are enumerated in Section 39 which states that any person –

- who falsifies any GI;
- falsely applies to goods any GI; or
- makes, dispose of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying a GI; or
- applies to any goods to which an indication of the country or place in which they were made or produced or the name the address of the manufacturer or person for whom the goods are manufactured is required to be applied under Section 71 (power to require goods to show indication of origin), a false indication of such country, place, name or address; or
- tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under Section 71; or
- cause any of the things as detailed above.

If proven, the accused shall be punished with imprisonment for a term not less than six months which may extend to three years and with a fine not less than fifty thousand rupees which may extend to two lakh rupees. The court for special reasons to be recorded in writing may sentence the accused to imprisonment less than three years or with a fine less than fifty thousand rupees. The accused may take the defence that he acted "without intent to defraud" and if proven he shall be absolved of the liability.

A person who sells goods to which false GIs have been applied pursuant to the Section 40 shall be punishable with imprisonment or fine unless he proves that he–

a) he has taken all reasonable precautions against committing an offence and that he at the time of commission of the offence had no reason to suspect the genuineness of the GI or that any offence has been committed in respect of the goods; or

b) That on demand of the prosecutor he gave all the information with respect to the person form whom he had acquired such goods; or

c) That he had acted innocently

It was held in ***Shantilal Uttamram Mehta v. Dhanji Kanji Shah*** (1961) 63 Bom LR 69 that whether an accused took all "reasonable precautions" against committing an offence against this section is one of fact and will have to be determined with reference to the circumstances of each case.

Section 41 clearly states that a person who has already been convicted for the aforesaid offences of falsifying, falsification of GIs or selling goods with false GIs shall be liable for enhanced penalty for subsequent convictions for the same offence.

Section 50 (2) clearly lays down that no court inferior to that of a Metropolitan

Magistrate or judicial Magistrate of first class shall try an offence under this Act and Sub-section (3) lays down that the above stated offences under Sections 39, 40 and 41 are cognizable. Sub-section (4) enacts that a police officer not below the rank of Deputy Superintendent of Police or equivalent, if he is satisfied that a cognizable offence has been committed or is likely to be committed, may search and seize – without warrant – the goods, die, block, machine, parts, plates, or other instruments or things involved in the commission of the offence, and whenever found shall be produced before the Magistrate at the earliest. However, the proviso to Sub-section (4) clearly mandates that the police officer before making any search and seizure shall obtain the opinion of the Registrar on the facts involved in the offence relating to the GI and shall abide by the opinion of the Registrar. This proviso clause corresponds to that of the proviso clause to Section 115(4) of the Trademarks Act, 1999 which mandates such prior opinion of the Registrar.

Any person aggrieved by such seizure of goods or the machine parts or has any interest in the same may apply to the Judicial Magistrate for restoration and the Magistrate after hearing the applicant and the Prosecution shall make appropriate orders.

Other offences are enumerated in Sections 42, 43, and 44 and basically pertain to misleading the public as to the status of the GI. Section 42 clearly prescribes imprisonment or fine or both for anybody who misrepresents that a GI which is not registered is a registered GI or is registered with respect to class of goods when in fact it is not misrepresents that registration of a GI gives him or her an exclusive right to use the same when in fact the registration does not. Sub-section (3) also indicates that while using a GI to indicate registration the words "registered geographical indication" or any other expression, symbol or sign like "R.GI" may be used. Section 43 prescribes penalty for improperly describing a place of business as connected with the GI Registry and Section 44 for falsification of entries in the register. However, no court shall take cognizance of these offences under Sections 42, 43, or 44 except on complaint in writing made by the Registrar or any officer authorized by him in writing.

Often such offences of infringement and piracy are committed by corporate and to fix responsibility for the same becomes a little difficult and hence, Section 49 has been inserted which clearly lays down that if such offence is committed by an company every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offences and shall be liable to be proceeded against and punished accordingly.

The legislature has taken a strong view of infringement, piracy, falsification, misrepresentation and has now made them penal offences.

Self Assessment Question **(Spend 4 minutes)**

2) Discuss about Falsifying and Falsely Applying GI.

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15.11 RECTIFICATION AND CORRECTION OF THE REGISTER

Power to cancel or vary registration and to rectify the register–

1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorized user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in Sub-section (1) or Sub-section (2).

5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

15.11.1 Correction of the Register

Correction of register- The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorized user,-

- correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;
- enter any change in the name, address or description of the association of persons or of producers or any ogranization or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;
- cancel the entry of a geographical indication on the register;
- strike out any goods or class or classes of goods from those in respect of which a geographical indication is registered from the register, and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

15.11.2 Alteration of Registered Geographical Indications

- The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the geographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.
- The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.
- Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under Sub-section (2).

15.11.3 Adaptation of Entries in Register to Amend or Substitute Classification of Goods

- The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a Geographical Indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods: Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as the case may

be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

- A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section

15.11.4 Appeals to the Appellate Board

- (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made there under, may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal. (2) No appeal shall be admitted if it is preferred after the expiry of the period specified under Sub-section (1): Provided that an appeal may be admitted after the expiry of the period specified therefore, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period. (3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fees as may be prescribed.

Bar of jurisdiction of courts, etc- No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in Sub-section of Section 31.

Procedure of the Appellate Board- The provisions of Sub-sections (2), (3), (4), (5), (6) of Section 84, Section 87, Section 92, Section 95 and Section 96 of the Trademarks Act, 1999 , shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trademarks Act, 1999.

Procedure for application for rectification, etc., before Appellate Board- An application for rectification of the register made to the Appellate Board under Section 27 shall be in such form as may be prescribed.

A certified copy of every order or judgment of the Appellate Board relating to a registered geographical indication under this Act shall be communicated to the Registrar by the Appellate Board and the Registrar shall give effect to the order of the B ard and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.

15.11.5 Appearance of Registrar in Legal Proceedings

The Registrar shall have the right to appear and be heard-

- In any legal proceedings before the Appellate Board in which the relief sought

includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;

- In any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user–

  Which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or

  Which has been opposed and the Registrar considers that his appearance is necessary in the public interest, and the Registrar shall appear in any case if so directed by the Board.

- Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

Self Assessment Question **(Spend 5 minutes)**

3) Discuss about *Rectification and Correction of the Register.*

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15.12 SUMMARY

While the law provides protection for geographical indications, there is also need for its proper implementation. The Geographical Indications of Goods (Registration and Protection) Act, 1999 contains specific provisions for obtaining relief from the courts on infringement of a registered geographical indication. Infringement action cannot be initiated against an unregistered geographical indication. A registered proprietor can also take civil and criminal action against an infringer for passing off under the Law of Torts.

Suits for infringement and passing off are to be initiated in District courts having jurisdiction. The period of limitation of three years apply in these cases. In civil suits the following immediate orders can be sought:

a) for discovery of documents;

b) for preserving of infringing goods, documents or other evidence which are related to the subject matter of the suit;

c) for restraining the defendant from disposing of or dealing with his assets in a manner, which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

There are case laws both from England and India with regard to infringement as well as passing off of geographical indications. One of the famous such cases is the Spanish Champagne case from UK. Three major Indian case laws are the following:

- ***Dyer Meakin Breweries v. Scotch Whisky Association,*** AIR 1980 Del 125
- ***Scotch Whisky Association v. Paravara Sahakar Shakar Karkhana,*** AIR 1992 Bom 295
- ***Khoday Distilleries v. Scotch Whisky Association,*** AIR 1999 Mad 274

For passing off action, registration is not a factor. It is based on the goodwill acquired through use. An action for infringement on the other hand is based on the right acquired by registration under the Act and is possible only in respect of registered GIs.

Passing off is a form of tort. The concept of passing off, of course, has a long evolution. Some of the famous cases that contributed to the development of the concept are the following:

- ***Southern v.How*** (1618)
- ***Calvin Klein Inc. USA v. International Apparel Syndicate***
- ***Honda Motors Co. Ltd. v. Charanjit Singh and Ors.***
- ***Colgate Palmolive company and Anr. v. Anchor Health and Beauty Care Pvt. Ltd.***

Infringement is when a person not being an authorised user uses a registered geographical indication falsely or in a misleading manner. The Act provides civil as well as criminal remedies for infringement. A suit for infringement of GI can be instituted in any court that is not inferior to a District Court. There is no particular form of filing the pleading except that it must contain a clear and concise statement of material facts. Certain acts such as use in accordance with honest practices or innocent infringement or when the registration of the Geographical Indication is not valid are not amounting to infringements. The Indian courts also recognize the existence of trans-border reputation.

As per the GI Act, the following acts are deemed as criminal offences which can attract imprisonment or fine or both:-

a) Falsifying and falsely applying GIs.

b) Selling goods to which false GI is applied.

c) Falsely representing a GI as registered.

d) Improperly describing a place of business as connected with the GIs.

e) Falsification of entries in the Register.

If proven, the accused will be punished with imprisonment for a term not less than six months which may extend to three years and with a fine not less than fifty thousand rupees which may extend to two lakh rupees.

Wrong entries in the Geographical Indication Register can be rectified and corrected by the Registrar after following certain procedures, mostly on application by an affected party. Appeals against the decisions of the Registrar are to be filed with the Intellectual Property Appellate Board. The Registrar has the right to appear and be heard in the appeals before the IPAB in certain cases involving the decisions of the Registrar.

15.13 TERMINAL QUESTIONS

1) What action can be taken on infringement of an unregistered geographical indication?
2) What are the differences between passing off and infringement suits?
3) What are the criminal offences under the Geographical Indications of Goods (Registration and Protection) Act, 1999?
4) How can mistakes in the Geographical Indications Registry can be corrected?

15.14 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 15.5 and 15.6
2) Refer to Section 15.10
3) Refer to Section 15.11

Terminal Questions

1) Refer to Section 15.3
2) Refer to Section 15.4

3) Refer to Section 15.10

4) Refer to Section 15.11

15.15 REFERENCES AND SUGGESTED READINGS

1) R.F.V. Heuston and R.A. Buckley, Salmond & Heuston on the Law of Torts.

2) W.L. Morison, Unfair Competition and 'Passing-off".

3) Suman Naresh, Passing-Off, Goodwill and False Advertising.

4) Andrew Christie, Of Passing off and Plastic Lemons, 49(3) The Cambridge Law Journal.

5) Peter Russell, Passing off by Misdescription, 43(3) The Modern Law Review.

6) Trade Marks and Passing Off-Narayanan 6th edition.

7) Venkateswaran on Trade Marks and Passing Off 5th edition

ANNEXURE

TIME SCHEDULE STIPULATED FOR DIFFERENT ACTIVITIES UNDER GEOGRAPHICAL INDICATIONS ACT AND RULES FOR PROCESSING APPLICATION FOR REGISTRATION

Sl. No	Activity	Time Prescribed	Relevant Provision
1	Compliance of the notice under Rule 31 to remedy the deficiencies in the application for Registration of GI	Within one *month* from the date of Receipt of the Notice.	Rule 31
2	Finalization of examination of application by the Consultative Group	Within three month from the date of constitution of the consultative group.	Rule 33
3	Advertisement	Within three months of the acceptance of the application.	Rule 38
4	Notice of Opposition	Within three months or further period not exceeding one month in the aggregate from the date when the Journal was made available to the public.	Section 14 r/w a Rule 41(1)
5	Application for extending time for filing notice of opposition by one month	Within three months period from the date on which journal was made available to the public.	Rule 41 (5)
6	Forwarding of the copy of notice of opposition to the applicant	Within two months of the receipt of the notice by the Registrar.	Rule 41(6)
7	Filing of counter statement	Within two months from the receipt of the applicant of the copy of the notice of opposition from the Registrar.	Rule 43(1) Section 14(2) r/w Rule 41(6)
8	Serving of the counter statement on opponent	Within two months from the date of receipt of the counter statement by the Registrar.	Section 14(3) r/w Rule 43(1)
9	Evidence in support of opposition by the opponent	Within two months from the date of serving of the copy of the counter statement or within such further period not exceeding *one month* in the aggregate thereafter as the Registrar may on request allow.	Section 14(4) r/w Rule 44(1)
10	Filing of application for the extension of the period for filing evidence in support of opposition by one month.	Before the expiry of the period of two months from the date of serving of the copy of counterstatement on the opponent.	Rule 44(3)

11	Evidence in support of application by the applicant	Within two months or within such further period not exceeding *one month* thereafter in aggregate as the Registrar may on request allow, on the receipt by the applicant of the copies of affidavits in support of opposition or of the intimation that the opponent doesn't desire to adduce any evidence.	Rule 45(1)
12	Filing of application for the extension of the period for filing evidence in support of application by 1 month.	Before the expiry of the period of *two months* from the date of Receipt of the copies of affidavits in support of opposition by the applicant.	Rule 45(2)
13	Filing of evidence in reply by opponent	With in *one month* from the receipt by the opponent of the copies of the applicant's affidavits or within such further period not exceeding *one month* thereafter as the Registrar may on request allow.	Rule 46
14	Notice for hearing	Within *3 months* of completion of the evidence.	Rule 50(1)
15	Application for renewal of Registration of G.I. or authorized user	May be made at any time not more than *6 months* before the expiration of the last registration.	Section 18(1) & (2) r/w Rule 60 (1)
16	Notice before the Renewal of GI or authorized user	At a date not less than one month and not more than three months before the expiration of the last registration.	Section 18(4) r/w Rule 60(2)
17	Transmission of application and statement for the rectification.	Within two months of receipt of the application by the Registrar.	Section 27(1) r/w Rule 65
18	Filing of counter-statement by registered proprietors	Within two months or within further period not exceeding two months in the aggregate from the receipt of the copy of the application for rectification by Registered Proprietor.	Rule 66
19	Serving of the counter statement on the applicant	Within one month from the date of receipt of the counter statement by the Registrar.	Rule 66
20	Evidence in support of Rectification by the Applicant	Within two months from the date of serving of the copy of the counter statement or within such further period not exceeding one month in the aggregate thereafter as the Registrar may on request allow.	Rule 66

21	Filing of application for the extension of the period for filing evidence in support of Rectification by one month.	Before the expiry of the period of two months from the date of serving of the copy of counter statement on the applicant.	Rule 66
22	Evidence in support of Registered G.I. by the Registered Proprietor	Within two months or within such further period not exceeding one month thereafter in aggregate as the Registrar may on request allow, on the receipt by the Registered Proprietor of the copies of affidavits in support of rectification or of the intimation that the applicant doesn't desire to adduce any evidence.	Rule 66
23	Filing of application for the extension of the period for filing evidence in support of Rectification by one month.	Before the expiry of the period of *two months* from the date of Receipt of the copies of affidavits in support of Rectification by the Registered Proprietor.	Rule 66
24	Filing of Evidence in reply by Applicant	With in *one month* from the receipt by the applicant of the copies of the Registered Proprietor's affidavits or within such further period not exceeding *one month* thereafter as the Registrar may on request allow.	Rule 66
25	Notice for Hearing	Within *3 months* of completion of the evidence.	Rule 66
26	Appeal to the Appellate Board	Within *3 months* from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.	Section 31

NOTES

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