

## # 19. LAW RELATING TO GEOGRAPHICAL INDICATION OF GOODS

1] A Geographical Indication means an indication in relation to goods which identify them as agricultural, natural or manufactured goods, originating or being manufactured in the particular territory of a country and which has a given quality, characteristic or reputation, attributable to a geographical origin.

2] In simple, a GI is -

- an indication
- used to identify agricultural/natural or manufactured goods
- which originates from a particular territory
- It has certain special quality, characteristics or reputation.

3] Certain examples of GI are: Darjeeling Tea, Kolhapuri Chappal, Agra Petta, etc.

\* Prohibition of Registration of certain GI.

4] As per section 9 the foll. are prohibited from registration as GI:

GI

- a) The use of which would be likely to deceive or cause confusion.
- b) The use of which is contrary to any law for the time being in force
- c) which contain any material which might offend any religious sentiments of the Indian Population.
- d) if it contains any scandalous or obscene matters.
- e) if it contains any
- e) which will be disentitled to protection in a court
- f) which is a generic name or has ceased to be protected in his country of
- g) origin. like champagne, cheddar cheese
- g) which accurately describes the place of origin but falsely suggest that the goods come from a different location.

## \* Registration of GI

5] Step 1: Filing of Application

a) An application for registration of GI must be made in triplicate by the association of person or producers or any organisation on an affidavit stating the special & characteristic claim.

b) It should be supported with 3 copies of the map of the region to which GI relates.

c) The application together with other details must also provide the applicant's details along with their address.

d) The application must be signed on by the applicants.

NOTE: If there are large number of producers then a collective reference can be made in the application.

## 6] Step 2: Preliminary scrutiny

a) The examiner will scrutinize the application to check for any deficiency.

b) If there is any deficiency then the applicant should within 1 month of

the communication remedy the same

7] step 3: Examination

- a) Once the application is complete the content is now examined by a consultative groups of experts which are required to provide an examination report.
- b) Thereafter, an examination <sup>report</sup> is issued.

8] Step 4: Show-cause notice

- a) If there is any objection in the application then the registrar communicates the same.
- b) The applicant shall within 2 months, either provide a reply or apply for a hearing
- c) Based upon this, the ~~data~~ decision of the registrar is passed and communicated.
- d) If the applicant is not satisfied he can within a period of 1 month apply to the Intellectual Property Appellate Board.

### 9] Step 5: Publication in the GI Journal

a) Every application shall be published in the GI Journal within 3 months of acceptance

### 10] Step 6: Opposition of Registration

a) Any person having any objection can file opposition within 3 months

b) The registrar will send the copy of the same to the applicant

c) The applicant shall respond within 2 months.

d) If he does not reply within the stated time the application shall be considered as abandoned.

e) Both the sides should lead their evidences by way of affidavit and based on this the registrar takes its final decision

### 11] Step 7: Registration

a) If the application is accepted the Registrar shall issue a certificate

with a seal of GI registry.

### 12] Step 8: Renewal

a) A registered GI shall be valid for 10 years and can be renewed on payment of renewal fees

NOTE: i) If the registration is granted then the particulars of GI shall be mentioned in part A of the register

ii) The particulars of the authorised user shall be entered in Part B of the register

### \* Infringement of GI Registration

13] A registered GI is considered infringed when any person other than the authorised user uses such GI by designating the same or presenting the goods in a manner that suggests that the goods originate from an area to which a GI relates

14] The following acts are considered unfair competition:

a) any act which creates confusion in the

minds of the general public that the goods of the establishment are related to that of the competitor.

b) False allegations in the course of trade so as to discredit the products of a competitor.

c) Practices which misleads the person as to the nature of products or manufacturing product process or the characteristics of the goods

15] Using a GI in such a manner which constitutes unfair competition including passing off shall amount to infringement of registered GI.

16] Using a different GI which falsely is accurate but falsely suggest that the goods originate from the area which is linked from that area which is linked to registered GI.

\* Assignment or Transmission.

a) The rights of a registered GI cannot be nor it can be licensed.

b) In Inamission is allowed in the event of the authorised user's demise, to his ~~per~~ legal heir.

### \* Prohibition of Registration of GI as trademark

17] A GI is different from a trademark in the foll. ways:

a) A trademark is used by a business to distinguish its goods or services from the goods & services of its competitors.

b) On the other hand, GI is used to identify the origin of certain goods from a definite geographical territory having certain special characteristics.

18] As per sec 25 no trademark should be registered by the registrar which contains or consists of GI. With respect to the goods or class of goods not originating from the territory of the country, where such use might confuse or mislead to the people to the origin of the goods.

19] In Tea Board v/s ITC Ltd, a similar situation was dealt by the Calcutta High Court the facts were as follows

a) The Plaintiff i.e. the Tea Board India was the authorised user of the Darjeeling Tea which was also registered as a GI, has filed for temporary injunction against the defendant i.e. the ITC Ltd. from conducting its business darjeeling lounge in Calcutta.

b) The application filed by the plaintiff claimed that it was an act of passing off by the defendant.

c) The Calcutta High Court stated that passing off should be seen ~~as~~ in context of trademark and to get a relief in this the foll. things are to be cracked checked:

- i) The nature of the mark
- ii) The resemblance of the mark
- iii) The similarity of the goods & services
- iv) The mode of assessing goods & services

d) The word darjeeling is more

more important to tea however it cannot be exclusively claimed by the plaintiff and likewise it is not passing off if a small tea stall selling hot tea is doing passing off if the name of the stall is darjeeling tea stall.

e) In the given case, darjeeling lounge is an exclusive area in a hotel for its higher customers where visitors can sip darjeeling tea or any other drink but there seems no likelihood of description between darjeeling lounge and darjeeling tea.

f) As per the claim of defendant, the word darjeeling is being used in the business context long before the GI Act was passed.

\* What do you mean by applying GI?

20] Application of GI to any goods<sup>to</sup> means the following:

a) A person apply GI to the goods

b) Applies GI to any packets in which

the goods are sold, exposed for sale or for any purpose of trade/manufacture.

c) When the GI is used in a manner which leads to the belief that goods in connection with which it is used are connected with the GI.

d) Where the GI is used in any sign, advertisement or catalogue and same are delivered to a person upon a request made by reference to GI.

\* What is falsifying and falsely applying GI?

21] A person is considered deemed to falsify a GI if:

a) without the assent of the authorised user that makes a GI.

b) Falsifying any genuine geographical indication.

22] Falsifying or falsely applying GI to any goods happens when:

a) any person applies a GI or

deceptively similar GI to any goods or package.

b) Uses any package having a GI which is identical to a registered GI for wrapping up any goods other than the genuine goods of the authorised user.

### \* Penalty for applying False GI

a) Any person falsely apply GI to any goods.

b) Tamper or alters with any GI shall be punished with imprisonment for not less than 6 months -but which may extend to 3 years and with fine which shall not be less than 50,000 but which may extend to 2 Lakh.

c) Provided further, Court for special reason may impose a punishment of imprisonment for less than 6 months and fine less than 50,000/-.