

Law Relating to Geographical Indications of Goods

QUESTION 1:

Section 9 of the Geographical Indications of goods (Registration and protection) Act, 1999 prohibits Registration of certain Geographical Indication.

Ans:

A Geographical Indication is used to identify the goods which are originating from a particular area having any special characteristic , but under the Act in Section 9 , the following are prohibited: -

- (a) The use of which is likely to create deception
- (b) The use of which might be contrary to law
- (c) Which has any material which might offend the sentiments of a group of the population
- (d) Which has any obscene or scandalous matter
- (e) Which has been disentitled from protection in the court
- (f) A Geographical Indication which accurately describes the place of origin but falsely represents the location, despite they are factually correct but the same may lead to confusion hence prohibited .

QUESTION 2:

India Tea Board owns the famous Geographical Indication "Darjeeling" and the logo of the woman holding the tea leaves, as well as the trademark "Darjeeling" under the Trademarks Act, regarding "tea". ITC, Limited has used the "Darjeeling Lounge" as the name of its top lounge at its Kolkata hotel, ITC Sonar. Tea Board of India filed a Lawsuit against ITC Ltd. that by using the word "Darjeeling" in one of its hotel resorts in Kolkata which is a breach of its landmark as well as well as a certificate mark as tea Board is the registered owner of the "Darjeeling" sign.

Tea Board of India moved an interlocutory application for temporary injunction for restraining the ITC Ltd. from using or conducting or making its business at the hotel by the name "Darjeeling Lounge". Application stated that usage of the word "Darjeeling" in the name and logo by defendants is passing off or attempting to pass off its business or services so as to discredit the fame of Darjeeling tea as a geographical indication and/or to mislead persons. In light of the above, answer the following questions in the light of the Geographical Indications of Goods (Registration and Protection) Act, 1999:

- (i) Is the contention of the India Tea Board, that ITC Ltd. is engaging in Passing-off, correct? Explain. **(2 MARKS)**
- (ii) How a Geographical Indication is different from Trade Mark? **(2 MARKS)**
- (iii) Can the Tea Board of India file a complaint against 'X' for selling tea varieties at the Railway station under the name "Darjeeling Tea Stall"? **(2 MARKS)**
- (iv) What if ITC Limited has been operating and using the 'Darjeeling Lounge' long before the enactment of the Act? **(2 MARKS)**
- (v) What is punishment for applying false Geographical Indications? **(2 MARKS)**

Ans:

- (i)
 - (a) Passing off occurs when one business misrepresents the goods or services with that of the original brand owner.
 - (b) In the given case the name Darjeeling which is as precious to tea as like champagne for sparkling water in France, now this cannot be exclusively claimed and is commonly used.

(c) The true test for determining is to check if it led to deception and the same is missing in this case. Hence, the contention of Tea Board of passing off is incorrect.

(ii)

(a) Geographical Indication in relation to goods is an indication which is used to identify goods having special characteristic originating from a definite geographical territory

(b) Whereas, a trademark is a sign which is used in the course of a trade and it distinguishes goods or services of one enterprise from those of the other enterprises.

(iii)

(a) While raising a claim, it is no ground to stop someone from selling tea under the name of Darjeeling Tea Stall.

(b) The name Darjeeling is a very generic name which could be used by anyone and there seems no likelihood of deception.

(c) Therefore, X can sell varieties of tea at the railway station under the name “Darjeeling Tea Stall” as it would not be in derogation of the rights of Tea board of India and hence no complaint can be filed against X.

(iv) If ITC had already been operating and using the ‘Darjeeling Lounge’ before the enactment of the GI Act, 1999 it shows that the term had already a part of trade and commerce. Moreover “Darjeeling” being a generic and geographical word due to which exclusive rights cannot be claimed. Therefore the plaintiff’s recent plea would not entitle them to enjoy the kind of exclusivity over the word.

Hence, ITC can continue using the name and the plaintiff is not entitled to the kind of exclusivity they are claiming.

(v) The punishment for applying false GI is Imprisonment for a term of not less than 6 months, which may extend up to 3 years, and a fine not less than ₹50,000, which may extend up to ₹2,00,000.

However, if the court finds special reasons, it may impose a lesser term of imprisonment and a fine which is less than ₹50,000.

QUESTION 3:

What is meant by “Act of unfair competition” under the Geographical Indications of Goods (Registration and Protection)

Ans:

Infringement of a registered geographical indication occurs when a person who is not an authorized user uses it in a way that falsely suggests the goods come from a region they do not actually originate from, thus misleading consumers.

Such misuse amounts to unfair competition, which includes:

1. Creating confusion with another trader’s goods or business this is known as unfair competition.
2. Making false claims in trade that harm a competitor’s reputation.
3. Using a G.I. in a way that misleads people about the product’s nature, manufacturing process, quality, or quantity.

QUESTION 4:

Kancheepuram Sarees, a famous product made in the Kancheepuram region of Tamil Nadu, was registered under the Geographical Indication of Goods (Registration and Protection) Act, 1999. The Kancheepuram Handloom Silk Weavers Co-operative Society Limited was constituted to register “Kancheepuram G.I” by traditional authentic weavers residing in Kancheepuram region. The registration of a similar society was also made by the non-traditional producers which used the same G.I. against which the dispute arose. The Kancheepuram Society of Traditional Weavers filed a petition challenging the registration of a similar G.I. for the product, claiming that it would result in the misuse and exploitation of their traditional craft. The petitioners argued that only the authentic weavers from the Kancheepuram region should be entitled to use the G.I. for Kancheepuram Sarees and that “Broader definition could result in the dilution of the uniqueness and quality of the product.

Therefore, the G.I. of Kancheepuram Sarees should be exclusive to the traditional weavers, of the Kancheepuram region and the G.I. Act should be interpreted in a way that protected the authenticity and tradition of the product. Any registration extending the use of G.I. beyond this would lead to the exploitation of their craft. Union of India, the respondent,

argued that G.I. Act is intended to protect the geographical origin of a product and does not restrict registration based on the type of producer. It should be extended to all the producers traditional as well as non-traditional weaver communities which produce authentic “Kancheepuram Sarees”. Considering the above case study, answer the following questions in the light of Geographical Indication of Goods (Registration and Protection) Act, 1999.

- (i) What is meant by Geographical Indication ? (2 MARKS)
- (ii) What are the benefits of Geographical Indication registration ? (2 MARKS)
- (iii) Is there any difference between Geographical Indication and Trade Mark ? (2 MARKS)
- (iv) When may a registered Geographical Indication be treated as infringed ? (2 MARKS)
- (v) Is the contention of the Union of India, the respondent, correct? Explain. (2 MARKS)

Ans:

- (i) GI means in relation to goods an indication which identify such goods as natural, agricultural, manufactured goods.
The purpose of GI is to showcase that the goods are originating or manufactured from a particular region or locality which has a proven quality or reputation or any other characteristic because of that Geographical origin.
- (ii) The benefits of Geographical Indication are: -
 - (a) To make a specific law dealing with GI in the country which could protect the interest of producers of such goods.
 - (b) To stop unauthorized person from misusing the GI and protect consumers from deception.
 - (c) To promote goods bearing Indian GI in the export market.
- (iii)
 - (a) Geographical Indication in relation to goods is an indication which is used to identify goods having special characteristic originating from a definite geographical territory
 - (b) Whereas, a trademark is a sign which is used in the course of a trade and it distinguishes goods or services of one enterprise from those of the other enterprises.

- (iv)
- (a) Infringement means violating the rights of an authorised user of a GI by using designations or presenting goods in a way that falsely suggests the goods originate from a particular geographical area, other than their true place of origin.
 - (b) Unfair competitive activities related to a GI can also amount to infringement.
 - (c) The following are considered unfair acts:
 1. Any act that creates confusion in the consumer's mind regarding the origin of the goods or unfairly competes with existing authorised users.
 2. Making false allegations in trade that can harm the reputation of another trader or the GI product.
 3. Using a GI in a way that misleads people about the quality, characteristics, or origin of the goods.
 4. Even when a GI application accurately describes the place of origin, if it falsely represents the location (e.g., giving technically correct details that still cause consumer confusion), it is prohibited.
- (v)
- (a) As per GI Act, 1999, Geographical Indication in relation to goods is an indication which is used to identify goods having special characteristic originating from a definite geographical territory. The Act allows any producer from the registered region to use the G.I., provided they adhere with the standards
 - (b) In the present case, the Kancheepuram Co-operative Society opposed use of the term “Kancheepuram” by others. However, the Union of India contended that G.I. protection is not exclusive and can be used by all producers in that particular region.
 - (c) This is supported by a classic case of Tea Board v. ITC case, where the Calcutta High Court held that the term “Darjeeling” could not be monopolized, and use of the word by anyone did not amount to infringement. Similarly, in the present case, as long as the production is from Kancheepuram and follows the set process, G.I. usage cannot be denied to non-traditional users.