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A STUDY ON GEOGRAPHICAL INDICATION **UNDER IPR**

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ABSTRACT:

A geographical indication is a sort of intellectual property right that is primarily used to protect a product's geographical origin. The underlying principle of this type of right is that the product's attributes are derived from the location of production in question. Since geographical indication is typically closely associated with the traditional production practices and cultural heritage of the specific region to which the product belongs, it serves as a vital tool for preserving cultural diversity and identity in addition to aiding in the preservation and promotion of these customs. This paper deals with the Geographical Indicators and their importance.

KEY WORDS: IPR, geographical indication. Origin.

INTRODUCTION:

A geographical indicator is a label that identifies a product as coming from a certain location. Like a person's place of birth, a product's geographical indication indicates its origin, and both are significant. It declares that a specific product is exclusive to a given location. There is an obvious connection between the product and its manufacturing location since the attributes are dependent on the location. A geographical indicator is mostly given to products that are manufactured, natural, agricultural, or handcrafted and come from a certain geographic area. Some examples include Agra Petha, Lucknow Silk Saree, Bikaneri Bhujia, Darjeeling Tea, and so on. The most typical form of a geographical indicator is the name of the location where the

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commodity was produced, like Darjeeling or Blue Mountain in Jamaica. However, non-geographical names like Argan Oil, Cava, or Vinho Verde, or symbols that are often connected to a location, can also be considered geographical indications. Essentially, national legislation and consumer perception determine whether a sign serves as a geographical indicator.

Furthermore, a sign must designate a product as coming from a certain location in order to function as a geographical indicator. Specified location. Furthermore, the product's attributes or standing need to primarily stem from its country of origin. There is a connection between the product and its original location of production since the attributes are dependent on the geographical site of manufacture.

Until the late nineteenth century, laws were used or passed against inaccurate trade descriptions, which typically protect against suggestions that have a certain origin, quality, of the product, or association when it does not. Today, governments protect trade names and trademarks used in the context of food products identified from a particular region. Governments in these situations justify the competitive freedom that results from the granting of a monopoly of use on a geographic indication for the benefit of either producer or consumer protection.

HISTORY OF GEOGRAPHICAL INDICATION:

Until the late nineteenth century, laws were used or passed against inaccurate trade descriptions, which typically protect against suggestions that have a certain origin, quality, of the product, or association when it does not. Today, governments protect trade names and trademarks used in the context of food products identified from a particular region. Governments in these situations justify the competitive freedom that results from the granting of a monopoly of use on a geographic indication for the benefit of either producer or consumer protection.

Appellate d'Orgine Controloli (AOC) is one of the first G.I. systems in use in France since the early 20th century. Products that satisfy quality and geographic origin requirements may be granted a government stamp, which acts as a formal consumer certification of the product's origin and standards. Products bearing this type of "appellation of origin" include several French wines and the Swiss cheese Gruyère.

India is one of the main growing nations with a prompt and effective G I tagging system.

Geographical indicators have a long history of being connected to Europe and the notion of Terrero, as there is a custom there of associating specific food items with specific areas and their place of origin. India has implemented a Sui Generis legal framework specifically for G.I. security and protection. "Sui Generis" refers to laws that are acknowledged nationwide and can be characterized as unique in their sort. The "Geographical Indications (Registration and Protection) Act, 1999" (G.I. Act) and the "Geographical Indications (Registration and Protection of Goods) Rules, 2002" (G.I. Rules) are the rules that govern the protection of Geographic Indications in India. In order to uphold domestic intellectual property rules in accordance with its TRIPS responsibilities, India passed the G.I. legislation. The Central Government created a Geographical Indication Registry in Chennai, under the authority of Pan-India, on September 15, 2003, in accordance with the G.I. Act, so that holders of rights may register their G.I.

NEED FOR GEOGRAPHICAL INDICATION:

G.I.'s legal protection is crucial given its potential for commercialization. Competitors who lack legal power over the G.I. can profit freely from its reputation if it is not adequately protected by the law. G.I. right holders lose money as a result of these unethical trading practices, which also confuse customers. Moreover, these kinds of actions can eventually damage the reputation and goodwill attached to a geographical indicator.

STATUTORY PROVISIONS:

The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement contains provisions solely for Geographical Indications beginning with Article 22 and continuing through Article 24. According to Article 22(1) of the TRIPS Agreement, a geographical indication is any indication that a good originated in a member's territory, or a region or locality within that territory that served as a geographical indicator of a specific trade, a high-quality product, or the uniqueness of the goods produced with a geographical origin serving as a geographical indication.

India is a party to both the TRIPS Agreement and the World Trade Organization (WTO). The Geographical Indications of Goods (Registration and Protection) Act, 1999 governs and protects geographic indications in India. It became operative on September 15, 2003. The geographical Indication office is at Chennai.

GEOGRAPHICAL INDICATION IN INDIA:

In India, geographic indication is defined as an identification of goods, such as agricultural, natural, or manufactured goods, that originates or is manufactured in a country, region, or locality where a given quality reputation or other characteristics of those goods are essentially attributable to their geographical origin, or, in the case of manufactured goods, where one of the activities of either the production or of processing or preparation of the goods concerned takes place in that territory, region, or locality, as the case may be. This definition is found in Section 2 (1)(g) of the Geographical Indication of Goods (Registration and Protection) Act 1999. For the purposes of this clause, a name that does not refer to a nation, region, or locality within that nation may also be used as a geographical indication if it denotes a specific geographic area and is applied to or used in connection with a specific product that comes from that nation, region, or locality, as applicable.

KEY POINTS OF GEOGRAPHICAL INDICATION:

- GIs represent a powerful tool for protecting cultural heritage, promoting fair trade, and fostering regional development. They empower local communities to capitalize on the reputation and qualities associated with their unique products, leading to increased income and job creation.
- The effectiveness of GI protection hinges on robust legal frameworks, efficient enforcement mechanisms, and consumer awareness. Strong international cooperation and harmonization of regulations are crucial to combating fraudulent use and ensuring fair competition.
- Challenges remain in areas like geographical delimitation, traditional knowledge protection, and balancing the interests of producers, consumers, and global trade. Continuously adapting legal frameworks and incorporating flexible solutions are essential to navigate these complexities.
- Technology presents exciting opportunities for enhancing GI management and traceability. Tools like blockchain and geographical information systems can promote transparency, improve authentication, and empower consumers to make informed choices.

TYPES OF GEOGRAPHICAL INDICATION:

Quality- Neutral geographical indications;

- Qualified geographical indications;
- Direct geographical indications; and
- Indirect geographical indications.

Quality- Neutral Geographical Indications: For the geographical indicators that are neutral in terms of quality, there is no apparent connection between the unique qualities of the items and their location of origin. All it shows is that the source indicator indicates that the product is manufactured at the specified place.

Qualified Geographical Indications: The qualifying geographical indicators provide a connection between the characteristics or standing of the products and the country, region, or location that they are relevant to. These items are designated or identified by a single name. These are frequently known as origin applications.

Direct Geographical Indications: The descriptive titles of the geographical locations to which the products of geographical indication tags belong are used to identify them for the direct geographical indications.

For instance, champagne from the region of Champagne is renowned for being called champagne, while tea from Darjeeling is called Darjeeling tea.

Indirect Geographical Indications: "Non-geographical names or symbols" are the names given to indirect geographical indicators in items that the general public perceives to be indicating a certain geographical origin. For example, the phrase "feta" is not geographically located in Greece, but Greece claims it is connected with an area and is protected by law as a geographical indicator. Another illustration is the "Basmati" rice type, which is found throughout India and has no particular place. If indirect geographic indicators are recognized, they are covered by the Trade Agreement on Intellectual Property Rights under "other signs of geographical significance, whether... composed of words, phrases, symbols or emblematic images."

RIGHTS GRANTED TO THE HOLDER:

- **Rights to Sue:** The Geographical Indication Act grants exclusive rights to individuals, allowing them to inherit, gift, sell, license, entrusted, or mortgage property. The holder can use their property subject to conditions and can take legal action against unconsent use. Compensation can also be received against real property.
- **The Right to grant license to others:** The holder has the right to transfer, grant, or arrange for consideration of their product's license, but it must be given in writing and registered with the Registrar of geographic indications for validity and legitimacy.
- **Right to Exploit:** The user is granted exclusive rights to use a registered geographic indication for geographic goods.
- **Right to get relief:** Registered proprietors and authorized users have the right to seek relief in cases of geographical indication violation.

**WHO CAN APPLY FOR GEOGRAPHICAL INDICATION
REGISTRATION:**

Applications for the registration of a product's geographic indication are accepted from any individual, manufacturer, entity, or body created by or under the legislation.

1. Producer interests should be represented by the appropriate applicant.
2. The written application must follow the required format and include all relevant product details.
3. The product registration fee should be sent with the application to the Registrar of Geographical Indicators.

WHOM TO APPLY?

The Controller of Patents, Designs, and Trademarks, who is appointed under sub-section (1) of Section 3 of the Trademarks Act 1999, will be the Registrar of Geographical Indications. The Application must be filed to the Registrar in accordance with the Act. He will have the support of the appropriate number of officers, chosen as they see proper by the federal government.

An excellent move in this direction is the establishment of the nation's first geographical indication (G.I.) registry and a comprehensive contemporary patent office in Chennai. By fulfilling the Act's obligations, the Registry will further enhance this. Within the borders of the

nation, the area, or the location where the geographical indications are located, each application must be submitted to the Office Registry of Geographical Indication.

REQUIREMENT OF REGISTRATION:

An unregistered geographical indicator is not protected under the Indian Act. As a result, the owner of an unregulated geographical indication is without recourse for mark infringement. Thus, it may be said that Indian law requires the registration of geographical indicators.

On the other hand, the original owner of a mark may still pursue a passing-off action.

BASMATI RICE:

In 1997, the US granted a patent to Ricetec Incorporation for new lines and varieties of basmati rice. However, two Indian non-governmental groups and the Centre for Scientific and Industrial Research protested, demanding revisions to US rights guidelines. In June 2000, the Indian government formally contested the patent, arguing that the word "basmati" is not a geographical designation for rice and is not eligible for protection under the intellectual property rights agreement's trade-related clause. Ricetec argued that the name "basmati" is generic and has entered the public domain. The US Patent and Trademark Office limited the number of types granted patents in 2000, and the Geographical Indication Act of India was passed in 1999 to address this issue.

DARJRLING TEA:

The Indian Tea Board, established in 1953 to control the tea industry, owns the geographical indication for Darjeeling tea, grown in 87 gardens in the district of Darjeeling. The board has fought over 15 cases against infringement and misuse of Darjeeling tea. The board successfully sought rejection of a trademark application for Darjeeling Nouveau in the name of the Republic of Tea, United States, based on its geographical certification mark for Darjeeling word and logo. The Trademark Trial and Appeal Board ruled that the Republic of Tea did not prove consumers view Darjeeling tea as a generic type, and recognized the tea board's efforts to maintain control of the mark and protect its value as a geographical indication. The Court of Appeal, Paris, ruled that Mr. Dusong's mark impairs the geographical indication of Darjeeling and prejudicial to the tea board's interest, leading to the nullification of the impugned mark.

JAMNAGAR PETROL:

Reliance Industries Limited filed a geographical indication application for Krishna Godavari gas and Jamnagar petrol, diesel, and LPG, aiming to authorize the use of the name Jamnagar LPG for oil, petroleum, and diesel. The application was published in a journal but was abandoned due to two oppositions. Section 11(2) of the Geographical Indication Act requires an application to state the quality, reputation, and other characteristics of the goods originating from the concerned region. Reliance Industries Limited stated that its products meet the required standards, but did not mention any unique properties, except compliance with International Organization of Standardization standards.

TIRUPATI LADDU CONTROVERSY:

The Tirupati Laddu controversy involved public interest litigation against the geographical indication tag for Tirupati Laddu. The petition was dismissed due to the availability of an alternative forum for adjudication. The Geographical Indication Act allows for such a petition to be filed either before the Geographical Indication Registry or the Intellectual Property Appellate Board. Mr. R.S. Praveen Raj, a scientist at the National Institute of Interdisciplinary Science and Technology, filed the petition against the tag, arguing it violated Section 11(1), Section 9(a), and Section 9(d) of the Geographical Indication Act. However, the Geographical Indication Registry rejected the petition, stating the applicant failed to prove locus sandi and interest in the registered goods.

The geographical indication's initial proof that it was correctly registered is the Registrar's certificate of registration. It is acceptable as the only evidence in all courts and before the Appellate Board in the absence of further original production evidence.

VALIDITY OF REGISTRATION:

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EFFECTS OF REGISTRATION:

The registration of geographical indicators is not mandated under the Geographical indicators Act. Authorized users who register have enhanced legal protection against breaches of recognized geographical indicators.

However, in the event of unregistered geographical indications, no infringement procedures may be started in order to stop infringement or to recover damages. No one will be able to utilize any of those geographical indications exclusively; rather, co-equal rights against third parties will be granted to two or more permitted users. Registration grants you the following rights:

- Registration gives you the only right to use the registered geographical indication in relation to the items it refers to, subject to the limitations and requirements that come with it. When there are two or more co-users, they have co-equal rights.
- Registration also gives you access to infringement remedies.
- In the event that a geographic indication is registered while the case is still ongoing, the existing passing-off action will have more scope.

REGISTRATION OF GEOGRAPHICAL INDICATION AS A TRADEMARK:

Geographical indicators cannot be registered as trade marks by the Registrar of Trade Marks due to their potential to mislead or confuse consumers about the genuine location of origin. The Geographical Indication Act of 1999, Section 25, renders a trade mark's registration void suo moto or upon the request of a concerned person. However, trademarks with geographical indications that have been legitimately applied for or registered before the Act's effective date are protected under Section 26.

In the case of *Tata Groups Mount Everest Mineral Water Ltd. v. Bisleri, Mount Everest Mineral Water (2010)*², the registered owner of the trade mark "Himalaya" requested an interim injunction to prevent Bisleri from using the mark on its packaging. The Intellectual Property Appellate Board stated that the term "Himalayan" should only be applied to water originating from the Himalayan-mountain and that no corporation is granted the exclusive right to use the term "Himalayan" as a trade mark for its products just because it was registered.

² W.P.(C) 8875/2009 & CM 6241/2009

INFRINGEMENT OF UNREGISTERED GEOGRAPHICAL INDICATION:

Section 20(1) of the Act prohibits any person from instituting any proceedings to prevent or to recover damages for the infringement of an unregistered geographical indication. However, this does not affect the rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

In *Braham v. Beachim*³, the plaintiff was the owner of and worked all the collieries in the parish of R. in Somersetshire and owned all the coal in that parish with a small exception. She carried on business of working the collieries and selling the coal in her own name adding to it on her wagons and bill-heads the words "R. collieries". The defendants from 1868 carried on at R. the business of coal merchant as the "R. Coal Co" having depots at various railway stations in the south and west of England at which they sold different kinds of coal. They became in 1876 the lessees of and worked a colliery outside the parish of R. but in a district or basin in which coal was raised similar to that raised within the parish, coal raised in the district, but outside the parish being known in the market as R. Coal. In 1873, the defendants began to sell coal at G. in Surrey by means of a local agent and in 1875 they bought the goodwill of a retail coal dealer named C. at G. who had become bankrupt. They then advertised themselves in the Surrey newspapers and otherwise in the neighbourhood as "The R. Colliery Proprietors and Factors, Coal and Coke Merchants (late C. & Co.)" and offered to supply coal of every description direct from the collieries. In such a fact, it was held that the defendants were not entitled to use the name "R. Colliery Proprietors" unless and until they should acquire a colliery within the parish of R. or to use any style implying that their coal came from the parish. of R. or unless and until they should become authorised to sell coals raised from a colliery within that parish.

In *Scotch Whisky Assn. v. Golden Bottling Ltd.*⁴The plaintiffs filed suit for restraining the defendant from dealing with whisky under the name "Red Scot" or any other name containing the word "Scot".

The Scotch Whisky Act, 1988 enacted in the UK defined Scotch whisky as such whisky (distilled and matured in Scotland) as conforms to a definition of Scotch whisky contained in an order made

³ (1878) LR 7 Ch D 848.

⁴ (2006) 32 PTC 656; (2006) 129 DLT 423.

by the Ministers. The Scotch Whisky Act and the Scotch Whisky Order showed that even in Scotland all whisky that is produced need not necessarily fall within the definition of Scotch whisky. Scotch whisky is known worldwide as a whisky produced in Scotland and is advertised as such.

The defendant was manufacturing and selling "Red Scot" whisky which gave an impression that it is Scotch whisky. It was argued that the word "Scot" or "Scotch" is a geographical indication within the meaning of Article 22.1, TRIPS Agreement inasmuch as it identifies whisky produced in Scotland. The plaintiff being the holder of unregistered geographical indication, the court enjoined the defendants from passing off its "Red Scot" whisky as a produce of Scotland.

UNCORKING VINICULTURE OF CHAMPAGNE:

The centrality of geographical influences for products such as wine is rooted in the idea of terroir. This elusive expression can be described as a much discussed term for the total natural environment of any viticultural site.⁵ It encompasses an original, and sometimes unique, combination of natural factors such as the quality and nature of the soils, climate, and location and orientation factors such as the slope and sunshine exposure of the vineyards. To these terroir quality attributes are added others that pertain to traditional winemaking processes⁶. So while the physical geography components-climate (temperature, rainfall); sunlight per unit of surface area; relief or topography; geology and pedology (a soil's physical and chemical characteristics); hydrology (soil-water relations) are important,⁷ the human skill and traditional know-how is a significant component as well.⁸

The vineyards of Champagne straddle the 49th parallel. The subsoil of the region is mainly chalk, which is highly porous and acts as a reservoir of water during summer months. Outcrops of limestone mixed with chalk and marl are naturally fissured, providing excellent drainage.⁹ Three grape varieties are predominantly used to make Champagne; pinot noir, chardonnay and pinot

⁵ Jancis Robinson (Ed.), *The Oxford Companion to Wine* (2nd Edn., OUP, Oxford 1999) 700.

⁶ E. Auriol et al, "France" in K. Anderson (Ed.), *The World's Wine Markets: Globalization at Work* (Edward Elgar, Cheltenham, UK 2004) 64.

⁷ See, James E. Wilson, *Terroir: The Role of Geology, Climate, and Culture in the Making of French Wines* (Mitchell Beazley, London 1998).

⁸ Elizabeth Barham, "Translating Terroir: The Global Challenge of French AOC Labeling" (2003) 19 *Journal of Rural Studies* 127.

⁹ Michael Edwards, *The Finest Wines of Champagne: A Guide to the Best Cuvées, Houses, and Growers* (University of California Press 2009) 23.

meunier.¹⁰ Champagne made exclusively from chardonnay grapes is Known as blanc de blancs; if made exclusively from the red skinned varieties, it is known as blanc de noirs.¹¹ The concept of terroir¹² is highly relevant to the production of Champagne wines.

Champagne vineyards are classified according to a system known as the Échelle des Crus (ladder of growth), whereby certain villages command a higher value for their grapes than other villages.

The traditional method of producing champagne is known as méthode-champenoise within the Champagne region. Primary fermentation takes place in vats or barrels, as for other wines. The wine resulting from primary fermentation of champagne grapes is acidic. The next step in the manufacture of champagne involves blending of several different wines to achieve the distinctive house style. The key to champagne production lies in a process of secondary fermentation, which takes place in the bottle. The blended wine is put into bottles, and a small amount of liqueur de tirage, a mixture of sugar and yeast dissolved in still wine is added. The bottles are then sealed with a crown cap (or crown cork), similar to a beer bottle cap.¹³ At the end of the designated riddling period, the crown cap is removed and the lees are disgorged, with minimal loss of wine. The lost volume is replaced with a fluid known as liqueur d'expédition; this practice is called dosage.

The final stage of production is the insertion of the cork that will stopper the bottle until consumption of its contents. The newly installed cork is secured by the addition of the muselet, the familiar wire cage, together with the tinplate cap that usually bears the logo or distinctive mark of the maison.

The complexity and the evolutionary development in the steps of production to achieve fine Champagne are two of the main reasons why the French are concerned to guard the reputation of the appellation and to secure the geographical indication to the Champagne region alone.

¹⁰ Grape Escapes, Champagne the grapes (2012) Grape Escapes, <<http://www.champagneescapes.com/grapes.shtml>>.

¹¹ Wine and Spirits magazine, The New Rose (2012) Wine and Spirits Magazine, http://www.wineandspiritsmagazine.com/pages/F&cF/1209_new_rose.html>.

¹² Terroir, a French word meaning sense of place, embodies the characteristics of geography, geology and climate that contribute to the qualities of the produce of the region.

¹³ Jancis Robinson, The Oxford Companion to Wine (4th Edn., OUP 2006) 150-53.

The complex and labour-intensive nature of the méthode champenoise, all contribute to the sense of identity and connection between the land, the produce and the people of Champagne. This fuels the passion and the desire of the Champenois to protect the product and the appellation.

INFRINGEMENT OF REGISTERED GEOGRAPHICAL INDICATIONS:

Section 2 of the Act deals with the infringement of registered geographic.

A registered geographical indication is infringed by a person who, not being an authorised user thereof,

- a) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or
- b) uses any geographical indication in such a manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.
- c) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

Act of unfair competition means any act of competition contrary to honest practices in industrial or commercial matters.

The following acts shall be deemed to be acts of unfair competition, namely:-

- i. all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;
- ii. false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competition;
- iii. geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

Section 23, GI Act, 1999 like Section 31, Trade Marks Act, 1999 recognises registration of a geographical indication to be prima facie evidence of its validity.

The plaintiff, in *Comite Interprofessionnel Du Vin De Champagne v. Chinar Agro Fruit Products*¹⁴, is the registered proprietor of the geographical indication "CHAMPAGNE" in respect of a naturally sparkling wine produced in the Champagne region of France by a process of double fermentation from grapes grown there. The defendant was engaged in the manufacture and supply of bottled beverages and nonalcoholic sparkling drinks under the name CHAMPAGNE. The plaintiff alleged that the defendant is taking the reputation in the name CHAMPAGNE and passing its goods as those originating from the Champagne region of France. The court held that use of the name CHAMPAGNE by the defendant on its products, which do not originate from the CHAMPAGNE region, amounts to infringement of the plaintiff's registered geographical indication.

The appellees in *Black Hills Jewellery Mfs. Co. v. Gold Rush Inc*¹⁵, are in the business of manufacturing a certain design of gold jewellery which they market under the name "Black Hills Gold Jewellery". The action was brought against the use by defendants of the words "Black Hills Gold Jewelry" describe jewelry of a style similar to that of appellees, but not manufactured in the Black Hills of South Dakota.

The appellees trace their beginnings back to one of the earliest manufacturers of "Black Hills Gold Jewelry", Mr F.L. Thorpe. The appellees were the only manufacturers of this design of jewelry who marketed it as "Black Hills Gold Jewelry", and their only place of manufacture was and is the Black Hills of South Dakota. Beginning sometime in 1977, other manufacturers and retailers began to market jewelry of this or a similar design as "Black Hills Gold Jewelry", although none of the jewelry was manufactured in the Black Hills. The consuming public generally considers the terms "Black Hills Gold" or "Black Hills Gold Jewelry" to refer to jewelry products manufactured in the Black Hills of South Dakota.

The actions of the defendants in promoting and selling jewelry not manufactured in the Black Hills as Black Hills Gold or Black Hills Gold Jewelry has created the likelihood of consumer

¹⁴ 2017 SCC OnLine Del 10704.

¹⁵ 633 F 2d 746 (8th Cir 1980).

confusion as to the origin of products.

Use of the terms "Black Hills Gold " or "Black Hills Gold Jewelry" will cause consumers to purchase products of the defendants when they in fact wished to purchase a product manufactured in the Black Hills of South Dakota. This will enable the defendants to wrongfully trade upon and profit from plaintiff's reputation and goodwill and will result in business losses to plaintiffs.

The Lanham Act, II U.S.C. Section. 1125(a) under which plaintiffs brought this action appears to continue this tradition of providing protection against outsiders for those using a geographical name. The statute prohibits a "false designation of origin", which would appear to prohibit a producer from labelling his product so as to make consumers believe it came from somewhere it did not.

The court also held, "Another section of the Lanham Act (15 U.S.C. Section. 1127) deals with what is known as a certification mark. This section also appears to provide protection for a group of producers using a geographical name to designate their product".

Evidence supporting the District Court's finding that the term "Black Hills Gold Jewelry" is merely geographically descriptive included the fact that appellees had advertised their product in a manner which utilised the history and folklore of the Black Hills of South Dakota. All gold jewelry sold as "Black Hills Gold" had been manufactured in the Black Hills for over 100 years. Thus an association with the geographical area was established. That appellants had in mind using this favourable association is apparent from their advertisements prominently displaying Mount Rushmore, as well as using historical folklore of the Black Hills in their advertising. The appellate court concurred with the District Court and found that the phrase "Black Hills Gold Jewelry" is merely geographically descriptive of origin.

The District Court found that there was a likelihood of confusion to consumers as to the origin of the products labelled as "Black Hills Gold" or "Black Hills Gold Jewelry". It found that appellees and their predecessors had made this high quality jewelry for over 100 years and sold it as "Black Hills Gold Jewelry". It also found that appellants' use of the term would cause consumers who wished to purchase a product produced in the Black Hills to purchase appellants' product instead. It stated this would allow appellants to wrongfully profit from appellees' reputation and goodwill

and result in business losses to appellees.

Canning companies in California, who put up and sell fruits grown in that State, have the right to use thereon the name "California" as a trade designation, and, when their products have become well and favourably known by such name, are entitled to protection by injunction against the fraudulent use on can of the same kind of fruit, grown and put up elsewhere, of labels designating it as California fruit, and falsely stating that it is put up in that state.¹⁶

In *J. Bollinger v. Costa Brava Wine Co. Ltd*¹⁷, the champagne houses sued importers of "Spanish Champagne" which was a sparkling wine produced in Spain. The plaintiffs were Champagne Houses of France and contended that only the wine produced in the Champagne District of France by the Champagne Houses was known as "Champagne", and that as such the wine had acquired a high reputation and that the use of the term "Spanish Champagne" would deceive by causing persons to believe that the wine so described was really Champagne. The assumptions of fact on which the legal argument was based were:

1. The plaintiffs carry on business in a geographical area in France known as Champagne;
2. The plaintiffs' wine is produced in Champagne and from grapes grown in Champagne;
3. The plaintiffs' wine has been known in the trade for a long time as "Champagne" with a high reputation;
4. Members of the public or in the trade ordering or seeing wine advertised as "Champagne" would expect to get wine produced in Champagne from grapes grown there; and
5. The defendants are producing a wine not produced in that geographical area and are selling it under the name of "Spanish Champagne".

The court held that "Champagne" had come to denote in the public's mind wine produced from grapes grown in the Champagne district of France which had acquired a high reputation. The judge also considered that not everyone, however, would realise that Champagne came from France, but those people would still recognise Champagne as defining a product with certain qualities and attributes. The point was that Champagne had created the necessary goodwill by reason of its qualities.

¹⁶ California Fruit Canner Assn. v. Myer, 104 Fed R 82.

¹⁷ 1960 Ch 262; (1959) 3 WLR 966; (1959) 3 All ER 800.

Pillsbury-Washburn Flour Mills Co. v. Eagle¹⁸ was a case in which the successful complainants in the number of seven established their several proprietary rights in the goodwill attaching to the use of a particular geographical description to distinguish their wares from those of other manufacturers.

In Vine Products Ltd. v. Mackenzie & Co. Ltd¹⁹, Cross J held that 1"sherry" meant fortified wine produced in the Jerez district of Spain and that the sherry producers and shippers were entitled to an injunction restraining the use of that word to describe wine not made in that area.

The word "sherry" as descriptive of a type of wine unless it was accompanied by some qualifying geographical adjective was held to denote wine produced by the solera method in the province of Jerez de la Frontera in Spain and the class entitled to the goodwill in the word was restricted to suppliers on the English market of wine produced in that province.

In Tea Board, India v. ITC Ltd²⁰, The Calcutta High Court considered whether the use of the words "Darjeeling Lounge" by the defendant to one of their lounges which served high end customers infringes the registered geographical indication of the plaintiff with regard to the word "Darjeeling". The contention of the defendant was that GI Act, 1999 is intended only for goods and the defendant rendering a service will not fall within the vice of infringement under the GI Act. The court came to the conclusion that though the focus of the GI Act is on goods; so much so that in the chapter relating to offences, there does not appear to be a direct recourse against any service wrongfully appropriating a registered geographical indication. Yet, both in the deeming provision of Section 22(1)(b), GI Act and in recognising other forms of passing off in Section 20(2) thereof, the GI Act may not altogether preclude a cross-category complaint.

The court came to the conclusion that the defendant's use of "Darjeeling" is not in connection with the designation or presentation of any goods. The first of Section 22(1) of GI Act, 1999 is not available for the plaintiff. The second limb conceives of the use of any geographical indication which would constitute an act of unfair competition including passing off. The expression "unfair competition including passing off" would not, by reason of the explanations in the relevant subsection, imply that every kind of passing off would amount to unfair competition. The phrase

¹⁸ (1898) 86 Fed R 608.

¹⁹ (1969) RPC I: 1968 FSR 625.

²⁰ (2011) 48 PTC 169 (Cal).

used is “unfair competition” and not "unfair practice" or "unfair trade practice". If every kind of passing off amounted to unfair competition, Section 20(2), GI Act, 1999 would be otiose.

Passing off as in Section 20(2), GI Act, 1999 has to be seen in the light of what it implies in trade mark law. As to whether any goods or services are passed off as some other goods or services would depend on a variety of factors ranging from the nature of the marks, their resemblance, the nature of the goods and services, the similarity of the character of the goods and services, the mode of accessing the goods or services and other surrounding circumstances.

The word "Darjeeling" —as precious to tea as may be Champagne to sparkling wines of that province in France —cannot be exclusively claimed by the plaintiff by virtue of its registration as a geographical indication or as a certification trade mark. Even for a case of passing off, the use of "Darjeeling" by a person other than the plaintiff can be complained of if the word or the geographical indication has any nexus with the product with which it is exclusively associated upon the registration.

The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks.

As to the case of dilution, the name "Darjeeling" has been extensively used in trading and commercial circles for decades before the GI Act, 1999 was enacted. In a case of dilution by blurring, it is the uniqueness of a mark which is protected even in a case where there is no likelihood of confusion. But the word "Darjeeling" has been and continues to be so widely used as a business name or for like purpose for so long that the plaintiff's recent registration would, prima facie, not entitle it to enjoy the kind of exclusivity that it asserts.

REMEDIES FOR INFRINGEMENT OF GEOGRAPHICAL INDICATION:

The legal remedies for geographical indication violation are comparable to those for trademark infringement. Similar to this, lying about a geographical indication is prohibited by the 1999

Geographical Indicators Goods (Registration and Protection) Act (Indian). There are two general categories into which remedies for geographical indication conservation may be divided:

- Civil remedies in India include injunctions, damages, and passing off. Injunctions protect against violations of related items, documents, or evidence, while damages prevent infringers from infringement. Damages can be ruled out if the defendant is unaware of the plaintiff's geographical indication and stops using it when they become aware. Courts have the discretion to order the infringer to deliver up infringing labels and indications for destruction, taking relevant circumstances into consideration. Passing off actions are initiated against the infringement of unregistered geographical indications.
- Criminal remedies are more effective than civil remedies because they can be disposed of quickly. Pendency of civil suits does not justify a stay of criminal proceedings, which directly attack the violator's honor and social status. In some cases, the violator may seek settlement out of court to save their reputation. Chapter VIII of the Act deals with offenses and punishment for such crimes, including falsely applying geographical indications to goods, selling goods to which false indications apply, misrepresenting geographical indications in registered form, incorrectly describing a place of geographically connected business indication registry, and falsifying entries in the register.

Penalties for infringement offenses range from six months to three years imprisonment and a fine of not less than rupees fifty thousand, but may extend to rupees two lakh. However, the court may grant lesser punishment for adequate and special reasons in writings.

CASE-LAWS:

BANGANAPALLE MANGO:

In 1997, the US granted a patent to Ricetec Incorporation for new lines and varieties of basmati rice. However, two Indian non-governmental groups and the Centre for Scientific and Industrial Research protested, demanding revisions to US rights guidelines. In June 2000, the Indian government formally contested the patent, arguing that the word "basmati" is not a geographical designation for rice and is not eligible for protection under the intellectual property rights agreement's trade-related clause. Ricetec argued that the name "basmati" is generic and has entered the public domain. The US Patent and Trademark Office limited the number of types granted patents in 2000, and the Geographical Indication Act of India was passed in 1999 to

address this issue.

BANGLAR RASOGOLLA v. ODISHA RASAGOLA (2017):

In 2017, West Bengal registered G.I. as Ras Banglar Rasogola, a popular dessert. Odisha won the legal battle to own the dessert, which originated at Jagannath temple in Puri, Odisha. An application to remove G.I. status was filed in February 2018, but Odisha registered G.I. as 'Odisha Rasgola' in July. Odisha won the race, but the G.I. registry has not registered the word all Rasogola / Rasgola. Instead, it prefixes two words for the G.I. tag: 'Banglar' and 'Odisha'. The term 'rasogola / rasgola' is a general term that can be used in trade and business. Both states have no monopoly on the word 'Rasogola / Rasola', so it is free to sell sweets as Rasgulla / Rasgola or any other synonym. However, the use of the words "Odisha rasgola" and "Benglar rosogola" by anyone other than authorized users is prohibited under the law.

CONCLUSION:

A registered Geographic Information (GII) tag is a legal document that prohibits the use of a product's trademark or name in any product that is similar to or misleading the registered product. This protection is crucial for marketing and exports, as it increases market access for these goods. The TRIPS Agreement has raised awareness of the need for adequate protection of geographic signals for all products, and negotiations by the World Trade Organization highlight the importance of preserving geographical signals for wines and spirits. National laws are the best way to provide protection for G.I.s, as they are not provisions of the treaty but actual laws. India is not far behind in legally pursuing this aspect of intellectual property.

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