

A Review on Protection of Geographical Indications

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ABSTRACT

"I don't feel compelled to think that the same God who gave us intellect, reason, and sensibility also meant for us to not use them."

- Galileo Galilee

All of these innovations fall under the purview of intellectual property as they are primarily the product of human brain. Geographical indications are among these attributes. Some products have special qualities that come from the place where they are made, like reputations and quality. Therefore, as the name implies, a geographical indicator (GI) is a designation of a geographic area that has a unique flavor or character that can be traced back to its source. The rural economy may benefit from both the short-term financial gain and the long-term advantages that come with GI products' increased market share and attention. GI produces a number of ancillary industries, including gastronomy, traveling, and expanding a brand. Therefore, there is a need to understand and appreciate the GI tags and the relating legal protection. Parallely, there is also the need to propagate the awareness relating to GI and the relevant regional protection.

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1. INTRODUCTION

Innovation is the force behind the modern world. From leading a pastoral lifestyle to its current state, humanity has advanced significantly. The exceptional intelligence of humans is what sets them apart from other animals, or rather, what gives them an advantage over them. From bicycles to jets, from letters to emails, from simple calculators to powerful computers, and so on, the intellect is responsible for a variety of corporate and scientific advances. All of these innovations fall under the purview of intellectual property, as they are primarily the product of human brain. Geographical indicators, or signals demonstrating the relationship between certain products and their areas of origin, are one example of such a feature. It goes without saying that a location's climate affects its soil, vegetation, labor, materials, etc. Some products have special qualities that come from the place where they are made, like reputations and quality. Therefore, as the name implies, a geographical indicator (GI) is a designation of a geographic area that has a unique flavor or character that can be traced back to its source. Champagne, Swiss watches, and Basmati are a few inspirations.

Their protection is necessary in order to encourage these GIs to continue developing and to make money for the owner while also utilizing GI to advance industry and society. In order to guarantee that the owner's rights are not abused by outside parties and that the benefit is received by the deserving individual, several states have granted protection for GI in their respective jurisdictions based on the relationship between the geographically origin and its quality or reputation.

Research Objectives

1. The purpose of this study is to comprehend the significance of geographic indications in agricultural growth.
2. To recognize the role that geographical designations can have in preserving traditional understanding and cultural manifestations.
3. To determine the methods for obtaining GI privileges within and between states.
4. To study the means available for protection of GI.

Investigation Methodology

Newspapers, breaks down, studies, books, periodicals, and websites have been the primary sources of information for the researcher. Both primary and secondary sources, as well as non-doctrinal approaches, form the basis of the study. Similar references have been made to a number of international treaties and reports.

Appraisal of Literature

Researchers have referenced to numerous books and journals written by well-known experts in the topic. For this report, the examiner examined websites like Legalserviceindia, Wipo, Lawctopus, Pathlegal, and Ipleaders. WIPO site reports make up the majority of the data used in this study.

Investigation Questions

1. Why is geographical designation protection necessary?
2. What are the several ways that regional designations can be obtained?

2. GEOGRAPHICAL SUGGESTION

Someone's preference for "Darjeeling" over tea or whisky over brandy is an example of the fundamental idea of Geographical Indication. These preferences are founded on the company's track record and quality in relation to its location of origin, which has distinctive features.

Article 22.1 of the TRIPS Agreement defines physical indications as

"Evidence that a good originated in a Member's territory, or in an area or place within the region, and that a certain quality, image, or other attribute of the good is primarily due to its geographic origin. (Part II—Requirements for the accessibility, extent, and application of trademark rights, 2021). A GI tag typically includes the title of the spot where the product originated, such as "Jamaica Blue Mountain," but this is not always the case; place-related symbols, such "Cava" or "Arghan oil," can also be used as GI tags. The product must include features that take into consideration its place of origin. It should have a unique quality and reputation that demonstrates the two are inextricably linked.

Generally speaking, the temperature, soil, rainfall, irrigation, and other factors related to the product's place of origin all contribute to the unique quality attributes of agricultural items. As a result, food and agricultural products include a large number of GIs. However, some GIs are awarded based on traits that can be attributed to human intervention, such as unique or traditional production techniques used in handlooms. Swiss watches are another example of a GI that demonstrates the abilities and quality-based standards of GI (Geography indications - Overview - WIPO, 2021).

3. REQUIREMENT OF GEOGRAPGICAL INDICATION

Let's imagine you are looking to purchase a pair of sneakers. When choosing a product, what qualities come to mind first? Among the key components of the fixing criterion are budget, quality, and brand. Many consumers favor goods from particular companies or regions, such as Kashmir, where Shawls are renowned for their excellent quality and low weight. GI allows for the creation of native goods according to the characteristics of the source. It functions as a marketing tactic to draw clients, boosting output while fostering relationships based on trust and quality that increase brand recognition.

The World Trade Organization's (WTO) duties to safeguard GIs under TRIPS (Trade Relevant Aspects of Intellectual Residence Rights) have fostered GI growth and increased market interest. Additionally, GI serves as a differentiator by letting users select from a wide variety of articles according to their interests while introducing a margin of quality features based on factors like location, skill, rapport, etc. Since localized producers typically have the rights related to GI, it offers rural communities a chance to grow. The rural economy may benefit from both the short-term financial gain and the long-term advantages that come with GI products' increased market share and attention. Among GI's ancillary benefits are gastronomy,

tourism, and brand promotion. The likelihood of success does not ensure that the system will be used well; careful consideration and planning, particularly with regard to the GI scheme, are required to balance the odds. Neogi, n.d. Traditional information and customary cultural displays are more commonly associated with GIs. GI goods are frequently the result of local communities' use of historical and culturally relevant information, abilities, and techniques. When paired with indigenous techniques and abilities, handicrafts, handlooms, and pottery created from locally available natural resources provide the GI regime with an alternative path.

As long as the relationship between the product and its locales is preserved and generalization has not infiltrated GI's framework, Tradition Knowledge (TK) and Traditional Cultural Expressions (TCEs) are compatible with GI in that they offer protection for an indefinite period of time. Since they prohibit transfer to anyone outside of the specified territories through licensing or distributing, these take the form of collective rights. Johnson, n.d. Listed below are some indirect ways that GI helps to protect TK and TCEs, which are in the public domain under traditional IP solutions:

1. By acknowledging the significance of TK and TCEs, GI protection aids in their preservation for future generations. For example, TK-related procedures may be included in the "code of practice" in the GI system.
2. By favoring old methods over less expensive ones, GI keeps traditional knowledge and procedures from disappearing.
3. The commercialization of TK and TCEs may benefit from GI.
4. GI also offers a platform for differentiation of goods, which helps to fight counterfeit and other deceptive practices.

4. GEOGRAPHICAL INDICATION ARRANGEMENT

Just recognizing GI is insufficient; a well-thought-out GI program and its appropriate implementation are needed to use GI for brand market development, rural growth, or the preservation and conservation of TK and TCEs, for what matters. Some crucial actions for the objective are listed below:

1. Determining the product's inside or outside market based on its attributes and features.
2. It is necessary to strengthen the unity among the producers and other workers.
3. Developing "regulations of use" or a "code of practice" that addresses the procedures and techniques used in the production process while taking into account the region's natural and man-made elements.
4. The creation of an efficient, well-thought-out process is required to allocate the right to use the GI among producers and workers in conformity with the specified norms and agreed restrictions.
5. Developing methods for inspection and tracking to guarantee quality and adherence to the "rules of use."
6. Developing tactics for the market.
7. A plan for GI's legal defense and prosecution. Advocates (2008)

Beyond the aforementioned procedures, the money for creating GI programs is a necessary obstacle that varies widely depending on the circumstances. Additionally, the plan is ongoing and requires periodic monitoring and revision. If obtainable, financial investment streamlines the process overall while accounting for the challenges of both home and abroad markets.

5. FORTIFICATION OF GEOGRAPHICAL INDICATION

The image of an area is closely related to GI. It represents an emotional bond between the producers and the consumer, entwined with tradition and culture. As such, it is a shared resource that must be safeguarded from unauthorized usage, which could have negative consequences. Unauthorized use not only deceives customers who are led astray into thinking the product is authentic, but it also hurts creators' market share because duplicates damage their name and financial gains. The safeguarding of GI is essential to prevent unauthorized parties from taking advantage of the work of others and damaging its reputation irreparably, as well as to let legitimate owners to use and benefit from their labor.

Prevention registration of the GI as trademark

For products that are comparable to those listed by GI, indications that qualify for protection in one country but not in another may be registered as trademarks. When businesses register indications as different signs for the same items for which no GI has been recognized as a trademark, this kind of circumstance typically occurs. A product becomes generic when it is used as a popular moniker even though it has geographical limitations but no GI, allowing anyone to use it. Therefore, GI registration aids in preventing the registration of a trademark for similar products. When someone else fails to generate in the authorized

zone or is not abiding by the "rules of regulation," a GI holder has the authority to stop them from using the name connected with GI. (WIPO, 2021) Geographical the benefits: A primer.

6. PROCEDURE OF OBTAINING GEOGRAPHICAL INDICATION

Multiple judicial systems around the world employ a variety of strategies to protect GI, taking into account their historical and economic circumstances. Occasionally, a mixture of two or more methods may be employed. Three primary GI protection measures are as follows:

a) **Sui generis structures of protection**

It is a system that just and especially pertains to them. In contrast to other intellectual property rights, it grants a particular right with regard to GI. Examples include groceries, wines, spirits, and agricultural products that are protected by the EU (European Union). Countries in the Andean Community, Switzerland, India, and the African Intellectual Property Organization also have access to this system. Although different countries may use different terms to indicate indications, such as "appellations of birth, regulated designations of origin, protected designation of origin, safeguarded geographical indications, or simply geographical symptoms,"

A request for the issuance of a Sui generis right basically involves a document called a "Product Specification," which details the delineation region, production norms (rules of regulations), quality, features related to the place of origin, and reputation. In order to guarantee optimal efficiency, it typically also entails monitoring and regulating systems.

b) **Combined Marks and Certification Marks**

Multiple people may utilize certification marks or collective marks. All that is required is that the user adheres to the rules or guidelines set forth by the holder. Through this, nations like China, the USA, Canada, and Australia protect GI. The primary distinction between certification and collective names is that certificate marks are open to anybody who meets the holder's requirements, whereas collective marks are restricted to organization members. In these situations, the mark holder often serves only as a certifying authority, guaranteeing adherence to the set requirements, and does not have the power to use the brand herself. Under normal trademark law, GI can defend both of these marks in the event that they are confused or used by someone without permission.

c) **Laws if for business practices**

Laws pertaining to business operations, such product labeling, protecting customers, and antitrust violations, may also provide indirect protection for GI by outlawing actions that would otherwise result in their unauthorized use.

7. DEFENSIVE GEOGRAPGICAL INDICATIONS ABROAD

IP adheres to the territoriality concept, which states that rights are only safeguarded in the jurisdiction where they are initially acquired. Therefore, the following four primary avenues are accessible to safeguard GI in foreign governments:

1. **Bilateral contracts**

Treaties or other multilateral agreements between respected states may provide protection for GI. These kinds of agreements are typical in the wine and spirits industry.

2. **Direct security**

As was previously mentioned, GI can be protected using a variety of direct protection techniques, including certification marks, collective marks, and sui generis marks. When multiple approaches are available in a jurisdiction, the one that best fits the circumstances may be chosen. For instance, an application for collective or certification mark registration may be submitted directly to the appropriate trademark agency in Australia, China, or the United States of America in order to protect a GI. A Protected Geographical Indication (PGI) or Protected Designated of Origin (PDO) can be registered by anybody looking to obtain protection for GIs that designate foodstuffs or agricultural products in the EU. Additionally, a collective mark registration application can be submitted to the European Union Intellectual Property Office (EUIPO)."

3. **Lisbon Settlement**

In order to protect appellations of origin, the Protocol of Lisbon was created on a global scale. When an appellation of origin is recognized and protected in the state of origin, it is the only one that can be preserved. Through a single document known as international registration, a member state can get protection in the territory of all other state parties. This is the benefit in this case. WIPO receives the registration from that nation of origin.

4. **Madrid structure**

The Madrid agreement, also known as the "Madrid Agreement Concerning the International Registering of Marks, concluded in 1891, and the Protocol relating to the Madrid Agreement, adopted in 1989," can be used to protect GI. WIPO oversees the management of these treaties. According to this agreement, GI can be protected as collective, guarantee, or certification marks by registering once in the state of origin (trademark office). The first prerequisite is that the mark must have been registered or lodged with the state of origin. The application must specify which contracting states are seeking protection. If no contracting party declines within the allotted time, the mark is granted for ten years, with the possibility of renewal every ten years, forever. (WIPO, 2021) Geographical indications: An Overview.

8. CONCLUSION

Although geographical indicators are among the oldest types of intellectual property, their inherent value has only lately come to light. The GI has a great deal of potential for local region development because it is founded on territoriality. Given that GI have strong ties to tradition, knowledge, tradition, and status that can be used to preserve TK and TCEs, the TRIPS agreement's requirements for member states are extremely extraordinary.

The study outlines the risks to unprotected GIs and provides an overview of the different national and international GI protection strategies. The GI scheme's planning period is key to its overall execution and success, and it is as important to regularly monitor and control it to ensure that this valuable intellectual property is not lost along with the chance for traditional and commercial development. Despite the fact that there are various strategies for protecting GI nowadays, many (rural) people still lack the knowledge and knowledge of these rights. The big corporates use this unconsciousness as a tool for exploitation through means such as registering trademarks. To prevent such misfortunes and help in the development of GI along with TK and TCEs (the golden trio), it is necessary to create awareness about these rights among the ignorant masses. Further proper legislation needs to be placed in order to prevent such acts and attempts from ruining the beautiful natural diaspora of goods with their locations and ultimately improving the economy of the area and businesses of the rightful owners.

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