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Sweet & Savoury - A GI Story

■ Bharadwaj Jaishankar & Mohit Goel

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he recent spate of news articles on the grant of Geographical Indication (“GI”) protection for “Rasogolla” to the State of West Bengal and the resulting

anxiety and concern expressed by the State of Orissa has seen the law of Geographical Indications take centre-stage. The law pertaining to GIs is a fairly niche area of IP law, that not too many legal practitioners and stake holders are aware of.

WHAT IS A GI?

Before explaining what a GI is, it is pertinent to note that India has enacted a sui generic law that governs GIs in India- Geographical Indications of Goods (Registration and Protection) Act, 1999 (“GI Act”). A GI is an indication that identifies

goods as originating or manufactured in a given territory (whether a country or a region/ locality in the country), where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographic origin. Put differently, a GI is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. Examples of GIs include Champagne, Scotch Whisky, Darjeeling Tea, Niligiri Tea, Kota Doria, Kullu Shawl, Kancheepuram Silk, etc.

A reading of the definition of a GI makes it apparent that the crucial determinative factor is a “product-place” link, whether the said link is backed by qualitative factors or reputation/ public perception factors or other factors. The GI Act recognizes agricultural



176, Ashoka Enclave-III,
Sector-35, Faridabad -121003,
National Capital Region (NCR)
T: +91 0129 4132176 | E:
admin@simandsan.com

goods, natural goods and manufactured goods as capable of having a GI significance. While the GI Act does recognize goods as capable of qualifying as GIs, services have not been recognized, thereby implying that services are not capable of having GI significance.

The understanding of the concept of a GI becomes clearer, when it is distinguished from a trade mark. While a trade mark is a private right, a GI is a collective-community right; i.e. all the stakeholders involved in a GI have an equal right to use and benefit from the GI. It, therefore, follows that the owner of a GI is nothing but a custodian, who holds the GI on behalf of all the stakeholders, and is a non-trading entity. On the other hand, a trade mark owner is not a custodial owner, instead having private commercial interests in the trade mark. Further, while a trade mark acts a distinguisher of goods and services of one enterprise from those of other enterprises, a GI tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. That being said, it is important to state that a GI may also be registered under the Trade Marks Act, 1999 as a certification trade mark and a collective trade mark. In fact, in some foreign jurisdictions, in the absence of a sui generic GI law, the most effective mechanism to protect a GI is as a certification trade mark and/ or a collective trade mark.

THE PUBLIC PERCEPTION FACTOR


One of the cornerstones of a GI is the public perception/ reputation factor. The “product-place” link of a GI emanates and is influenced from a public recognition and understanding of the fact that a given GI product originates from a given geographic location. Put contextually, the public perceives and is aware of the fact that Swiss Chocolate originates from Switzerland or that Darjeeling Tea originates from Darjeeling district in the State of Assam. Such perception can be attributed to different reasons, for example the influence of natural/ climatic factors in manufacturing

Swiss Chocolate or Darjeeling Tea or indications/ symbols used in Swiss Chocolate or Darjeeling Tea product packaging that refer or show the place of origin.

What is interesting, however, is the fact that a reading of the definition of a GI under the GI law in India seems to suggest a product is capable of having a GI significance even in the absence of reputation. This is so as the definition uses the word “or”. Conversely, it is equally possible that a given product has no unique characteristics that are associated with the place of origin and, instead, only has a reputation as originating from a given place, and an example of this would be the Nagpur Oranges GI, which despite being mostly cultivated outside Nagpur are still called ‘Nagpur Oranges’ due to the local market for their trade being in Nagpur.

THE “RASOGOLLA” OUTCRY

As is now well documented and reported, the issue in this case was a tussle between two States as to the origin of Rasogolla. Each State claimed to have invented the sweet. While this tussle goes back a few years, the State of Orissa never did lodge an opposition with the GI Registry.

While the issue really heated up when the GI Registry granted registration to the State of West Bengal, what was missed, and cleverly picked up by a few news agencies, was the fact that the registration was granted for “Banglar Rasogolla”. While the name of the GI itself connotes that this is a sweet originating from State of West Bengal, the application also identified the production areas as those in the State of West Bengal. It follows from this that nothing prevents the State of Orissa (or any other State for that matter!!) from filing an application to register “Odisha Rasogolla” (or the like terms) as a GI. What matters is showing that “Odisha Rasogolla” has an independent existence and perception as a sweet that is different from its Bengali counter-part. 



Bharadwaj Jaishankar is an Associate Partner in the Firm's Intellectual Property and Dispute Resolution team. Bharadwaj's expertise extends to advising Clients on protection and enforcement of trademark, copyright and design rights. Bharadwaj regularly appears before various Courts and Tribunals across India. In addition, Bharadwaj is an active member of the International Trademark Association (INTA) and is currently a member of INTA's Emerging Issues Committee, wherein he is examining emerging issues and trends in the field of trade marks.



Mohit Goel is a Partner in the Firm's Dispute Resolution team. Mohit's expertise extends to dispute resolution in the field of Intellectual Property Rights and Arbitration and Conciliation. Mohit has played and continues to play a key role in some of India's biggest Intellectual Property disputes. Mohit is also an active member of the International Trademark Association (INTA).