INDIAN TEA INDUSTRY IN THE CONTEXT OF INTELLECTUAL PROPERTY RIGHT (IPR) AND GEOGRAPHICAL INDICATION (GI)

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ABSTRACT

Today tea is more conventional, and is becoming part of beverage offerings in many establishments. The tea industry has a significant and special place in the Indian economy. Tea is the country's primary beverage, with almost 85% of total households in the country consuming tea. India is the world's largest producer and consumer of tea. India is an imperative tea exporter, with around 12-13% of world tea exports. Further, certain varieties of tea (viz., Darjeeling, Assam, Nilgiri teas) are grown only in India and are in great demand across the world. Darjeeling teas possess the lightness of flavour and fine colouring that set them apart from all other teas. Darjeeling tea is the pride of Indian tea in the globe. From the ancient time, Indian tea has fame for its quality. But due to dishonest practices followed by some corrupt traders in India as well as in others foreign markets the fame of Indian tea has gradually been hampered in the last few years. Blending with other cheaper quality tea from different origin and packaged as tea from Indian origin (particularly as Darjeeling tea) affect market of Indian tea drastically in the foreign countries.

In this backdrop, Darjeeling tea in particular and Indian tea in general required full protection under the umbrella of IPR (Intellectual property rights) and GI (Geographical Indications) as per Trade Related Aspects of Intellectual Property Rights (TRIPS) guided by WTO.

In this paper we have made a modest attempt to highlight the necessities of moving towards IPR and GI in the context of Indian tea as well as the steps have been taken by the government front in this regard.

KEYWORDS: IPR, GI, Blending, TRIPS, Export.

INTRODUCTION

From crowded bazaars to railway platforms, tea (Chai) is attached in India. Usually consumed in the Indian sub-continent from the turn of the 20th century, tea is an essential commodity for most people living in this part of the world. Today tea is more conventional, and is becoming part of beverage offerings in many establishments.
The tea industry has a significant and special place in the Indian economy. Tea is the country's primary beverage, with almost 85% of total households in the country consuming tea. India is the world's largest producer and consumer of tea, accounting for 27% of the world tea production in 2003. India’s expenditure on beverages and processed foods accounts for 8% of food expenditure in rural areas, and 15% in urban areas.

India is also an imperative tea exporter, with around 12-13% of world tea exports. Further, certain varieties of tea (for example Darjeeling) are grown only in India and are in great demand across the world. Darjeeling teas possess the lightness of flavour and fine colouring that set them apart from all other teas. Darjeeling tea is the pride of Indian tea in the globe. From the ancient time, Indian tea has fame for its quality. But due to dishonest practices followed by some corrupt traders in India as well as in others foreign markets the fame of Indian tea has gradually been hampered in the last few years. Blending with other cheaper quality tea from different origin and packaged as tea from Indian origin (particularly as Darjeeling tea) affect market of Indian tea drastically in the foreign countries.

In this backdrop, Darjeeling tea in particular and Indian tea in general required full protection under the umbrella of IPR (Intellectual property rights) and GI (Geographical Indications) as per Trade Related Aspects of Intellectual Property Rights (TRIPS) guided by WTO.

WHAT IS IPR?

Intellectual property rights are a collection of exclusive rights over creations of the mind, both artistic and commercial. The former is covered by copyright laws, which protect creative works, such as books, movies, music, paintings, photographs, and software, and gives the copyright holder exclusive right to control reproduction or adaptation of such works for a certain period of time.

The second category is collectively known as "industrial properties", as they are typically created and used for industrial or commercial purposes. A patent may be granted for a new, useful, and non-obvious invention and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time. A trademark is a distinctive sign which is used to prevent confusion among products in the marketplace.

An industrial design right protects the form of appearance, style or design of an industrial object from infringement. A trade secret is an item of non-public information concerning the commercial practices or proprietary knowledge of a business. Public disclosure of trade secrets may sometimes be illegal.

The term intellectual property denotes the specific legal rights described above, and not the intellectual work itself.

There is a well-established statutory, administrative and judicial framework to safeguard intellectual property rights in India, whether they relate to patents, trademarks, copyright or industrial designs. Well-known international trademarks have been protected in India even when
they were not registered in India. The Indian Trademarks Law has been extended through court decisions to service marks in addition to trade marks for goods. Computer software companies have successfully curtailed piracy through court orders. Computer databases have been protected. The courts, under the doctrine of breach of confidentiality, accorded an extensive protection of trade secrets. Right to privacy, which is not protected even in some developed countries, has been recognized in India.

Protection of intellectual property rights in India continues to be strengthened further. The year 1999 witnessed the consideration and passage of major legislation with regard to protection of intellectual property rights in synchronization with international practices and in compliance with India's obligations under Trade Related Aspects of Intellectual Property Rights (TRIPS). These include:

1. The Patents (Amendment) Act, 1999 passed by the Indian Parliament on March 10, 1999 to amend the Patents Act of 1970 that provides for establishment of a mail box system to file patents and accords exclusive marketing rights for 5 years.

2. The Trade Marks Bill, 1999 which repeals and replaces the Trade and Merchandise Marks Act, 1958 passed by the Indian Parliament in the Winter Session that concluded on December 23, 1999.

3. The Copyright (Amendment) Act, 1999 passed by both houses of the Indian Parliament, and signed by the President of India on December 30, 1999.


5. The Industrial Designs Bill, 1999 which replaces the Designs Act, 1911 was passed in the Upper House of the Indian Parliament in the Winter Session which concluded on December 23, 1999 and is presently before the Lower House for its consideration.

6. The Patents (Second Amendment) Bill, 1999 to further amend the Patents Act, 1970 and make it TRIPS compliant was introduced in the Upper House of Indian Parliament on December 20, 1999.

In addition to the above legislative changes, the Government of India has taken several measures to streamline and strengthen the intellectual property administration system in the country.

As regards the aspect enforcement, Indian enforcement agencies are now working very effectively and there has been a notable decline in the levels of piracy in India. In addition to intensifying raids against copyright infringers, the Government has taken a number of measures to strengthen the enforcement of copyright law. Special cells for copyright enforcement have been set up in all States and Union Territories. In addition, for collective administration of copyright, copyright societies have been set up for different classes of works.
It has been alleged that there is absence of effective patent protection in the pharmaceutical sector. India does provide for patents in the pharmaceutical sector. However, in terms of Section 5 of the Patents Act, the patents are presently restricted to the methods or process of manufacture and not extended to the substances/products themselves. In terms of the TRIPS Agreement, India has time till January 1, 2005 to extend patent protection to this area. The ten year transition period available for providing product patents to pharmaceutical products is within WTO rules.

NEED FOR GI

A Geographical Indication can be confined through a wide variety of appropriate legislations in specific countries. The commonly used laws are specific legislation for Geographical Indications, Appellations of Origin, Certification Trade Marks, Collective Marks, etc.

Many famous GIs like Scotch whisky are protected by separate Statute (The Scotch Whisky Act 1988) in their country of origin, which defines the product and its manner of use/users. The issue of international protection through treaties is also of relevance. India is a signatory to the Paris Convention for the Protection of Industrial Property. It is, however not a signatory to the Lisbon Agreement for the Protection of Appellations of Origin and Their international Registration which has 23 signatory countries. The WIPO administers the system of international registration of marks under two treaties-the Madrid Agreement and the Madrid Protocol. India is not a signatory. There is also the possibility of registration in a group of countries. This is relevant in the E.U. where a “Community registration” is possible at the office of the Harmonization of the Internal Market (OHIM) at Alicante, Spain.

India is a founder member of the World Trade Organization (WTO) and Articles 22 to 24 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) relating to Geographical Indications is of importance in this context. India, along with several other has countries, had taken the initiative to push for the same protection to other products as envisaged for “wines and spirits” in the TRIPS agreement. The main advantage would be to develop a multilateral system of notification and registration of all Geographical Indications. The Doha Ministerial Declaration under paragraphs 12 & 18 provides the mandate for the issue of providing a higher level of protection to Geographical Indications to products other than “wines and spirits” to be addressed by the TRIPS Council.

INDIAN PRODUCTS NEEDING GI (GEOGRAPHICAL INDICATION) PROTECTION

- BASMATI RICE
- DARJEELING TEA
- MADRAS PAAN
- KASHMIR CARPETS
- SHIVAKASHI CRACKERS
- POCHAMPALLY SAREES
- MALABAR PEPPER
- HYDERABAD ANEA-BE-SHAHI GRAPES, and
- ALPHONSO MANGOES

(Note: This list is illustrative, not exhaustive)

TEA BOARD OF INDIA AND ITS INTELLECTUAL PROPERTIES

All teas produced in the tea growing areas of India are administered by the Tea Board of India under the Tea Act, 1953. The Tea Board is not involved in the manufacture of any product and is run on a non-profit basis. The functions of the Tea Board are, amongst other things, to regulate the production and cultivation of Indian tea, to improve the quality of Indian tea and to improve the marketing of Indian tea within India and abroad.

The tea industry in India is highly regulated. Under the Tea Act, 1953, the Tea Board has been constituted by the Government of India (GoI) to regulate the production and extent of cultivation of tea; improve the quality of tea; promote cooperative efforts among growers and manufacturers of tea; secure better working conditions and the provisions and improvement of amenities and incentives for workers; etc. Permission has to be obtained from the Tea Board for planting of tea on any land not planted with tea; replacement of tea area by planting tea on area not planted with tea. The Tea Board also regulates and controls the total area of land under cultivation.

In order to ensure the supply of genuine Darjeeling tea and check labelling of other teas as 'Darjeeling Tea', the Government has incorporated a compulsory system of certifying the authenticity of exported Darjeeling tea into the Tea Act. This system makes it compulsory for all the dealers in Darjeeling tea to enter into a licence agreement with the Tea Board of India on payment of an annual licence fee. The terms and conditions of the agreement provide, inter alia, that the licensees must furnish information relating to the production and manufacture of Darjeeling tea and its sale, through auction or otherwise. The Tea Board is thus able to compute and compile the total volume of Darjeeling tea produced and sold in the given period. No blending with teas of other origin is permitted. The customs authorities in India have instructed, by circular, all customs checkpoints to check for the certificates of origin accompanying the Darjeeling tea consignments and not to allow the export of any tea as 'Darjeeling' without this certificate. This ensures the sale-chain integrity of Darjeeling tea until consignments leave the country.

In order to provide legal protection in India, the Tea Board has also registered the 'Darjeeling logo' and also the word 'Darjeeling' as Certification Trade Marks (CTMs) under the Indian Trade and Merchandise Marks Act, 1958 (now the Trade Marks Act, 1999). At the national level, the words 'Darjeeling' and 'Darjeeling logo' have been proposed for incorporation in the Indian Geographical Indications (GI) registry under the Geographical Indications of Goods
(Registration and Protection) Act, 1999 which came into force with effect from September 15, 2003.

The objective of the Tea Board, under the Darjeeling Certification Trade Mark Protection Scheme, is to put in place a mechanism to ensure the supply chain integrity for DARJEELING tea so that the tea leaving the shores of India and claimed as 'DARJEELING' tea worldwide is truly a genuine Darjeeling tea. For fair and competitive marketing of Indian tea in the international markets, the Tea Board has been administering its intellectual properties (Logos) which are as under:

The three above marks are widely known as Speciality Tea Logos of the Board indicative of the geographical origin of produce. These Speciality Tea Logos are also known as Certification Trade Marks (CTM) of the Board. The CTM Logos have been registered under Trademark Laws of various international jurisdictions. Several users of these logos are permitted by the Tea Board to use these in the course of their tea trade as marks of origin.

WHAT IS A CERTIFICATION TRADE MARK?

The utility of trade mark is to indicate trade origin. It serves the purpose of distinguishing the goods of one trader from those of other traders. On the other hand, the rationale of a certification trade mark is to indicate that the goods on which it is impressed have been certified by some expert persons in respect of some characteristic of the goods like origin, composition, mode of manufacture, or quality. The proprietor of such a mark does not himself sell or deal in the goods. Manufacturers or dealers in the goods get them certified by the proprietor of the mark and attach the mark thereon to indicate to the public that the goods have been so certified. The manufacturer or dealer may in addition to the certification trade mark fix his own trade mark on his products. Thus an ordinary trade mark and a certification trade mark may be used side by side in relation to the same goods.

Three considerations, obviously, emerge from the special nature of a certification trade mark. First, it must be adapted to serve the special purpose. Second, the person certifying the goods as to any particular quality or characteristic or origin must be competent for the purpose. Finally, the use of such mark must be regulated by duly framed rules to prevent its abuse. In the Certification Trade Mark Protection Scheme of the Tea Board all the above mentioned three considerations are fulfilled.
GEOGRAPHICAL INDICATION OF GOODS (REGISTRATION & PROTECTION) ACT 1999 IN THE POST-WTO SCENARIO AND TRIPS

In the revive of a new global trade system mandated by the W.T.O., it has become imperative to update and reinforce the existing legal procedures for administration of intellectual property rights including geographical indications in India. Under the TRIPS Agreement, there is no obligation on the part of any member state to protect any geographical indication which has fallen into disuse or ceased to be protected in its country of origin. In addition, in recognition of the mandatory international regime, Indian Parliament has passed the new law [GI of Goods(R&P) Act, 1999] for registration and better protection of geographical indications.

The Act provides for the registration and better protection of GIs relating to goods. While the Act does not make provision for individual ownership, any association of persons or producers or any organization or authority representing the interest of the producers of the concerned goods can apply for registration in accordance with the provisions of Section 11 of the Act.

Section 2(e) of the act defines Geographical indication in relation to goods as agricultural goods, natural goods, manufactured goods originated or manufactured in the territory of country or a region or locality in that territory where a given quality reputation or other characteristic of such goods are attributable to its geographical origin and in case such goods are manufactured goods one of the activities of either the production or of processing or of preparation of the goods concerned takes place in such a place, region or locality.

DARJEELING TEA AND THE DARJEELING LOGO & TEA BOARD'S ROLE

Darjeeling is a district of West Bengal, India. Since about 1835, tea has been cultivated, grown and produced in certain tea gardens geographically located in the areas within the State. Due to the unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed by the Tea Board, such tea has a distinctive and naturally occurring quality and flavour which has won the patronage and recognition of discerning consumers all over the world. Consequently, the tea produced in the aforesaid region and having the said special characteristics, is and has for long been known to the trade and the public in India and abroad as Darjeeling tea and as such it has acquired domestic and international reputation. Any member of the trade or public in India or abroad ordering Darjeeling tea or seeing tea advertised or offered for sale as Darjeeling will expect the tea so ordered, advertised or offered for sale to be the tea cultivated, grown and produced in the District of Darjeeling and having the aforesaid special characteristics.

In order to make the name Darjeeling distinctive of and exclusively evocative of the district of Darjeeling, the Tea Board designed a logo which consists of the word DARJEELING and a depiction of an Indian woman holding tea leaves, all precise in a roundel. In its aesthetic combination of the word DARJEELING with the woman device, the DARJEELING logo created by the Tea Board has been a source of exclusive public recognition and identification of Darjeeling tea as a geographical indication for a uniquely flavoured tea coming from the district.
of Darjeeling in India. The said DARJEELING logo has been extensively used by all producers, packeteers and exporters of Darjeeling tea, under licence and authority of the Tea Board.

Therefore, the word "Darjeeling" qualifies as a certification trade mark since it is adapted to describe tea originating in the said region in terms of its naturally inherent quality or characteristics and thus distinguish the same from other teas.

It is in order to support the Tea Board in its role that it has applied /registered for a Certification Trade Mark for the word DARJEELING as well as the DARJEELING logo respectively in various jurisdictions. This is because the Tea Board will be in a position to bring actions for breach of the Certification Marks or either of them.

The Tea Board is eager to reform the procedure for a consistent and easily verifiable use of the name DARJEELING in relation to tea, in its all forms, and the DARJEELING logo (hereinafter "the Certification Trade Marks") as guarantees of Darjeeling tea. The Tea Board will license persons who wish to use the Certification Marks ("authorised users") if it is satisfied that those persons will only use the Marks in relation to tea conforming to appropriate standards and coming from the Darjeeling area. The approach of use of the Certification Marks upon or in relation to Darjeeling tea certified as such, would be determined by the Tea Board and be subject to its approval before commercial use thereof. It may be noted from Regulation 5, that there is no requirement of submission of samples with the application, but the Tea Board has the right to inspect the premises and/or call for samples of tea in respect of which the applicant/licensee is desirous of using or uses "DARJEELING" and test the sample in order to determine that the Marks are only being used or will be used in relation to genuine "DARJEELING" tea. In terms of Regulation 16, a licensee is to display on its consumer packets and/or bulk packaging material his CTM User Licence Number.

The aforesaid certification framework is in addition to the Tea Board's already existing statutory duties and functions under the Tea Act and its various enabling Orders which govern production, marketing and export of all teas administered by the Tea Board. Such functions include the right to control or regulate the use of any label or its container which bears any false claim for such tea or is misleading in any material particular. The Tea Board shall administer the Marks "DARJEELING" as per the Regulations and various Orders issued, from time to time, under the Tea Act, 1953.

MAJOR INITIATIVES BY THE TEA BOARD OF INDIA

The Tea Board had taken the first measures to protect Darjeeling as a Geographical Indication about 20 years ago by developing a “Darjeeling” logo. The logo was created in 1983 and registered in 1986 in various jurisdictions including UK, USA, Canada, Japan, and Egypt and some European countries as a Trade mark/ Certification Trade Mark.
The Tea Board has been active in this area again from 1998 onwards. The Tea Board started its protection exercise with registration of the Darjeeling logo created in 1983, and then went on to seeking protection of the word Darjeeling as a Geographical Indication in the post TRIPS scenario.

The Tea Board has obtained “home protection” by registering a Darjeeling logo and also the word “Darjeeling” as a Certification Trade Mark under the Indian Trade and Merchandise Marks Act, 1958. The registration has been granted against two applications of the Tea Board: “Darjeeling Logo” in class 30 in the name of Tea Board, Kolkata under No. 532240 filed on October 9, 1986 and for “Darjeeling” word in class 30 in the name of Tea Board, Kolkata under the No. 831599 filed on December 10, 1998.

Since February 2000, an extremely important step was the statutorily compulsory system of certifying the authenticity of the Darjeeling tea being exported which was put in place under the provisions of a Federal Indian Act known as the Tea Act, 1953. The system envisages all dealers in Darjeeling tea to compulsorily enter into a License Agreement with the Tea Board India against an annual License Fee. The terms and conditions of the Agreement provide that the licensees would furnish information relating to production of Darjeeling tea, manufacture and sale of such tea through auction or otherwise. The Tea Board is thus able to compute and compile the total volume of Darjeeling tea produced and sold for the same period. No blending with teas of other origin is permitted. Under this process, 171 companies dealing with Darjeeling tea have registered with the Tea Board. Out of 171, 74 are producer companies and 97 are trader/exporter companies. Certificates of Origin are then issued for export consignments, which are given under the Tea (Marketing and Distribution) Control Order, 2000, read with the Tea Act, 1953. Data is entered from the garden invoices (the first point of movement outside the factory) into a database, and export of each consignment of Darjeeling tea is authenticated by issue of the Certificates of Origin by crosschecking the details. This ensures the sale-chain integrity of Darjeeling tea until consignments leave the shores of India. The Customs authorities in India have, by circular, instructed all Customs checkpoints to check for Certificates of Origin accompanying Darjeeling Tea consignments and not allow the export of any tea as “Darjeeling” without this certificate.

Tea Board has sought the support of all overseas buyers, sellers and Tea Councils and Associations in so much as they should insist on Certificates of Origin to accompany all export consignments of Darjeeling tea. Overseas importers are thus ensured of 100% Darjeeling tea in their consignments.

Initiative was taken to not only register the logo (or to renew the registration when required) but also to register the word “Darjeeling”. A recent significant development is that the UK Trade Registry has awarded registration of the Darjeeling word under the Trade Marks Act 1994 of Great Britain and Northern Ireland as of March 30, 1998 under No. 2162741 signed August 3, 2001. In October 2002 the US accepted Tea Board’s application for registration of Darjeeling as a CTM. The Registration includes filing of regulations.
These regulations define parameters for usage and a system of governance to protect and track infringements. The system begins at the level of production, primary marketing and at the point of export with production data coming in and issuance of Certificates of Origin.

Overseas, Darjeeling teas as exported against certificates of origin is traded by authorized users of the logo/word and periodic data is made available in accordance with the terms of the licence agreement. This system enables tracking of areas of infringement. The procedure to become a licensee has been made as simple as possible. The applicant has to execute a licence agreement, to agree to abide by a set of regulations and pay the annual licence fee. He has to submit a bi-annual return on the volume and quantity of tea sold, declare his stock and maintain an “adequate” system of control. He has to agree for verification and inspection for maintenance of standards prescribed.

Tea Board, since 1998, has hired the services of Compumark, an international Watch Agency that keeps Tea Board informed of all attempts to register the word “Darjeeling” worldwide. Pursuant to the watch agency being appointed, several instances of attempted registrations have been found. Some of these have been challenged through oppositions and cancellations and some through negotiations.

Marks opposed include those relating to diverse goods and services such as clothing, lingerie, telecommunication and internet services, coffee, cocoa, etc.

Of the fifteen instances, five have been successfully concluded in countries such as Japan, Sri Lanka, Russia, etc. Three oppositions were unsuccessful and seven are still pending decision.

The Indian Geographical Indication of Goods (Registration & Protection) Act 1999 is a specific Act covering the registration and protection of Geographical Indications. The Rules relating to this Act have only recently been notified in 2002 and the Registry has not yet become functional. The Tea Board and its lawyers have kept ready the application and regulations for the GI registration and would file the same as soon as the process is initiated by the concerned Registry.

**CONCLUSION**

As it is clear from this discussion, Indian tea industry should protect its prestigious and quality products from the duplication and mishandling in the global market. For this purpose, protection of all valuable products of Indian tea industry viz., Darjeeling tea, Nilgiri tea, Assam tea required protection under IPR and GI. It is worthwhile here to mention that various steps have been initiated by Tea Board of India (along with various producers’ associations) to protect the “Darjeeling tea” till the date. Some primary initiatives had taken by the industry to protect Nilgiri tea and Assam tea though the measures were not sufficient. But the industry has hardly taken such solid steps regarding protection of Indian tea, and to emerge Indian tea as a brand, in the global market.
Of course, Tea Board had initiated action that facilitated an India Tea logo campaign in Russia, one of India’s major importers. The framework under which the logo will be granted is undergoing change and a monitoring mechanism is being put in place to ensure that teas being exported under the logo to Russia meet a minimum benchmark quality. This minimum benchmarked quality has been ascertained as part of a separate exercise where the most popular brands in the Russian market were analysed and Indian tea alternatives developed.

India Tea logo will have to meet the following standards as per the Logo Rules:

- For 100% Indian tea.
- Only for value added (packets/tea bags/etc).
- Pre-packed in India (to start with). Could be later extended for overseas packing.
- Tea to meet minimum quality benchmark standards. The standards will be created and physically maintained.

All logo consignments will be checked (sampled and tasted) before being exported. The India Tea logo is proposed to be registered as a Certification Trade Mark in India. The Assam and Nilgiri tea logos are to be registered as Geographical Indications in India once the GI Act is operationalised in India.

Indian tea industry under the supervision of Tea Board of India need to shape the IP laws to promote development generally and keep in mind some of the impacts of overly generous IP protection.

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