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INDISPENSABLE NAMES: A TIME TO REGISTER?

The World Intellectual Property Organization (WIPO) organized a regional symposium on the protection of geographical indications (GIs) in co-operation with the Ministry of Commerce and the Japan Patent Office during November 18-20, 2003 in New Delhi. The symposium could not have been timed better what with the notification of the Indian GI law into effect on September 15, 2003. After the dismal outcome of the Cancún summit that did not address many important issues concerning protection of GIs, the symposium rekindled the hopes of many developing countries and countries which are friends of GIs on these issues.

What are GIs? The term “geographical indications”, in legal parlance, is used to refer to the mystical relation of certain products and their geographical origin. Examples of GIs are Darjeeling tea, Coorg coffee, Kancheevaram Sarees, Champagne wines, Swiss chocolates etc., all of which are linked to their places of production due to either a natural or human factor and are not produced elsewhere. The legitimate right-holders of GIs, which are intellectual property rights held collectively, are the producers, manufacturers, traders, exporters etc., who can use these in the course of trade without any formal license.

It is important to note that certain geographical names describing a type of product or a method of manufacture, the production of which is not necessarily restricted to such place, are not GIs. For instance, Epsom salt and Kolhapuri *chappals* have become generic names to describe a type of product and no longer come from Epsom or Kolhapur. Since these were not protected by their respective right holders by regulating the production and delimiting the area of production, the factors of delay and acquiescence have acted against any claim of such names as GIs.

Under the new GI law enacted by India in compliance with its obligations under the TRIPS Agreement, right holders can register their GIs with the Geographical Indications Registry in Chennai. Going by the examples set abroad, registration of a GI is believed to increase the premium on the price of a product claimed under the GI. For instance, the production of Teruel ham in Spain is understood to have increased by 202% after it received protection under EU law in the mid-nineties. Hence, viewed from an angle of economic benefits for the right holders, especially for a developing country like India, this legislation has plenty to offer. Perhaps, it is too early to comment on why many have not availed of the benefits under this law.

Now that the legislation for protection of GIs is in place, it needs to be examined whether India has GIs whose economic potential remains untapped. Besides the example of Darjeeling tea and Basmati rice one has not heard of an

assertion from rights owners that their product is a GI. This may be due to lack of awareness of the concept or the new law. If one were to make a list of the Indian GIs that could be registered under the new law which could provide an economic face lift to their respective products it would include the following. Kashmiri carpets, Paschmina wool shawls, Bengal cotton *saris*, Assam tea, Chanderi *saris*, Sambhalpur cottons, Nagpur oranges, Alphonso mangoes, Lonawala *chikis*, Feni, Pochampalli Silk, Coorg Coffee, Mysore sandal, Mysore silks, Malabar pepper, Kerala spices, Kancheevaram silks, Nilgiri tea etc. This is undoubtedly an incomplete list. Some of these products are much sought after in the export markets and a registered GI status would only push their premium upwards.

One of issues discussed at the symposium was the economic and social benefits to developing countries from protection of GIs. Economic potential of a registered GI can be tapped both in the domestic as well as the export market. Even if a product under a GI is consumed or used only in the domestic market, regulated use of such a GI would only enhance its premium in the domestic market.

What are the points to be taken home from the symposium? *First* and foremost is that a GI must be registered. This would require delimiting the area of production and defining the specs of the product. With home registration a GI can be prevented from becoming generic.

Art. 24.9 of TRIPS which obliges members to protect a GI only if has home protection is relevant here. To illustrate, Alphonso mango, which is not freely available in the Indian market, is an unprotected Indian GI and is in very high demand in the export markets. A registration of the name Alphonso under the new law would only escalate its prices in the export markets. If an unscrupulous trader starts to cash in on the premium in the name Alphonso in a foreign jurisdiction, lack of registration in the home country could be an insurmountable negative factor for the Alphonso producers from Maharashtra in any legal action to claim rights in the name Alphonso. As one of the speakers in the symposium pointed out, it is never too early to register a GI!

An interesting question posed at the symposium was what would happen if one of the producers of a product under a GI move out and start manufacturing the product outside the traditional area. The question related to a GI involving human skills and had nothing to do with the natural or environmental factors. The simple answer would be that he should not be allowed to use the GI to name his product since it is manufactured outside the area. For, if he is allowed to do so, that is the first step to letting the GI become a generic word. Perhaps this is why Kolhappuri *chappals* today refer to a type of leather slippers made anywhere in India. The example of certain European GIs which have become semi-generic in the US because no control was exercised on these when they moved out of Europe to the US with the migrants is apt here.

In this connection, the discipline and perseverance of the Champagne wine makers in guarding the premium in the Champagne name is worth mentioning. In 1911, there was a move to expand the Champagne producing area as well as to buy grapes from outside the Champagne region. This led to riots described as the "Champagne Revolution" in history books.

Secondly, India should prepare a list of possible GIs that could be registered under the new law in consultation with the rights holders. The rights owners, if unaware of the status of the product as a GI, must be educated on the economic potential of the product as a registered GI in the domestic as well as export markets.

Ignorance cannot any longer be blissful when it comes to GIs. If Shakespeare thought that names were nonessential, time has come for Indians to differ.

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