

## Darjeeling Tea - Challenges in the Protection and Enforcement of Intellectual Property Rights

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Today, India is the world's largest grower of tea with a total production of 826.17 Million kilograms in the year 2002. Among the teas cultivated in India, the most celebrated one is Darjeeling. Connoisseurs will assert that without Darjeeling, tea would be like wine without the prestige of Champagne.

The district of Darjeeling is situated in the state of West Bengal, India. Tea has been cultivated, grown and produced in tea gardens geographically located in this area for the last 150 years. The unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed, lends the tea a distinctive and naturally-occurring quality and flavor which has won the patronage and recognition of discerning consumers all over the world for well over a century. The tea produced in the region and having special characteristics is and has for long been known to the trade and the public all over the world as "Darjeeling" tea.

According to records, the first commercial tea gardens were planted by British tea interests in 1852. Darjeeling was then only a sparsely populated hamlet which was being used as a hill resort by the army and affluent people. However, by 1866, Darjeeling had 39 gardens producing a total crop of 21,000 kilograms of tea. In 1870, the number of gardens increased to 56 to produce about 71,000 kilograms of tea harvested from 4,400 hectares. By 1874, tea cultivation in Darjeeling was found to be a profitable venture and there were 113 gardens with approximately 6,000 hectares. Today, nearly 17,400 hectares in 85 tea gardens produce around 11.5 million kilograms of tea.

Tea cultivation, being a labor-intensive enterprise, required sufficient number of workers to plant, tend, pluck and finally package the produce. The Darjeeling tea industry at present employs over 52 thousand people on a permanent basis - a further 15,000 persons are engaged during the plucking season which lasts from March to November. A unique feature of this work force is that more than 60 percent are women.

The income of a garden worker is half in the form of cash and the other half by way of perquisites which have over the years effectively provided a cushion against the impact of inflation and scarcities. Workers are provided with free accommodation, subsidized cereal ration and free medical benefits. Gardens used to run primary schools that have since been taken over by the government but the buildings continue to be maintained by the garden management.

A major part of the annual production of Darjeeling tea is exported. The key buyers of Darjeeling tea are Germany, Japan, U.K., U.S.A. and other E.U. countries such as the Netherlands, France, etc. In the year 2000 about 8.5 Million Kilograms of Darjeeling tea was exported, amounting to a total value of USD 30 Million.

While the tea industry in India is almost completely in the private sector, it is statutorily controlled by the Government since 1933 under various enactments culminating in the Tea Act, 1953. The Tea Board in India is a Board set up under the same Act of Parliament. The Board is administratively under the control of the Ministry of Commerce & Industry of the Government of India (the federal or central government). The Tea Board is vested with the authority to administer all stages of tea cultivation, processing and sale of the tea industry, including the Darjeeling segment through various orders. The Tea Board, however, has been working in close cooperation with the Darjeeling Planters' Association, which is the sole producers' forum for Darjeeling tea.

Given that Darjeeling has a high reputation, both the Tea Board and the Darjeeling Planters Association have been involved at various levels in protecting this common heritage. The protection is essentially geared to:

- prevent misuse of the word "Darjeeling" for other types of tea sold world-wide
- deliver the authentic product to the consumer
- enable the commercial benefit of the equity of the brand to reach the Indian industry and hence the plantation worker
- achieve international status similar to Champagne or Scotch Whisky both in terms of brand equity and governance/administration

### 1983 - Darjeeling logo Created

One of the first significant measures was taken by the Tea Board to protect Darjeeling as a geographical indication about 15 years ago by developing a "Darjeeling" logo.



## Statutory Protection

### Domestic

The Darjeeling logo created in 1983 has since been registered in various jurisdictions including UK, USA, Canada, Japan, and Egypt and some European countries as a Trade mark/ Certification Trade Mark/Collective Mark.

The Tea Board has obtained "home protection" by registering the Darjeeling logo and also the word "Darjeeling" as a Certification Mark under the Indian Trade and Merchandise Marks Act, 1958. Under the new Geographical Indication of Goods (Registration & Protection) Act, 1999, (which has become operational on September 15, 2003), the Tea Board has also filed applications for the Darjeeling logo as well as "Darjeeling" word to be registered as a geographical indication.

Since February 2000, the statutorily compulsory system of certifying the authenticity of the Darjeeling tea being exported was put in place under the provisions of the Tea Act, 1953. The system requires all dealers in Darjeeling tea to compulsorily enter into a license agreement with the Tea Board India and pay an annual license fee. The terms and conditions of the Agreement provide that the licensees would furnish information relating to production, manufacture and sale of Darjeeling tea through auction or otherwise. The Tea Board is thus able to compute and compile the total volume of Darjeeling tea produced and sold in any given same period. No blending whatsoever with teas of other origin is permitted.

Under this authentication 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. 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 supply-chain integrity of Darjeeling tea until consignments leave the shores of India. The Customs authorities in India have, by officially issued instructions, instructed all Customs checkpoints to check for and ensure that Certificates of Origin accompany Darjeeling Tea consignments.

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

### International

Overseas, the Darjeeling logo and word are registered or applied for registration under the relevant laws available in the country where registration is sought. The present position of international registration of Darjeeling and Darjeeling logo is summarized in the chart below.

NO.	COUNTRY	NATURE AND SUBJECT MATTER OF REGISTRATION	REGISTRATION NO.	VALIDITY
1.	Canada	Certification Mark	0903697	Valid until voluntarily abandoned or expunged pursuant to a court order.
2.	Egypt	Trade Mark	103072	April, 2009
3.	International Registration Germany, Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia.	Collective Mark	528696	September, 2007.
4	Benelux registration Belgium, Netherlands, Luxembourg	Collective Mark	444511	March 2007

5.	India	Certification Mark for DARJEELING logo	532240	October 9, 2007
6.	India	Certification Mark for DARJEELING (word)	831599	December 10, 2005
7.	Japan	Trade Mark for the DARJEELING logo	2153713	July, 2007
8.	U.K.	Certification Mark for the Darjeeling logo	1307518	April, 2008
9.	U.K.	Certification Mark for Darjeeling (word).	2162741	March 30, 2008
10.	U.S.A.	Certification Mark Darjeeling logo	1632726	January, 2007
11.	U.S.A.	Certification Mark for Darjeeling word per se.	2685923	October 1, 2012
12.	Russia	Darjeeling logo Darjeeling word		Pending application dated April 1999. Word recently accepted for registration.

In addition to the above, the Tea Board is also in the process of putting in place additional applications for "Darjeeling" and/or Darjeeling logo as certification mark/collective mark in Australia, Canada, Germany and a number of other countries.

### 1998 - Worldwide watch agency for monitoring conflicting attempted registrations appointed

Pursuant to the appointment of the agency, several instances of attempted registrations have been found. Some of these have been challenged through oppositions and cancellations and some through negotiations. Of the fifteen instances, while five have been successfully concluded in countries such as Japan, Sri Lanka and Russia, seven are still pending decision.

One of the key issues faced by the Tea Board is one of mixing whereby a tea packer maintains a level of tasting consistency and price stability in his brand by mixing Darjeeling tea with teas procured from different sources. There is no process change involved but the packer justifies the considerable mark-up in the retail prices on the ground that he has made considerable investments in propagating his mixture under his brand.

The Tea Board and the Darjeeling producers insist and require that, while the use of the expression "Darjeeling blend" would be applicable to a blend of Darjeeling teas drawn from more than one Darjeeling estate, tea may only be called Darjeeling tea if it contains 100% Darjeeling tea. For example, if the name DARJEELING is used as part of the packer's brand, then the tea to be sold thereunder would require to be 100% Darjeeling tea conforming to the standards prescribed by the Tea Board.

However, if Darjeeling tea is one of the components of a tea mixture and such mixture is sold under the packer's mark (which does not include the name DARJEELING as part thereof), then the Tea Board requires that the ratio, name and percentage of each of the components including Darjeeling tea, shall be clearly indicated on the packaging, and the font, design and size of the name DARJEELING and other constituents must be in accordance with and proportionate to the contents of the pack: the objective being to ensure that there is no misrepresentation amounting to passing off as to content and origin of the mixture and thus protect the intrinsic value and integrity of Darjeeling as a geographical indication. Further, the consumer must know what he/she is buying and how much Darjeeling tea is contained in the mixture. Unless there is a greater degree of transparency, consumers, as well as producers, will be deprived of their legitimate due.

### Difficulties & Inequities in Enforcement

Worldwide, all GIs are primarily faced with two kinds of risk, one arising from their generic use to indicate a class of products without any regional nexus and the other from their dilutive use as trademarks on similar or dissimilar goods or services. Such enforcement is further compounded by the difficulties arising from the civil law and common law divide among various jurisdictions, the former insisting on formal registration in the country of disputed use and the other insisting on proof of local reputation and goodwill in the country of disputed use. Enforcement of Darjeeling as a geographical indication has been no exception to this and it is currently faced with these or similar challenges in France and USA.

### Costs of protection and enforcement for the industry and the government

In the last four years, the Tea Board has spent approximately USD 200,000 on legal and registration expenses, costs of hiring an international watch agency and fighting infringements in overseas jurisdictions. This does not account for administrative expenses including manpower working on the job in the Tea Board, cost of setting up monitoring mechanisms, software development costs etc. It is a great challenge for every geographical indication right-holder to incur such expenses for protection.

Considering that protection of Darjeeling as a geographical indication is the responsibility of the Tea Board as a statutory body of the Government of India with other public policy objectives and concerns for the welfare of the average plantation workers and other interests involved in the industry, the exorbitant and phenomenal resources spent by the Tea Board for worldwide protection and enforcement constitute a significant drain on the already strained budgets of developing countries such as India. This is even harsher because India has geographical indications primarily in the field of agriculture and handicrafts. Nevertheless, the Tea Board has recognized the importance of protection and, despite the costs, has striven to ensure that Darjeeling tea is protected for the benefit of the producers and consumers.

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