

Beyond social media

On September 4, the Cell for IPR Promotion and Management (CIPAM) under the aegis of the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, launched a social media campaign to promote Geographical Indications (GIs) with the hashtag #LetsTalkIP.

The press release says that GIs are of utmost importance to the country as they are an integral part of India's rich culture and collective intellectual heritage and that their promotion is in line with the Government's 'Make in India' campaign. It adds that it is an area of strength and optimism for India as the "GI tag" has accorded protection to several handmade and manufactured products, especially in the informal sector. CIPAM proposes to talk about interesting facts and stories on GIs using social media.

With legislation enacted in 2003 — the Geographical Indications of Goods (Registration & Protection) Act, 1999 (the GI Act) — for their protection and 295 names registered with the Geographical Indications Registry, GIs today need no introduction.

The proposed campaign is certainly heartening because goods branded as GIs can be made indigenously by local communities independently and in a self-sustaining manner. And India, with its rich cultural heritage and diversity, has GIs. It is an added advantage that if protected the correct way, GIs can promote rural development in a significant manner and could be fitted in as the most ideal intellectual property right to bolster a programme such as 'Make in India'.

But there is a catch. A GI is supposed to convey to a consumer the assurance of a certain quality, reputation or other characteristics of the goods on which it is applied, which are essentially attributable to its geographical origin. For example, when you see the name Scotch for whisky, a registered GI under the GI Act, on a bottle of whisky, you expect it to originate from Scotland and possess certain qualities that you would not associate with other whiskies. Does the GI Act ensure that all the GIs registered thereunder meet such expectations?

The keywords here are "quality control". This is the sine qua non of any GI protection. In fact, the European Community Regulation 1151/2012 for the protection of GIs is titled as a regulation "on quality schemes for agricultural products and foodstuffs". The emphasis laid on quality must be underscored here. Recital 46 of this regulation states that the added value of GIs is based on consumer trust and that it is only credible if accompanied by effective verification and controls. Further, the quality schemes should be subject to a monitoring system of official controls to ensure verification of compliance with the law and rules relating thereto, and should include a system of checks at all stages of production, processing and distribution.

In the Indian scenario, the question arises whether the GI Act provides for quality control measures and verification of compliance. The word 'quality' itself appears in the GI Act only in two instances, first in Section 2(1)(e) which defines a GI, and second, in connection with Section 11(2) that stipulates that the application should state as to how the GI serves to designate the goods in respect of, *inter alia*, quality. Unlike the European Regulation, the GI Act does not provide for monitoring mechanisms at multiple levels. In fact, there is no single reference to an inspection or monitoring structure in the Act. Though there is a mention of it in Rule 32(1)(6)(g) which lists what should be the content of the statement of case, it is quite perfunctory in that it states, "particulars of the inspection structure, if any, to regulate the use of the geographical indication". In contrast, the European Regulation stipulates multiple monitoring measures, both within the GI-controlling body and outside it.

Currently, there is a proliferation of GI registrations in India without any legal provisions stipulating post-registration quality control measures that are to be employed in the production of goods branded as GIs. This is detrimental not only to the protection process of GIs in India but also to the very existence of these GIs, because prolonged failure to meet consumer expectations would dilute the premium and credibility of GI-branded goods. Why would a customer pay a premium to a GI branded product if there is no difference in quality as compared to similarly placed goods?

While the campaign is a wonderful idea to promote awareness, there is more work that is required at the legislative level to ensure credibility of the GI protection process in India. To make such efforts more meaningful and worth the passion put in by bodies such as CIPAM, we need to first fill the legislative gap in ensuring quality control through monitoring mechanisms.

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