

Geographic Indication: How Can Gi Application Prosper Nepal

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ABSTRACT

This article, through management and legal perspectives, aims at exploring Geographic Indication and its possible economic prosperity in Nepal. Many perceive Intellectual property rights to be the rights in the form of Patent, Copyright, Design and Trademark only. However, traditional and indigenous knowledge (TIK) and geographical indications(GI) are also emerging in IPR. Geographical Indication is a sign used on products that have specific geographic origin and possess qualities or a reputation that are due to place of origin. Whereas, indigenous and traditional knowledge is a living body of knowledge that is developed, sustained and passed on from many generations within a community. In global arena from international liquor like Champagne, Scotch, Whisky, Bordeaux, Bourgogne, Irish Whisky to Darjeeling Tea, Banarashi Sari are promoted through GI all across the world. The EU and its member states have a wide range of portfolio of over 10,000 protected GIs. Although GI is literally untapped in Nepal it has many significance like marketing tool, stimulation of consumer psychographic behavior, economic prosperity, protection of morale and economic rights of community. Research on Nepali products with reference to its commercial viability in global market and collection of indigenous and traditional knowledge must be done to secure such GI products from global infringement, which would eventually prosper Nepal.

Keywords-Intellectual Property Rights, World Intellectual Property Organization, Geographic Indication, Indigenous and Traditional Knowledge, Darjeeling Tea, Hedonic Pricing , Country of Origin, GI label.

I. INTRODUCTION

According to the World Intellectual Property Organization (WIPO) a specialized agency of the United Nation, Geographical Indication is a sign used on products that have specific geographic origin and possess qualities or a reputation that are due to place of origin. A sign must characterize a product as originating in a specific place. In a product must have qualities, characteristics or reputation of the product, which should essentially due to the place of origin. Quality and characteristics hugely depend on the geographical place of production and hence there is a strong relation between the product and original place of origin. This article aims at exploring GI with special reference to Nepali products that have geographic reputation but have not been intellectually secured. After its identification, the article also covers the possibility of economic prosperity and social recognition through GI application along with its opportunities and challenges.

History of GI

The agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an International legal agreement between all the members of the World Trade Organization, which was effective since 1 January 1995. In order to become the member of WTO a country must ratify TRIPS agreement. Before TRIPS agreement, there were primarily three international conventions dealing with the protection of Intellectual Property Rights (IPR) i.e. the Paris Convention for the protection of Industrial Property (1883), the Madrid Agreement (1891) and the Lisbon Agreement for the protection of Appellations of Origin and their International Registration. Paris convention dealt with the indication of source whereas Lisbon Agreement focused on protection of appellations of origin. However, there remained problem in the structure of the protection based on arbitrary and specious categorization of goods under TRIPS Agreement. The European Union had always shown interest and aggression in seeking effective protection of GI goods. The EU proactively emphasized on inclusion of GI in the TRIPS during the Uruguay rounds of negotiation. It was best entitled in the interest of the European countries which set the basic standard for the protection of all goods and higher standards of

protection to wines and spirits in which they have comparative advantage. As a result ranging from international liquor from Champagne, Scotch whisky, Bordeaux, Bourgogne to Irish Whisky are promoted through GI all across the world. The EU and its member states have a wide range of portfolio of over 10,000 protected GI.

Significance of GI

To secure IP rights of communities

There are many places in Nepal, which are renowned and recognized globally for some products. It has the scope of GI in various sectors. Like, *Himali Yarsagumba*, *Shilajit*, *Bhojpure Khukuri*, *Palpali Dhaka*, *Kathmandu's religious masks* and *Bhaktapur's Ju-Ju Dhau* (traditional yogurt). In order to be recognized under GI three criteria's have to be met i.e. known quality, specific characteristics and a reputation that is essentially attributable to region or locality from where the goods originated. There are ample of goods that meet such criteria's. Therefore, the community can enjoy the benefits of GI if such products can be registered. It not only promotes the economic prosperity and but also enables recognition of the producers.

GI are not necessarily just an indicative of a geographical area such as town or a city. In most of the goods, there has been an application of genetic resources, traditional knowledge and folklore as well. Traditional knowledge is not just antique but also a living body of knowledge that is developed sustained and passed on from many generations within a community. One of such goods made from traditional knowledge and capable of GI protection is *Churpi* (traditional cheese that is hard in nature). Registrations of GI would grants protection of such goods against infringement and enable Himalayan communities to control and benefit from collective commercial advantage.

According to WIPO, there are two types of intellectual property under the protection of Indigenous and traditional knowledge. Defensive protection prohibits outside the community from acquiring intellectual property rights over traditional knowledge. For example, India has compiled a searchable database of traditional medicines that can be used as evidence of prior art by patent examiners when assessing patent applications. This followed that US Patent and Trademark granted a patent for the use of turmeric powder to treat wounds. Later it was revoked because it was a well-known property of India, which has been documented in Sanskrit texts. On the other hand, positive protection empowers communities to promote traditional knowledge, control its uses and benefit from its commercial exploitation.



(Source :GI Tag India , 2019)

To sustain Nepali GI and promote economic prosperity of producers

Through the protection of it helps in the economic prosperity and sustain the regional development. A study conducted by the OECD (1995) identified a number of factors that influence small rural enterprises that primarily target niche markets. Two factors emerged; market access and differentiation, while numerous factors have an influence. OECD found that to address such factors, small and rural enterprises must work

collectively in order to develop a competitive advantage. It can be achieved with an origin labeled valorization strategy, which is to establish the price, by governmental action usually of a higher value. This would ultimately sustain and promote economic prosperity of producers.

To use as a marketing tool

From Levitt's theory on the levels of product (core product, actual product and augmented, products) products are conceived as consisting various information cues. Each cue in the level of product assists consumers in evaluating the products. Information cue associated with core level is functional dimensions of the products, actual product has features and design and final augmented product has additional customer services and values. In many marketing literature emphasis has been given to country or region of origin, which has an indirect impact on consumer preferences as quality cue, which stands in front of product attributes.

Different methods have been used in empirical studies to measure consumer's willingness to pay. Hedonic pricing is a model, which determines the price factors according to internal characteristics of the goods and external factors affecting it. With reference to GI external factors means the reputation of goods derived from the country of origin. According to Loureiro and McCluskey, the presence of the label generates a high premium for high quality products. Therefore, it was concluded that GI label is a powerful tool to promote the quality and obtain a price premium.

Socially constructed differentiation through GI allows small producers to create competitive advantage from economies of differentiation and niche marketing. However, it yields no value if consumers do not recognize it the goods. This articulates the fact that niche marketing through origin labeling requires extensive awareness campaign in order to capture the benefits. Other factors like packaging, processing, distribution and promotion should also be taken into consideration. Whatsoever GI can be an effective marketing tool through which different quality dimensions like tangibleness, reliability and assurance can be sustained.

II. DARJELLING TEA AND GI

*10 million kgs of tea grown every year
87 Tea gardens grow this fabled tea
at over 5,000 mts. Above sea level
spread over 17,500 hectares of land
4 flushes
Better to be deprived of food for three days, than tea for one"*

-- Ancient Proverb

Darjeeling Tea Industry is spread over 17,800 hectares, which produce approximately 8-9 million kg tea annually. It has more than 100,000 workers, predominantly women. Tea industry carries a great significance in Darjeeling especially in economic activity where 70% of tea is exported.

Darjeeling tea possesses a well-known flavor and quality, which is highly recognized by global consumers for over a century. It has a distinctive and naturally occurring quality and flavor because of the unique and complex combination of agro climatic condition.

Its quality, reputation and characteristics is significantly attributable to its geographic origin and cannot be replicated elsewhere.

In 2004, Darjeeling Tea registered as Geographic Indication. Prior to its registration there was massive misuse of the word "Darjeeling Tea " for tea sold worldwide, many global consumers were manipulated by fake Darjeeling tea. Which eventually caused poor value realization, consumer deception and damage of reputation? Later, Tea Board India fought more than 15 cases against against the infringement and misuse of Darjeeling tea. TBI was successful in rejection of trademark application for DARJEELING NOUVEAU in the name

of Republic of Tea (ROT: a privately owned American tea company based in Novato, California). The ROT could not prove that consumers view Darjeeling tea as a generic type.



Source: Tea Board India, 2019

There has been many attempts globally to take advantage of the trademark of Darjeeling tea. Bvlgari Switzerland, Dusong France has attempted such to take advantage of Darjeeling Tea. TBI has been successfully able to revoke the application of such infringement. After the GI tag, consumers' perception of Darjeeling tea has created a luxury tea brand which justifiably represents premium quality and has enhanced economic benefits for all stakeholders.

III. CONCLUSION

There is a huge scope of GI in Nepal. However, there has not been substantial research. In order to protect geographic goods it must also be consumable in global markets. If such goods are domestically consumed only, then there is no significance of protecting it. Internal consumption would not yield enough revenue. Therefore, such goods need to have commercial potential and must be tradable in global arena. In Nepal, many products are globally consumed. If the Government of Nepal makes an initiation in protecting our local geographic goods then, not only the respective region and community would be economically and socially benefited but the entire nation would be recognized and known for such products. To make it so, the government should also start collecting, documenting indigenous and traditional knowledge, geographically known goods, and its global consumptions. In order to strengthen GI, awareness on intellectual property is also necessary.

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