

TRADEMARKS AND GEOGRAPHICAL INDICATIONS IN PROTECTION OF CONSUMER'S RIGHTS IN INDIA: ISSUES AND CHALLENGES



DR. MEENAKSHI DAHIYA

“Trademarks and Geographical Indications in Protection of Consumer’s Rights in India: Issues and Challenges”

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Acknowledgement

Prima facie, I am grateful to God for the good health and well-being that were necessary to complete my book.

Every work is said to be complete if it is done with sincerity, hard work and dedication but it's also true that no target is accomplished without the help and support of all the associated persons. So, there is a need to acknowledge the contribution of all those who contributed in the successful completion of this work. In the beginning I offer my regards to my loving parents Mr. Naresh Kumar and Mrs. Sheela Devi whose love, teachings and blessings brought me this far. I thank my uncle Mr. Narender Singh for his unconditional love and support throughout my educational career. My brother Mr. Deepak Dahiya has been a continuous source of inspiration and encouragement for me.

And most of all, I owe my deepest gratitude to my loving husband Dr. Imtiyaj Khan (Judicial Officer) for his affection, encouragement, understanding and patience. He supported me without any complaint or regret that enabled me to complete my book. My book acknowledgement would be incomplete without thanking my in-laws and especially my loving son Master Kevin (Miku) whose smiling face always made me happy and inspired me. I am also thankful to different authors and writers whose writings and ideas helped me in completion of this work.

With immense pleasure, I would like to dedicate my book to my family, my loving son and my loving husband for their constant care and support kept on inspiring me to keep up the good hopes and do hard work that finally led to the desired results. I thank God for always being with me.

Dr. Meenakshi Dahiya

Preface

Creativity and innovation are two important ingredients for the sustainable growth and development of any nation. The ability to think out of the box and the art of implementing novel ideas distinguishes oneself from the rest of the world. Today is the era where we can't afford to turn our eyes away from inculcating these traits in our youth. Creativity and innovation need to be strongly intertwined in our education system. This book is a step in this direction and makes an attempt to enhance the intellectual capital by sensitizing faculty and students towards IPR and its various forms like trademarks and geographical indications. If we observe the global rankings, we find that India's rank in intellectual property is lower compared to countries like USA, Japan, France, Germany, China, etc. Although there are several factors responsible for that, but one of the major concerns is the lack of required awareness of Indian academia about IPR. It is high time that Higher Education Institutes should come forward and uplift the quantity and quality of our intellectual property. It becomes imperative to introduce IPR and related courses at the under-graduate and post-graduate levels in order to make our scholars IPR savvy.

The book introduces various categories of intellectual property like trademarks and geographical indications. The steps involved in the process of filing trademark and geographical indications registrations, etc. are described along with associated forms in a clear and concise manner. The concluding part of the book attempts to identify the various issues and challenges faced by the consumers of Trademark and Geographical Indication. The last part put forward some suggestions in order to overcome the issues.

Her astute advice, imaginative solutions, and amazing reconstructions have really motivated many to advance their professional understanding of the trademarks and Geographical indications. The book, being a comprehensive guide on navigating the intricacies of trademark and geographical indications law in India and abroad, is nothing short of extraordinary.

The author has expressed the matter in lucid language. I am sure that the stakeholders, academicians and students will love reading this book and the book will become a benchmark in setting the IPR context in Indian academia.

Cheers to many more accomplishments down the road!

Index

Chapter No.	Title	Page No.
1	Introduction	1
2	Protection of TM- A Conceptual Analysis	15
3	Legal Analysis of TM – Legislative, Regulatory & Judicial Approach	44
4	Legal Analysis of Protection of GI	71
5	Analysis of Consumer Protection	120
6	Shift From Traditional Approach of Consumer Protection	128
7	Consumers Interest & Investment in Intellectual Property	139
8	Conflict Between Tm & Gi: Analysis of Conflict and Co-Existence	150
9	Critical Analysis of GI Laws: Emerging Issues & Challenges	161
10	Conclusion & Suggestions	166

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LIST OF ABBREVIATIONS

- GI – Geographical Indication
- TM – Trademarks
- WIPO – World Intellectual Property Organisation
- WTO – World Trade Organisation
- SC – Supreme Court
- HC – High Court
- TRIPs – Trade Related Aspects of Intellectual Property Rights
- APEDA – Agricultural and Processed Food Products Export Development Authority

Chapter 1

INTRODUCTION

1.1 Introduction

My study titled as “Trademarks and Geographical Indications in Protection of Consumer’s Rights in India: Issues & Challenges” is of immense importance as it deal with many issues and legal infirmities in enforcing such rights and ensuring protection of owners as well as consumer rights. Out of all Intellectual Property Right (Hereinafter IPR), Trademark (Hereinafter TM) is the only one which can be retained permanently till its renewal.¹

Due to globalization² the world is at ever-expanding stage and thus some phenomenon changes are attributed to the inventions for development of trade and commerce.³ It must be examined how a person feels if someone use your idea or creation and take all credit of it. Intellectual property right is the key answer to the same. Over the corridors of time the value of Intellectual Property Right has grown tremendously.

To curtain some inadequacies and unfair practices of trade⁴ present in the present market, the necessity to amend the current legislation⁵ regarding TM has become a need of hour.⁶ Companies are spending huge investment to make the goodwill regarding their product and once the reputation has been established, they want to get benefit of the same.⁷

Similarly Geographical Indication⁸ (Hereinafter GI) are some signs, impressions or designations which targets at the indication a product has relating it to its country, region or area of origin.⁹ It can be used for almost every kind of product.¹⁰ But generally GIs are related to agricultural goods or food stuff.¹¹ GIs are considered as an instrument for securing the link between product and its area of origin.¹²

Thus, the brand name become famous and the TM is used as a synonym to the product itself.¹³ Like for instance “Xerox”¹⁴ have become a synonym for photocopying.¹⁵ Similarly in India many names are used to denote a particular product.¹⁶

¹ Arul George Scaria, "International exhaustion of trademark rights in India." In Annotated Leading Trademark Cases in Major Asian Jurisdictions, 129-141 (Routledge, 2019).

² Pitman B. Potter, Globalization and Adaptation in International Law, 117 (2011).

³ M. Lakshmi Narasaiah, Industrial Development & World Trade Organization, 5 (2005).

⁴ WIPO, WIPO Intellectual Property Handbook: Policy, Law and Use (2004).

⁵ TM Act, 1999.

⁶ Dezan Shira & Associates, Chris Devonshire-Ellis Springer Science & Business Media, Doing Business in India, 67 (2012).

⁷ Gordon Clarke, Business Start-Up & Future Planning, 106 (2010).

⁸ Vandana Singh, The Law of GIs: Rising Above the Horizon (2017).

⁹ Bernard O'Connor, The Law of GIs, 23 (2004).

¹⁰ Marsha A. Echos, GI for Food Products: International Legal & Regulatory Perspectives (2016).

¹¹ Alessandro Bonanno, Kae Sekine & Hart N. Feuer, GI and Global Agri-Food: Development and Democratization (2019).

¹² Sreenivasulu N.S., Law Related to Intellectual Property, 423 (2013).

¹³ Mary LaFrance, Understanding TM Law (2009).

¹⁴ This word is commonly used in India

India is a party to WTO and has ratified TRIPS agreement¹⁷ is under an obligation to incorporate the international law and principles as specified in the covenants related to intellectual property into its domestic laws.¹⁸ By this the older legislation¹⁹ has been repealed and replaced with the new one.²⁰

Intellectual Property related to business i.e. TM and GI not only protect the rights of businessman²¹ but also ensures safeguard for consumers.²² The question of infringement and passing off arises when one imitate the reputation of business of true owner to take benefit by themselves.²³

By tracing the history the TM Registration Act, 1875²⁴ of United Kingdom have created register to record TMs of legal nature and TM registry for the first time around the globe.²⁵ In UK the TM laws has been consolidated in 1883²⁶ and the Act of 1905²⁷ have first time gave the definition of TM.²⁸

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¹⁵ Roger Perman & John Scouller, Business Economics, 143 (1999).

¹⁶ DALDA has become as a synonym for Vanaspati gee.

¹⁷ TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].

¹⁸ *Supra* note 11.

¹⁹ TM & Merchandise Act, 1958

²⁰ TM Act, 1999.

²¹ Anurag K. Agarwal, IIMA - Business & Intellectual Property: Protect your Ideas (2016).

²² Yin Fenglin, Zhao Yixin, and Medina Turdi. "Challenges of the Intellectual Property System in the Age of Artificial Intelligence." 6 AJASR, 24-29 (2020).

²³ *Thiruvalluvar Modern Rice Mill, represented by its Managing Partnership D. Balasubramani, Kangayam v. R. B. Chidambarasamy*, 2018 73 PTC 149.

²⁴ TM Registration Act, 1875.

²⁵ *Id.*

²⁶ John Mercer, *A mark of distinction: Branding and trade mark law in the UK from the 1860s*, 52 Bus. His. 17-42 (2010).

²⁷ TM Act, 1905 (older UK TM statute).

²⁸ Rochelle Cooper Dreyfuss & Justine Pila, *The Oxford Handbook of Intellectual Property*, 280 (2018).

Meet the Author!

Dr. Meenakshi Dahiya is currently working as an Assistant Professor in the Faculty of Law, PDM, University, Bahadurgarh. She has done her PhD. From Department of Law, Maharshi Dayanand University, Rohtak in the field of Intellectual Property Law. She has done her LLM from Maharshi Dayanand University Rohtak in corporate scheme. Her B.A.LL.B. is from Maharshi Dayanand University. She has presented various research papers in national as well as International Conferences and seminars, published research papers in various reputed Journals.

This book gives readers an extensive knowledge of trademarks and geographical indications of law while also offering insightful analysis and practical ideas. It is an important contribution to the area because of its thorough examination and impartial viewpoint. The immaculate effort of the author are very well depicted in the thoughts & perspectives and her unique vision of creativity about the diversity of trademarks and geographical indications in the plinth of law.

