
Increased Marketing Opportunities for Speciality Quality Products

DARJEELING



A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide against a dark green background.

The Significance of Geographical Indications

- ❑ It is a well known fact that GIs add value to producers and products
 - ❑ An increasingly liberalised world order means lesser export subsidies to producers. Hence the need to compete internationally on quality rather than quantity.
 - ❑ Competing on quality would be futile without protection in international markets.
 - ❑ The process would guarantee origin, quality, authorised producers and those in the value chain
-



-
- ❑ GI protection creates value based on the consumers desire for quality products. A differentiating factor.
 - ❑ It is healthy for consumer protection as it is perceived to be an indicator of origin and quality, for which the consumer is willing to pay a premium
 - ❑ This necessarily means that imitations would need to be prevented , such that the consumer is not misled. Labeling information therefore has a significant role.
-

A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide. The background is white with a light gray grid pattern.

Difficulties of enforcement

- ❑ Expensive litigation often unaffordable to small producers
 - ❑ Lack of appropriate level of protection in various jurisdictions, and where prior trademarks do not allow a GI to be protected in a country
 - ❑ *Yet if it is to be used as an effective marketing tool, appropriate international parameters would need to be in place*
-

A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide.

TRIPS MANDATE

□ Article 22

□ Geographical Indication

- identifies a product as originating in a country or a region thereof
- whose quality, reputation or other characteristic is attributable to its geographical origin

E.g. CHAMPAGNE, SCOTCH whisky, DARJEELING tea, HAVANA cigars (product name indicates the origin)
ALPHONSO, FENI

(product is traditionally associated with a particular region)

A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide. The background is white with a red horizontal line below the title.

TRIPS MANDATE

TRIPS DEFINITION

- Represents consensus of all member states to overcome limitations of earlier treaties
- Provides three **alternative** means to link a GI with a given product :
 - a given quality;
 - or reputation;
 - or other characteristic of the good
- Which should be essentially attributable to its geographical origin

A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide.

TRIPS MANDATE

TRIPS DEFINITION

- ❑ Expands concept of appellation of origin in Lisbon (which is limited to geographical names)
 - ❑ Would extend to iconic symbols or emblems (e.G. Eiffel tower for French goods; Taj Mahal for Indian goods, the statue of liberty for US goods)
 - ❑ Includes non-geographical traditional names such as Basmati
-

A vertical branch of a tea plant with several green leaves, positioned on the left side of the slide.

The way forward

TRIPS Agreement

- India, along with several other has countries is advocating the same protection to other products as envisaged for “wines and spirits” in the TRIPS agreement.
 - To prevent genericide and stops use of imitations with “like”, ”style” etc.
 - The Doha Ministerial Declaration under paragraphs 12 & 18 provides the mandate for the issue of providing a higher level of protection to Geographical Indications to products other than “wines and spirits”.
 - The issue did not feature in the Cancun round.
-

THE DARJEELING STORY



DARJEELING

Why is Darjeeling Tea a Geographical Indication

- ❑ The tea is only produced in a well defined geographical area
 - ❑ The tea produced has distinctive characteristics of quality and flavour, and enjoys global recognition and reputation of well over 100 years.
 - ❑ The quality, reputation and characteristics of the tea is essentially attributable to its geographical origin and cannot be replicated elsewhere.
-



The nature of Intellectual property protection

- *This equity is protected legally by IPR legislation which varies from country to country even upto consumer protection laws*
 - *Different legal concepts have developed as a result of national legal tradition & specific historical and economic conditions*
 - *Have a direct bearing on conditions for protection, entitlement to use & scope of protection of Darjeeling*
-





Objectives

- ❑ To prevent misuse of the word "Darjeeling" for tea sold world-wide
- ❑ To deliver the correct product to the consumer
- ❑ To enable the commercial benefit of the equity of the brand to reach the Indian industry and hence the plantation worker

GI status used as a marketing tool

Getting Our Act Together

Prior to 1997

- 1986 – the Darjeeling logo created and registered in U.K., U.S.A., Canada, Japan, Egypt and under Madrid covering 8 countries
- 1986 – the Indian CTM application for logo filed



- No formal certification system in place
-

A vertical branch of a tea plant with several green leaves, positioned on the left side of the slide.

THE DARJEELING TEA STORY

Post 1997 : Broad Agenda - Legal

Elements of broad agenda developed :

- recognition of need to protect **DARJEELING** word (being the heart of GI protection)
 - **at domestic level in India**
 - **in countries of interest through national or international legal instruments**
 - **recognition of need to ensure integrity and sanctity of supply chain through certification at source and in other countries of interest**
 - **Recognition of need to initiate pro-active and defensive steps to stop attempted registrations and/or use of Darjeeling or deceptive variations thereof**
-

THE DARJEELING TEA STORY

Post 1997 : Broad Agenda - Commercial

- Need for Some Critical steps :
 - Documentation of traditional knowledge in the cultivation and production methods of Darjeeling Tea
 - Documentation of all advertising and promotional expenditure
 - Focus on quality assurance : commitment of trade to maintain standards
 - Building or molding public opinion and perception critical to reputation of a GI after administrative system is in place

Industry and Tea Board have been working closely





The Milestones

- ❑ CTM registrations in **UK** (2nd largest mkt), **USA** (4th largest) & **India**
 - ❑ Considerable opposition overcome
 - ❑ Registrations elsewhere TM/collective mark – relevant legislation not available
 - ❑ Where no registration, administration via our common law rights. Even where no registration, use of mark is administered
-

A vertical branch of a tea plant with several green, serrated leaves against a dark green background.

Steps Taken

- The Tea Board has obtained “**home protection**” by registering a Darjeeling logo and also the word “Darjeeling” as a **Certification Trade Mark under the Indian Trade and Merchandise Marks Act, 1958**
 - The **Indian Geographical Indication of Goods (Registration & Protection) Act 1999** is a specific Act covering the registration and protection of Geographical Indications. After the Act came into force on 15th Sept.03, the Tea Board has filed an application for registration of Darjeeling tea as a “GI”.
-

| Country | Property | Nature & subject matter of registration | Status |
|--|------------------------------------|---|---------------------------|
| U.K | Darjeeling logo Darjeeling word | Trade mark laws | Valid registration as CTM |
| Germany, France, Austria, Spain, Portugal, Italy, Switzerland, former Yugoslavia | Darjeeling logo | Collective Mark | Valid registration |
| U.S.A. | Darjeeling logo Darjeeling word | Certification Trade Mark | Valid registrations |
| Japan | Darjeeling logo | Trade mark | Valid registration |
| Egypt | Darjeeling logo | Trade mark | Valid registration |

| Country | Property | Nature & subject matter of registration | Status |
|----------------------------------|------------------------------------|---|--|
| India | Darjeeling logo Darjeeling word | Certification Trade Marks | Valid registrations |
| Canada | Darjeeling logo | Certification Mark | Valid registration |
| Russia | Darjeeling logo Darjeeling word | | Pending application for logo dated April 1999. Word recently accepted for registration |
| Belgium, Netherlands, Luxembourg | Darjeeling logo | Collective Mark | Valid registration |



THE DARJEELING TEA STORY

Steps Taken : legal

- 1998 – World Wide Watch agency CompuMark appointed to monitor conflicting marks

 - Pursuant to the watch agency being appointed :
 - instances of attempted registrations found
 - some challenged through oppositions & cancellations and sometimes negotiations
-

THE DARJEELING TEA STORY

Steps Taken : legal

Marks opposed:- include DIVINE DARJEELING, DARJEELING, DARJEELING NOVEAU, - relating to diverse goods and services such as clothing, lingerie, telecommunication and internet services, coffee, cocoa etc.

Of the 15 instances, 5 have been successfully concluded in countries such as Japan, Srilanka, Russia etc. 6 oppositions were unsuccessful and 4 are still pending decision

Use by BULGARI, Switzerland of the legend

“ Darjeeling Tea fragrance for men” agreed to be withdrawn pursuant to legal notice and negotiations



THE DARJEELING TEA STORY

Marks opposed

- 
-
- France - DARJEELING - perfumes, articles of clothing & telecommunication
 - Germany - Device applications with Darjeeling logo
 - Israel - DARLING - agricultural & horticultural products
 - Japan - DIVINE DARJEELING- coffee, cocoa, tea
- DARJEELING with India map
- DARJEELING Logo - serving tea, coffee, soft drinks
 - Norway - DARJEELING - telecommunication
 - Russia - DARJEELING - Tea
- DARJEELING Logo - Tea
 - Srilanka - SAKIR DARJEELING TEA - Tea
 - U.S.A - DARJEELING NOVEAU - Tea
-

THE DARJEELING TEA STORY

Steps Taken : legal

- Darjeeling certification system a pre-requisite for domestic and international protection law, involving :
 - Drafting of fresh detailed Regulations defining Darjeeling, the manner of use by authorised users, definition of Tea tasters, Darjeeling blend etc.
 - Start establishment of supply chain integrity - A compulsory system of certifying the authenticity of Darjeeling tea produced and exported is in place under the provisions of the Tea Act, 1953 and is administered by Tea Board
 - Customs notification dated June 25, 2001, making all exports of Darjeeling Tea subject to mandatory proof of such certificate of origin

All Darjeeling Tea leaving the shores of India today is guaranteed 100% Darjeeling Tea



A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide. The leaves are arranged alternately along the stem.


THE DARJEELING TEA STORY

Case History : JAPAN

- ❑ Divine Darjeeling application allowed to proceed on the basis that “Divine” in Japan does not have laudatory significance
 - ❑ Third party registration for Map of India with Darjeeling challenged by way of :
 - ❑ - non use cancellation action
 - invalidation action
 - ❑ non use cancellation allowed, though invalidation refused
-

THE DARJEELING TEA STORY

CHALLENGES : LEGAL JAPAN

- 
-
- Existing registration for Darjeeling logo in the name of a Japanese company cancelled at the instance of Tea Board on grounds :
 - of being contrary to public order and morality
 - of insult to name and honour of the Government of India
 - in contravention of good international relations
-

A vertical branch of a tea plant with several green, serrated leaves is positioned on the left side of the slide against a dark green background.

DARJEELING PROTECTION OVERSEAS

Protection sought in Japan

Darjeeling – a well known brand, with the Japanese Patent authorities upholding Tea Board's oppositions in certain cases

However no provision for GI or CTM registration. Better protection sought for use of the word "Darjeeling"

A vertical branch of a tea plant with several green, serrated leaves against a dark green background.

DARJEELING

Protection in Japan

Registration only as collective mark possible.

TRIPs obligations not fulfilled adequately

THE DARJEELING TEA STORY

Steps Taken : Commercial

- ❑ Denton Wilde Sapte, a major U.K. law firm, appointed by the Tea Board to advise on administration of Darjeeling certification system worldwide
 - ❑ Awareness generation at all IPR forums, WIPO conventions
-



THE DARJEELING TEA STORY

The way forward : LEGAL

- In the process – applications to be filed for Darjeeling (word and/or logo) in additional countries such as Australia, Canada etc..
 - Need for India to join other international or regional treaties:
 - Madrid – no real benefit
 - Lisbon – limited benefit
 - EC 2081 – high level of protection
 - Community collective mark – beneficial
 - Periodical caution notices in domestic as well as international publications on the GI status of Darjeeling word and logo
-



THE DARJEELING TEA STORY

The way forward : LEGAL

- Need for certification in the domestic market and other international markets
 - system in Japan in Operation for logo
 - U.K system for word and logo about to be implemented and systems for Europe, US and non-protected areas finalised
 - Need for co-operation and collaboration with other administrators of well known GIs (Champagne, Scotch whisky, Stilton cheese, Colombian coffee etc)
 - Need for either country specific WTO dispute settlement action or campaign for extension of Article 23 protection to Indian GIs such as Darjeeling
-





The way forward

Promotional measures

There is a need to **increase consumer awareness** as to what Darjeeling tea signifies.

Legal measures

Tea Board to continue opposing attempts at individual registration in case of private labels (or incorporate disclaimers as deemed fit)

Cases of misuse to be highlighted by all stakeholders especially Industry



Darjeeling is determining the success of GIs as a marketing tool

Darjeeling is the most expensive Indian tea

The benefit of the brand does not always reach the producer

Protection is therefore necessary to nurture products/ brands that have special characteristics and value that consumers desire



Thank you