

# COMMENTS ON THE DRAFT GEOGRAPHICAL INDICATIONS GUIDELINES: IMPLICATIONS AND DISCREPANCIES

Sulok S.K\*

## ABSTRACT

*On 24th June 2019, the Department for Promotion of Industry and Internal Trade (DPIIT) under the Ministry of Commerce and Industry released the Draft Guidelines for the use of Geographical Indications (GI) Logo and Tagline. The logo and tagline are intended to serve as a certifying mark which will enable consumers to identify all authentic and genuine Indian GI products.*

*By ensuring that only those permitted use the logo and tagline, consumers are expected to recognise authentic GI products. Thus, it is a significant step towards ensuring that only genuine and authorised GI products remain in the market. The objective of the guidelines is praiseworthy as one of the major problems faced by the owners and consumers of the GI is the presence of duplicate products in the market. However, the question is whether the guidelines in its present form sufficiently addresses all concerns. This article analyses and critiques the guidelines by raising fundamental concerns regarding the practical implementation of the guidelines in its present form and the possible solutions thereof.*

\*

---

\* Mr. Sulok is a research scholar currently pursuing an integrated LL.M in Intellectual Property Rights and a Ph.D in Geographical Indications from Cochin University of Science and Technology (CUSAT), Kochi. He may be contacted at [sk.sulok@gmail.com](mailto:sk.sulok@gmail.com).

## INTRODUCTION

On 24<sup>th</sup> June 2019, the Department for Promotion of Industry and Internal Trade (DPIIT) released the draft guidelines for the use of the Geographical Indication (GI) logo and tagline.<sup>1</sup> Under Public Notice, the objectives of the guidelines lays down that the GI logo and tagline (released on 1<sup>st</sup> August 2018) is with an intent to encourage promotion and marketing of Indian products registered as GI. Further, the common GI logo will act as a certifying mark that can be used to identify all Indian products registered as GI, which would help make it convenient for consumers to recognise authentic GI products and thereby protect the interest of genuine GI producers.<sup>2</sup> The same finds mention in the guidelines.<sup>3</sup> It is ensured that production of products embodying the GI logo is by persons authorized to produce so under the Act. This is the objective of the guidelines as delineated under the public notice.<sup>4</sup>

While the objective of the guidelines is laudable, the pertinent question here is regarding the effectiveness of the mechanism envisaged to ensure that the use of logo and tagline is only by authorised persons for legitimate purposes. This also raises questions about the mechanism in place to ensure authenticity of GI products and legal measures provided for in case of contravention. The answer for this can be understood if we ask ourselves; firstly, who will ensure the authenticity of the GI products? Secondly, how will it be guaranteed, that is, what are the mechanisms envisaged in the guidelines to achieve it? Also, thirdly, what are the legal measures provided for in case of contravention?

The introductory portion of the guidelines retraces the objectives sought to be achieved. Namely, creation of awareness amongst GI producers and consumers to increase marketability and saleability of these products and preventing confusion resulting from the use of different logos for different products.<sup>5</sup>

---

<sup>1</sup> Guidelines for permitting the use of Geographical Indication (GI) Logo & Tagline, P-24026/10/2018-IPR-IV-Part (1) (Proposed Draft Jun. 24, 2019) [hereinafter Guidelines].

<sup>2</sup> Department for Promotion of Industry and Internal Trade, Public Notice on Proposed Guidelines for permitting the use of Geographical Indication (GI) Logo & Tagline, (Jun. 24, 2019), [http://www.ipindia.nic.in/writereaddata/Portal/News/536\\_1\\_GI\\_Guideline\\_Finalised\\_.pdf](http://www.ipindia.nic.in/writereaddata/Portal/News/536_1_GI_Guideline_Finalised_.pdf).

<sup>3</sup> Guidelines at p. 1, 2.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> Guidelines at p. 1.

## I. OWNERSHIP

The first part of the guidelines deals with ownership of the logo and tagline. Ownership vested with the DPIIT through the Secretary.<sup>6</sup> However, the right of usage of the tagline and logo is reserved only for Indian GI products registered in India or abroad and it explicitly bars foreign GI products whether registered in India or abroad, from utilising the same.<sup>7</sup> The first issue here is regarding the use of the word ‘or’ in ‘Indian GI products registered in India or abroad’. It implies that Indian GIs can be registered either in India or abroad. This raises three inferences.

The first is a situation where an Indian GI is registered in India. It is valid, provided the registration of the GI is as per the Geographical Indications of Goods (Registration and Protection) Act, 1999. The second is of an Indian GI product registered in a foreign country and not in India. This is not possible as per Article 24(9)<sup>8</sup> of the TRIPS Agreement, 1994, and Section 9 (f)<sup>9</sup> of the GI Act, which provides that for a GI to be protected in any country, it needs to enjoy protection in the country of origin. So, an Indian GI has to be registered in India before it can be registered elsewhere. The third could be that the GI is registered abroad and not in India. It again is not possible as the guideline elucidates in the public notice that the objective is to encourage products registered as GI thus dismissing the possibility of use of logo or tagline for unregistered products. This section should therefore be reworded to ‘Indian GI products registered in India and abroad’ to remove confusion.

One pertinent issue that needs redress if India intends to use the logo and tagline on exports is ensuring the authenticity of the product and the legal measures DPIIT can take in case of a contravention. Since the guidelines bars foreign GI products from using the logo and tagline, a question that arises is whether it is detrimental to the marketing and sale of foreign GI products, as consumers may prefer an Indian product.

---

<sup>6</sup> *Id* at 2.

<sup>7</sup> *Id* at 4.

<sup>8</sup> Agreement on Trade Related Aspects of Intellectual Property Rights, art. 24(9), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1C, 1869 U.N.T.S 299, 33 I.L.M 1197 (1994) [hereinafter TRIPS Agreement].

<sup>9</sup> The Geographical Indications of Goods (Registration and Protection) Act, No. 61 of 1999, §.9(f).

As to the foreign GI products, the guideline explicitly bars them, irrespective of whether registered in India or abroad, from utilising the logo.<sup>10</sup> Reading it with the objective of the guideline where under not only identification but also guaranteeing the authenticity of GI products is sought to be achieved the genuine question which arises is whether it enables a consumer to identify an authentic Indian GI product with ease, whereas foreign GI products would be harder to identify considering an implicit lack of familiarity? Would this give undue commercial advantages to Indian GI products?

The guidelines *prima facie* discriminates between a foreign and an Indian GI product as Indian GI products can use the logo which allows the consumers to ensure its quality whereas this privilege is not afforded to foreign GIs. This raises two questions. Firstly, in an era of increasing globalisation where a country has both domestic as well as foreign goods in its market, the logic behind establishing a framework to ascertain the genuineness of domestic products is to be questioned.

Secondly, under the TRIPS Agreement obligations, India is mandated to provide equal treatment to foreigners and citizens. This principle is known as national treatment.<sup>11</sup> Sections 84 and 85 of the GI Act incorporates national treatment.<sup>12</sup> When the Act seeks to ensure authenticity and genuineness of all GI products without any discrimination as to foreign or domestic, are the guidelines *ultra-vires* the Act? Moreover, does the guidelines violate India's international obligations under the GATT Agreement<sup>13</sup>, TRIPS Agreement and the TBT Agreement<sup>14</sup>?

Firstly, the public notice elucidates that the guidelines seeks to encourage promotion and marketing of Indian GI products.<sup>15</sup> So it is evident that the logo seeks to give an economic advantage to the Indian products, but this results in foreign GI goods standing discriminated.

---

<sup>10</sup> Draft guidelines for permitting the use of Geographical Indication (GI) Logo & Tagline, (proposed June 24, 2019), Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, P-24026/10/2018-IPR-IV-Part (1), Annexure I p.3, (8<sup>th</sup> November, 2019), [https://dipp.gov.in/sites/default/files/GI\\_Guideline\\_Finalised.pdf](https://dipp.gov.in/sites/default/files/GI_Guideline_Finalised.pdf).

<sup>11</sup> TRIPS Agreement, art. 3.

<sup>12</sup> GI Act, §§.84-85.

<sup>13</sup> General Agreement on Tariffs and Trade 1994, Apr.15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S 120, (1994) [hereinafter GATT Agreement].

<sup>14</sup> Agreement on Technical Barriers to Trade, Apr.15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S 187, 33 I.L.M 1153 (1994) [hereinafter TBT Agreement].

<sup>15</sup> *Supra* note 2.

Further, the Act mandates equal treatment between a foreign and an Indian good.<sup>16</sup> Hence, the provision of the guidelines that prohibits foreign GIs from using the logo or tagline is *ultra-vires* the Act. Secondly, the guidelines are likely to violate India's international obligations as India is placing foreign GI products at a disadvantage by denying them the use of the logo and tagline which ensures authenticity and genuineness of GIs.

Looking at the specifics, one needs to glance at the WTO case of *European Communities (EC)-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs* (2006)<sup>17</sup>. In the complaint filed, United States<sup>18</sup> and Australia<sup>19</sup> challenged the EC Regulations<sup>20</sup> that provides that "if the name of a protected third country was identical to a community protected name (EC) then its registration shall only be authorised if the country of origin of the product was made visible in the product" as giving less favourable treatment to the imported products.<sup>21</sup> The issue at hand was a labelling requirement which gave priority to GI's registered in EC than GIs from non-EU countries when both the names were identical. The regulation was under challenge as violative of the principle of national treatment incorporated under Article III:4 of the GATT Agreement<sup>22</sup>, Article 2.1 of the TBT Agreement<sup>23</sup> and Article 3.1 of the TRIPS Agreement<sup>24</sup>. We can draw parallels to India's draft guidelines as it also provides for a labelling requirement which gives priority to Indian GIs in comparison with foreign GIs.

---

<sup>16</sup> GI Act, §§ 84, 85.

<sup>17</sup> Two complaints have been filed. One by US and the other by Australia. Consequentially there are two separate WTO Panel Reports each in respect of the complaints filed: Panel Report, *European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS174/R, (adopted Apr. 20, 2005); and Panel Report, *European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS290/R, (adopted Apr. 20, 2005).

<sup>18</sup> Panel Report, *European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS174/R, (adopted Apr. 20, 2005).

<sup>19</sup> Panel Report, *European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS290/R, (adopted Apr. 20, 2005).

<sup>20</sup> Council Regulation 2081/92 of Jul. 14, 1992, Protection of geographical indications and designations of origin for agricultural products and foodstuffs, art. 12(2), 1992 O.J. (L 208) (EC). Article 12 (2) states that "if the protected name of a third country is identical to a Community protected name, registration shall be granted with due regard for local and traditional usage and the practical risks of confusion. Use of such names shall be authorised only if the country of origin of the product is clearly and visibly indicated on the label".

<sup>21</sup> Australia claimed that the labeling requirement applies to the use of GI's from other WTO countries so that use of GI on a product from another country could only be authorised if meets the labeling requirement. *See supra* note 26 at pp. 9, 100. *See also supra* note 25 at pp. 106, 107.

<sup>22</sup> *Supra* note 25 at p. 112.

<sup>23</sup> *Supra* note 26 at p. 100.

<sup>24</sup> *Supra* note 25 at p. 110.

The principle of national treatment embodied under the TRIPS Agreement<sup>25</sup> seeks to prevent discrimination between nationals of one's own country with that of other WTO members. The issue is whether the guidelines deals with nationals alone. *Prima facie*, it doesn't, as it deals with GI products and not nationals. However, owing to the peculiar nature of GI, i.e., an owner of a GI of a particular country will ordinarily be a citizen of that country and not of any other country. If we take the example of a GI from France, it will ordinarily be a French citizen and not a citizen of China or USA. The direct effect of the guidelines is therefore on nationals, even though it deals with GI products. So, we must examine whether the provisions of the guidelines violate national treatment under the TRIPS Agreement.

Regarding TRIPS Agreement violation, the Panel opines that two conditions have to be satisfied for proof of violation: that it must concern the protection of intellectual property; and that it gives less favourable treatment to the nationals of other Members. Protection of intellectual property concerns the acquisition, scope, availability, enforcement and maintenance of the intellectual property, as well as the use of IP, specifically addressed in the Agreement.<sup>26</sup> The draft guidelines affects the enforcement of IP, as the logo enables authorities and customers to differentiate between genuine and non-genuine products. resulting in better enforcement of Indian GI goods.

Now, as to the inquiry into less favourable treatment, the Panel notes that the test is whether the Regulation provides for effective equality of opportunities to both the goods and also the fundamental thrust and effect of the Regulation.<sup>27</sup> The Panel interprets 'effective equality of opportunity' as effective equality of opportunities to imported products in terms of the application of laws, regulations and requirements affecting the internal sale, distribution, offering for purchase, sale, or use of the product and 'fundamental thrust and effect' as including an analysis of its terms and practical implications.<sup>28</sup> The guidelines confers an economic advantage to Indian products and could affect the internal sales of the foreign GI products. Denying the use of GI logo and tagline deprives the foreign GIs of an opportunity for easier marketing and communicating the authenticity of the product to the customers.

---

<sup>25</sup> The national treatment principle under TRIPS Agreement focuses on nationals and whether the nationals of other WTO members are accorded less favourable treatment than their own. *See* TRIPS Agreement, art. 3.

<sup>26</sup> *Supra* note 25 at p. 110.

<sup>27</sup> *Id* at p. 111.

<sup>28</sup> *Id* at pp. 44, 45.

Moving on to the GATT Agreement<sup>29</sup>, Article III deals with discrimination between a domestic and an imported product. The Panel notes two requirements to be assessed here, First, whether the law in question is one that affects the internal sales and offering for sale and second, whether it formally discriminates between domestic and imported products.<sup>30</sup> Again, the guidelines affects the internal sales, purchase, use, offering for sale of the product as the use of logo and tagline will give an economic advantage to Indian products, and it formally discriminates between the products as under the guidelines, consumers would prefer Indian products compared to similar foreign products as they would consider it authentic if it contains the logo, whereas they would be apprehensive about the genuineness of the foreign GI products.

Concerning the allegation of violation of the TBT Agreement<sup>31</sup>, the Panel observes that the essence of Article 2.1 is that it needs to be a technical regulation and must concern like products. Further, the regulation does not afford any less favourable treatment to imported products. Technical regulation means a regulation which lays down production method, product characteristics or related processes, including the related administrative provisions. There must be a labelling requirement with which compliance is mandatory.<sup>32</sup> The guidelines are a labelling requirement as it prescribes the circumstances for the use of the label (logo and tagline). Compliance with it is mandatory as the guidelines use the words ‘are not allowed to use’,<sup>33</sup> expressing the nature of compliance. Thus, it is a technical regulation within the ambit of TBT Agreement.<sup>34</sup>

As to whether the usage mandated concerns ‘like’ products, the guidelines applies to any GI. Thus, wine from France registered under the Act might not be able to use the logo and tagline

---

<sup>29</sup> GATT Agreement, art. III:4 states “the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product”.

<sup>30</sup> *Supra* note 25 at pp. 113, 114.

<sup>31</sup> TBT Agreement, art. 2.1 states that “Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any country.”.

<sup>32</sup> *Supra* note 26 at p. 104.

<sup>33</sup> Guidelines at p. 3.

<sup>34</sup> *Supra* note 25 at p. 107.

whereas as Indian wine registered under the Act can avail of the benefit of the logo and tagline, so it applies to 'like' products.

As to whether the regulation affords 'less favourable treatment' to the imported products, the Panel observes that the inquiry is whether it provides any difference in treatment.<sup>35</sup> The result of the guidelines is clear: it affords less economic opportunity for foreign GI goods in comparison with similar Indian GI goods. Consumers are likely to choose Indian products with the logo and tagline, which are marks of authenticity and genuineness than similar foreign products with no such logo or tagline.

Therefore, a case can be made out by alleging that the provision in the guidelines providing for a blanket prohibition of foreign goods from using the logo or tagline violates India's international commitments under the TRIPS, GATT and TBT Agreements. The guidelines states that the DPIIT shall have the right to withdraw permission to use the logo and tagline without any notice.<sup>36</sup> Such a provision is unfair as it can result in applicants being at the threat of withdrawal of permission at any time, even after making substantial investments concerned for the event/sale. Such withdrawal should only be allowed after due notice.

## II. TERMS AND CONDITIONS

The next part of the guidelines is titled 'terms and conditions for the use of GI logo and tagline'. It states that DPIIT shall not be accountable for the quality or authenticity of the products which uses the logo or tagline or for any information shared or distributed in any media.<sup>37</sup> This provision contradicts the objective of the guidelines, that is 'the GI logo will act as a certifying mark which will be used to identify all GI's registered in India and make it convenient for consumers to recognise authentic GIs'.<sup>38</sup> This raises the question of who becomes responsible for ensuring the authenticity of products. The objective of the logo and tagline is to ensure authenticity and genuineness of products, and if there is no framework to ensure this, the purpose of the guidelines will become futile.

---

<sup>35</sup> *Supra* note 26 at p. 108.

<sup>36</sup> Guidelines at p. 3.

<sup>37</sup> *Id* cl. 1(iv) at p. 3.

<sup>38</sup> *Supra* note 2.

Sub-clause (vii) provides that in the event of any unauthorised use of the logo or tagline, DPIIT is entitled to take action as it may deem fit.<sup>39</sup> The word ‘may’ highlights that the power is discretionary and DPIIT could choose not to take action in genuine cases. This reduces the deterring effect of the provision. It is clarified when read with sub-clause (iv) the stand taken under the guidelines. DPIIT will act as a passive observer, and if a violation is brought to their notice, they may take action, which again implies that there will be no monitoring system under the guidelines. One major criticism levelled against the GI Act is that there is no post-market monitoring and quality control of the products. So it is disappointing that such a passive stand has been taken under the guidelines too.

Further, the guidelines are silent as to the punishment in case of a breach. If the guidelines are to have any impact on the unauthorised use of GI logo, it should have specific actions which the DPIIT can take. Having said this, one needs to ask ourselves even with potent criminal remedies provided for violation of the GI Act, how many infringement suits have been filed across various High Courts and at the Supreme Court in the post-GI Act period. It will highlight the fallacy of the current approach and the need for altogether a new one.

Under the guidelines, it is the responsibility of the entity seeking permission to use the logo and tagline to ensure that the use is in association with genuine Indian GI products sold by Authorised Users registered under the Act.<sup>40</sup> It is not clear on whom the responsibility to ensure the genuineness of the product lie. It is in line with the GI Act, where again the responsibility to ensure that the product is genuine is on the producers of the product<sup>41</sup>? Let us ask as to how this presumption has been working in India?

---

<sup>39</sup> Guidelines cl. 1(vii) at p. 3.

<sup>40</sup> *Id* cl. 1(viii) at p. 3.

<sup>41</sup> Section 11 of the GI Act prescribes the content to be included in the application to be filed for registration of a GI. Rule 32 of the Geographical Indications of Goods (Registration and Protection) Rules, 2002, in this connection prescribes that a statement as to the particulars of the mechanism to ensure that the quality, integrity, consistency and other special characteristics in relation to the goods are maintained by the producers, maker or manufacturer of the goods, is to be included in the application. Further the details of the inspection structure, if any, to regulate the use of the GI are also to be provided. *See* The Geographical Indications of Goods (Registration and Protection) Rules, 2002, r. 32, Gazette of India (2002), pt. ii sec. 3, <http://egazette.nic.in>.

The Manual of Geographical Indications Practice and Procedure further clarifies that the application may contain details of the inspection body set up by the applicant to monitor the production in respect of the quality, consistency and integrity of the product as well as the genuine use of the GI. Thus, the responsibility of ensuring the genuineness of the product is on the applicant himself and the Act does not envisage any external agency to regulate it. *See* Office of The Controller General of Patents, Designs and Trademarks & Registrar of Geographical Indications, Manual of Geographical Indications Practice and Procedure,

Though there is no extensive study to answer this question, literature<sup>42</sup> suggests that things have not been working well at the ground level. The Act has brought in the notion of Registered Proprietor to enhance registration, and for defending the GI's against infringement.<sup>43</sup> The number of litigations initiated by the Registered Proprietor will give an idea about its effectiveness. In this context, it should be said that it is because government organisations have stepped into shoes of a Registered Proprietor, many GI registrations have been encouraged<sup>44</sup>, but their role in filing infringement suits remains unclear.

Another fascinating point in the guidelines is that entities must only use the logo and tagline concerning products provided by Authorised Users registered under the Act.<sup>45</sup> Does the DPIIT honestly believe that at least 50 or even 25 per cent of the actual users/producers of GI has registered themselves as Authorised Users? The tip of the iceberg can be seen from the number of Authorised Users given in the Registry's website. In the case of famous Kancheepuram Silk, the website provides information only of two Authorised Usernames<sup>46</sup> as Authorised Users.<sup>47</sup> Authorised User. The case of Mysore Silk or Coorg Orange is no different as there is no mention of even a single name.<sup>48</sup> When this is the sad state of affairs of the registry's website, an applicant cannot ensure that the supplier is an Authorised User.

---

[http://www.ipindia.nic.in/writereaddata/Portal/IPOGuidelinesManuals/1\\_31\\_1\\_manual-of-geographical-indications-practice-and-procedure.pdf](http://www.ipindia.nic.in/writereaddata/Portal/IPOGuidelinesManuals/1_31_1_manual-of-geographical-indications-practice-and-procedure.pdf).

<sup>42</sup>In India, there is no post-registration quality control mechanism. Empirical studies have shown absence of inspection mechanism on the ground in GI dominated areas and calls for stringent quality control mechanisms in place to ensure that the authenticity and quality of the products are preserved. See Yogesh Pai & Tania Singla, 'Vanity GIs': India's Legislation on Geographical Indications and the Missing Regulatory Framework, in GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE: FOCUS ON ASIA-PACIFIC 333–358 at pp. 333-345 (Irene Calboli & Wee Loon Ng-Loy eds., 2017).

<sup>43</sup> GI Act, § 21.

<sup>44</sup> An analysis of the first 100 GI applications and applications from no. 100 to 200 revealed that 64% and 57% of the applications respectively, were filed and subsequently registered in the name of government agencies.

See Prashant Reddy, *The Nationalization of Geographical Indications in India*, SPICYIP (Feb. 12, 2012), <https://spicyip.com/2012/02/nationalization-of-geographical.html>; See also, Prashant Reddy, *More on the Nationalization of GIs-Sarkar Raj - Power cannot be given - It has to be taken*, SPICYIP (Feb. 17, 2014), <https://spicyip.com/2012/02/more-on-nationalization-of-gis-sarkar.html>.

<sup>45</sup> Guidelines cl 1(vii) at p. 3.

<sup>46</sup> The two authorized users are Mrs. B. Padma W/O Mr Balasubramaniam and Shri. S. Chitrambalam of M/s Shiva Sakthi Silks. See *Authorized User Details of Kancheepuram Silk*, GEOGRAPHICAL INDICATIONS REGISTRY, <http://ipindiaservices.gov.in/GirPublic/Application/Details/15>, (last visited Dec. 4, 2019).

<sup>47</sup> *Id.*

<sup>48</sup> *Details of Mysore Silk*, GEOGRAPHICAL INDICATIONS REGISTRY, <http://ipindiaservices.gov.in/GirPublic/Application/Details/11> (last visited Dec. 4, 2019); *Details of Coorg Orange*, GEOGRAPHICAL INDICATIONS REGISTRY, <http://ipindiaservices.gov.in/GirPublic/Application/Details/33> (last visited Dec. 4, 2019).

One may argue that the government record's uploading on the website was not proper, but the reality is that most of the users/producers of the GI are not registered.

Sub-clause (viii) further entrusts the applicant with the responsibility of ensuring genuineness of the product concerned, making it clear that there is no monitoring system envisaged. So, the need is to shift the entire burden of defending the GIs from the shoulders of the applicants or Authorised Users or Registered Proprietors. The government needs to come up with surveillance and monitoring committees to ensure that illegal goods do not flood the market. If the government is shying away from its responsibility, the entire exercise of promoting GIs and release of logos will be wasteful.

Sub-clause (xi) states that DPIIT will decide the duration of the use of the logo on a case to case basis.<sup>49</sup> So inevitably DPIIT is going to grant different periods for different uses ranging from a day's use to several months depending on the case in hand. We have two categories here: one who can use it without permission and the other who requires approval.

Both cases do not contemplate unauthorised use or a framework to monitor it. Since there is no post-market or post-grant monitoring mechanism under either under the Act or the guidelines, the effectiveness of action taken by DPIIT can be questioned. Action can be taken only on the basis of complaints, practically meaning there will be widespread unauthorised use of the logo and tagline.

The model followed under the Act and the guidelines is a market-based approach rather than a regulatory one with the underlying faulty assumption that GI owners are capable of taking care of their intellectual property and thus, least governmental intervention is justified. It is high time that such a presumption, taking into account the Indian reality, is questioned and debated.

### III. PROCEDURE FOR GRANT OF PERMISSION

Clause two, of the guidelines deals with the process for grant of permission to use the logo and tagline. It entrusts the power of approval in the hands of Joint Secretary, DPIIT. DPIIT can seek additional information, and in case of use of the logo for electronic media, the details must be submitted at least 30 days advance.<sup>50</sup> The procedure for grant of permission

---

<sup>49</sup> Guidelines cl 1(xi) at p, 3.

<sup>50</sup> *Id* at pp. 3, 4.

is thus loosely worded, and even in case of use of the logo in electronic media, where the risk of unauthorised usage is high, the guidelines fails to mandate steps to ensure prevention of the same. Further, it does not prescribe any time limit for granting the permission by the DPIIT which may result in pendency of an application for an extended period which can be detrimental to the commercial interest of the applicant.

#### IV. CATEGORIES NOT REQUIRING PERMISSION

Clause 3 deals with the groups which do not need permission for the use of logo and tagline and it includes, among others, offices and officers of DPIIT, all central and state government departments and Indian embassies/missions abroad for programmes directly organised by them.<sup>51</sup> In the case of Registered Proprietors and Authorised Users, they shall use the logo and tagline for the product for which they have obtained registration without obtaining permission.<sup>52</sup> However, the guidelines further mentions that “for the sake of information, it is desirable that they submit the required information as provided in the enclosed format” given at the end of the guidelines. This shows that there is no mandate on the Registered Proprietors and Authorised Users.

An important point is that the Act confers the right to use the GI only to Authorised Users and explicitly denied the Registered Proprietors this right.<sup>53</sup> The reason is attributable to the fact that there exists a high possibility that the Registered Proprietors may abuse its position to usurp the benefits which should go to the Authorised Users if given an independent right to use the GI. In tune with this, it would only be logical to allow the Registered Proprietor to use the logo after obtaining permission from the DPIIT that is to add them under the category of individuals who requires permission to use the logo.

---

<sup>51</sup> *Id* at p. 4.

<sup>52</sup> *Id* cl 3(iv) at p. 4.

<sup>53</sup> GI Act, § 22.

## V. CATEGORIES REQUIRING PERMISSION

Clause 4 deals with categories which can use the GI logo and tagline with the permission of DPIIT. They include *inter alia*, all central/State government ministries and departments for programmes conducted in association with industrial bodies like CII/FICCI/ASSOCHAM,<sup>54</sup> events organised by private bodies for promoting GI,<sup>55</sup> for the broadcast of logo and tagline on electronic media or other modes of communication,<sup>56</sup> for use in articles, blogs through newspaper, magazine, internet<sup>57</sup> and for sale and display of products by retail/wholesale outlets or e-commerce platforms<sup>58</sup>. The guidelines are silent on whether a wholesale outlet that has purchased genuine GI products from Authorised Users containing the logo and tagline need to obtain permission from DPIIT to sell the products, and in such a case, do they require permission each time or for a particular period. Further, the guidelines are silent on whether permission is granted for a product or classes of products or use of any GI product.

The effect of this provision clearly would be to discourage whole or retail outlets or e-commerce platforms from the promotion of GI products. Taking into consideration the delay in getting permission from a government body like DPIIT; E-commerce platforms or retail outlet would be unwilling to get permission. Further, if an Authorised User has sold the goods, an e-commerce platform would be required to obtain additional permission.

Regarding wholesale and retail outlets, it can include small shops selling few products to giant mega marts. Can one expect all these establishments to seek permission from DPIIT? If yes, then the DPIIT would be flooded with applications from all the categories of individuals, including permission applications for individual functions. The irony here is that permission is to be sought by private bodies and e-commerce platforms without any surveillance and monitoring mechanism after granting of the permission.

The categories requiring permission also includes the Registered Proprietors and Authorised Users of other GIs than the one which they are registered.<sup>59</sup> This provision is not

---

<sup>54</sup> Guidelines cl 4(i) at p. 4.

<sup>55</sup> *Id* cl 4(iii) at p. 4.

<sup>56</sup> *Id* cl 4(iv) at p. 4.

<sup>57</sup> *Id* cl 4(v) at p. 4.

<sup>58</sup> *Id* cl 4(vi) at p. 4.

<sup>59</sup> *Id* cl 4(vii) at p. 4.

necessary. Why should a Registered Proprietor or Authorised User of, say Darjeeling tea be allowed to use the logo and tagline for Kancheepuram Saree? The Act clarifies that the right of use with respect to a registered GI is vested with the Authorised User of the GI concerned<sup>60</sup> and definition of the producer,<sup>61</sup> does not envisage Registered Proprietors or Authorised Users of any other GI. If the guidelines refer to a situation in which Registered Proprietors or Authorised Users of one GI is assisting others to help with the sale of the latter's GI products, equitable participation of the former will resolve the issue.

## VI. THE WAY FORWARD

In this article, three critical questions were raised in the beginning to assess the overall effectiveness of the guidelines. Firstly, as to who will ensure the authenticity of the GI products, Secondly, how will it be guaranteed that is, what are the mechanisms envisaged in the guidelines to achieve it? Furthermore, thirdly, what are the legal measures provided for in case of contravention.

Regarding the first, it is the burden of the applicants themselves who seek permission from DPIIT to ensure that the affixation of the logo and tagline are on genuine products. As regards the second, there is no mechanism envisaged under the guidelines to ensure the genuineness of the GI products as there is no quality control or monitoring mechanism envisaged. Regarding the third, there are no specific legal measures provided for in case of contravention. The only thing mentioned in the guidelines is the discretionary powers vested with the DPIIT to take action if they wish to do so. Therefore, the guidelines in its present form cannot be said to be effective in achieving its objective, that is to use the logo and tagline as a certifying mark by which consumers can identify and recognise authentic GI products which will, in turn, benefit the genuine producers of the GI goods.

The solution in this regard would begin by envisaging a framework whereunder the entire responsibility is not the shoulders of the applicants alone. The presumption that least governmental intervention is only required is in line with that of the Act whereunder the responsibility to ensure the genuineness of the product is with the producers of the GI themselves. This approach must change, and the government must step forward to undertake

---

<sup>60</sup> GI Act, § 21.

<sup>61</sup> GI Act, § 2(k).

monitoring and surveillance mechanism to ensure that the logo and tagline are used only on genuine products.

The specific measures that can be taken could be to deploy inspection squads who can conduct surprise inspections as to the genuineness of the products using the logo and tagline, thereby keeping the applicants on high alert and reducing instances of misuse of the logo and tagline. Such surveillance and monitoring should be on the categories of individuals prescribed under the guidelines, be it those who require permission or those who do not and should even include foreign products and Indian products exported outside.

Discriminating between the Indian and foreign products seems to be an imprudent approach which needs to be changed, the latter must also have the opportunity to use the logo and tagline as their mark of genuineness. As the guidelines is silent on the penalty in cases where any person duplicates or forges the logo and tagline and uses it on products or persons who abet it, it must provide for specific but moderate penal punishments if found to be using or abetting the unauthorised use of the logo and tagline. Consumers and other interested parties must get an opportunity for quality inspection of the products where they can approach either the inspection squad or selected testing centres to test the quality or other features of the product as mentioned in the application. DPIIT should also set up anti-piracy cells to monitor using the logo and tagline online through the internet or other electronic means which can also receive complaints from interested parties.

The time delay that might take place in approving the applications is another cause of concern. It may prove to be a significant deterrent to willing e-commerce platforms or other parties interested in promoting the product genuinely. The guidelines must provide for a deeming provision under which the maximum period within which the DPIIT must give the permission should be 30 days, failing which it shall be deemed to have been given. Further, the applicant must be afforded a provision for administrative appeal in case of rejection of the permission.

Allowing use of logo and tagline by Registered Proprietors should only be after obtaining prior approval from DPIIT. Allowing Authorised Users to use the logo and tagline for GIs (other than the GIs for which they have registered) should be done away with as they can result in misuse. If any other Registered Proprietor or Authorised User wants to promote

and sell other GIs they can collaborate with the Authorised Users of the GI concerned and use the logo and tagline.

The guidelines have not elucidated whether the application for permission can be by way of online applications or only offline. Such clarification is required, and facilities should be given for both online and offline applications. To conclude, one thing which can be said is that the guidelines, at least in its present form will not create any significant impact in ensuring that the GI product is genuine and in enhancing the marketability of the product. If the guidelines follow the same path as that under the Act, it will do little to help the genuine producers, and the whole exercise of releasing the GI logo and tagline would prove to be wasteful, both in terms of time and money.

\*\*