



## Geographical Indications and Trade Marks: A Study of Their Legal and Conceptual Distinctions

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### Abstract:

Intellectual Properties are something that needs major recognition and proper protection. Especially the one which are used for the product identification like Trademarks, Biodiversity, Collective marks, Geographical Indication, etc. When it comes to GI and Trade mark, it often lacks distinction between them and it is not being identified properly. Geographical Indication is a collective mark that will be given to multiple producers for producing goods either natural or manufactured, which has a distinctive character because of its geographical nature and Trademark is given to a single producer for a mark or symbol or name which is distinctive to identify the product to make it easier for the people. Their distinction is important so that to protect the traditional and cultural producers of GI and give them a proper validation and also to reduce the dilution of both and give them special protection. In this paper we will be seeing the distinction of both GI and Trademark, their legal protection across the globe and why is it necessary to protect them individually. This paper will be analysing the concept behind the same and how it has been defined around the world in order to protect the same.

**Keywords:** Geographical Indication, Trademark, Intellectual Property, Producers, Distinction.

### 1. Introduction

The Intellectual Property is at a state to need more recognition due to the rapid growth in the technology and also in the economy that it is really necessary that all of it needs proper recognition. People want the products that they use in their life to be authentic and unique that it has the value for the money. GI and Trademark gives them the same and that's the main reason for them to be given proper protection that they need in order to save the interest of the producers and also the consumers in that regard. Geographical Indication as defined in the TRIPS agreement and the geographical Indication Act, 1999, Is a good which has some distinctive trait which is there because of either the region or the method to production which is carried on in that area, locality or region. On the other hand Trademark is a mark that is used to identify the product by the consumer for its distinctive quality. They are different as GI is a collective mark that is given to multiple producers and Trademark is given to a single producer to protect their rights. Their distinction makes a necessity in the place of protection the rights of the traditional producers and also to protect their culture in the same. It also helps in protecting the Trademark from being used by unauthorised users which may lead to genericide or dilution of the same. Although Geographical Indications and Trade Marks are both critical IP tools, they differ significantly in their nature, purpose, and legal framework.

## 2. Definitions and Core Differences

As per Article 22(1) of the TRIPS Agreement, a Geographical Indication refers to a sign used on goods that originate from a specific region, locality, or territory, where the unique quality, reputation, or other attributes of the goods are fundamentally linked to their geographical origin.<sup>1</sup> India's GI Act (1999) defines GI similarly as a sign for goods whose unique qualities are due to their geographical origin.<sup>2</sup> In contrast, a trademark is "any sign capable of distinguishing goods or services of one enterprise from those of others," protected under the Trademark Act of 1999.

Key differences include:

- **Ownership:** GIs are collective rights for groups of producers; trademarks are exclusive to a single owner.
- **Scope:** GIs apply only to goods whose qualities link to a region; trademarks can apply to any goods or services.
- **Assignment:** when it comes to trademark it can be licensed or assigned but for GI, it can't be assigned but can be given to authorised user.
- **Duration:** GIs are renewable (usually every 10 years in India); trademarks can be renewed indefinitely.

These differences reinforce the protector of collective cultural heritage (GIs) versus that of individual economic branding (trademarks).

### International Legal Frameworks

The protection of Geographical Indications (GIs) and trademarks across jurisdictions varies significantly, reflecting differing historical, cultural, and economic priorities. At the international level, the primary legal foundation for GI protection is the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995**, which sets minimum standards for member countries of the World Trade Organization (WTO). Under **Articles 22–24 of TRIPS**, members are obligated to protect GIs to prevent misrepresentation of the geographical origin of goods and to avoid unfair competition. While TRIPS provides flexibility for states in implementing these obligations, the approaches adopted in jurisdictions like the United States, European Union, and China showcase contrasting systems for protecting GIs in relation to trademarks.

#### United States

The United States does not provide a **sui generis (standalone)** regime for GI protection. Instead, it relies on its **Trademark Act (Lanham Act, 1946)** to safeguard geographical terms through **certification marks** and **collective marks**. Certification marks indicate that a product meets certain regional or qualitative standards (e.g., "Idaho® Potatoes"), while collective marks are used by members of associations to indicate geographic origin.

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<sup>1</sup> [bitlaw.com+6USPTO+6Wikipedia+6](https://bitlaw.com/6USPTO+6Wikipedia+6)

<sup>2</sup> [wipo.int](https://wipo.int).

For example, the **Napa Valley Vintners Association** uses certification marks to protect wines from California's Napa Valley, ensuring that only wines meeting the geographic criteria can bear the name. Similarly, the **Vidalia Onion Committee** in Georgia uses certification marks to protect "Vidalia Onions."

However, critics argue that this trademark-based protection is weaker than the European system, as U.S. law treats geographical terms primarily as indicators of origin rather than as community-owned rights. This has created tension in international trade disputes, especially with the European Union.

#### European Union

The European Union offers one of the world's strongest systems for GI protection through a dedicated, **sui generis framework**. EU law recognizes two levels of GI protection under **Regulation (EU) No. 1151/2012**:

1. **Protected Designation of Origin (PDO)**: Covers products whose production, processing, and preparation occur entirely in the defined geographical area (e.g., *Parma Ham*, *Roquefort Cheese*).
2. **Protected Geographical Indication (PGI)**: Requires that at least one stage of production occurs in the specified region (e.g., *Scotch Beef*, *Bavarian Beer*).

In the EU, GIs are treated as collective property rights that cannot be transferred or licensed like trademarks. This system is deeply rooted in preserving traditional agricultural practices and cultural heritage.

The EU's robust GI protection has led to trade conflicts with the United States, particularly regarding the use of generic names. For example, the EU prohibits non-Italian producers from labeling sparkling wine as "Champagne," while the U.S. allows it under certain grandfathered exceptions.

#### China

China follows a **hybrid system**, combining trademark law with sui generis GI protection. GIs can be registered as **collective marks** or **certification marks** under the **Trademark Law of the People's Republic of China** (revised in 2019). Alternatively, GIs can be protected as "special marks" under the **Administrative Measures for the Protection of GI Products**, overseen by the State Administration for Market Regulation.

Notable Chinese GIs include **Longjing Tea** and **Kweichow Moutai Liquor**, which enjoy strong domestic protection against misuse. China has also signed agreements with the EU to mutually recognize and protect 100 GIs from each region, further strengthening its GI regime in line with global standards.

### 3. India's Legal Regime

In India, the legal framework for Geographical Indications is established under the Geographical Indications of Goods (Registration and Protection) Act, 1999, which became effective on 15 September 2003. The enactment of this legislation was aimed at fulfilling India's commitments under

the TRIPS Agreement (1995), especially Articles 22 to 24, which require member states to recognize and protect GIs as a distinct category of intellectual property rights. The Main necessity of the Act is to Give proper protection for the goods that has certain attributes, and possess necessity quality which are based on the geography or the method of production in that particular geography, while also preventing unauthorized use and ensuring fair competition among producers.

Under Section 2(1)(e) of the Act, a “**Geographical Indication**” is defined as an indication which identifies agricultural goods, natural goods, or manufactured goods as originating in the territory of a country, region, or locality where a given quality, reputation, or other characteristic of such goods is essentially attributable to their geographical origin. Examples of registered Indian GIs include Kancheepuram Silk, Assam Tea, Kodaikanal vella pundu, etc.

The GI Registry is located in Chennai, which registers and administers GIs in India. Registration confers protection for **10 years** (Section 18) and can be renewed indefinitely. Importantly, GIs are **non-assignable and non-transferable**, unlike trademarks, as they are linked to the geographical region and not to an individual proprietor.

#### **Case Study: Tea Board of India v. ITC Ltd.**

In *Tea Board of India v. ITC Ltd.* (Calcutta High Court, 2019), the Tea Board sought to prevent ITC from using “Darjeeling Lounge” in its Kolkata hotel, asserting GI, certification mark, trademark rights, and passing-off. The court dismissed all claims and awarded ₹100,000 in costs<sup>3</sup>. Key findings included:

- GI Act applies only to goods, not services; lounges provide services, not goods<sup>4</sup>
- Certification marks only certify goods (tea) and do not prohibit service use of “Darjeeling”<sup>5</sup>
- Bar under Section 26: ITC’s lounge began in January 2003, predating the GI Act’s enforcement in September 2003<sup>6</sup>
- Consumers of the lounge—a five-star service—were unlikely to confuse it with Darjeeling tea, negating passing-off claims.<sup>7</sup>

This case underscores that GI rights are product-specific and non-transferable to services—thus preserving clear boundaries between GI and trademark uses.

#### **4. Conclusion**

This study highlights the fundamental and legal differences between GIs and trademarks. GIs safeguard collective cultural products—like Darjeeling tea—by asserting origin-based quality.

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<sup>3</sup> [BananaIP+8SpicyIP+8Kluwer Trademark Blog+8](#)

<sup>4</sup> [Nishith Desai Associates+5IIPRD |+5Indian Kanoon+5USPTO+5Mondaq+5Lexology+5.](#)

<sup>5</sup> [Wikipedia+10Mondaq+10Lexology+10.](#)

<sup>6</sup> [Nishith Desai Associates+3IIPRD |+3Kluwer Trademark Blog+3.](#)

<sup>7</sup> [Indian Kanoon+1Wikipedia+1](#)

Trademarks, however, protect individual business identities and can be linked to goods or services and freely assigned. Globally, diverse legal frameworks—EU’s sui generis protections, the U.S.’s trademark-based regime, and hybrid systems in China and India—reflect differing cultural and economic priorities.

In India, the GI Act and judicial interpretations (such as in *Tea Board v. ITC*) demonstrate a clear delimitation: GI rights apply to goods, while trademarks may cover services. Such distinct but complementary protections ensure both rural, traditional producers and commercial enterprises are safeguarded within a balanced IP ecosystem. Protecting each regime independently across jurisdictions ensures the preservation of cultural heritage and the viability of brand-driven commerce.

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