

Chapter VII

Fashion designs protection under the Law of Geographical Indications

7.1 Introduction

Copyright, trademarks and designs law aims at protecting the fashion industry from fashion piracy, whereas geographical indications prevent traditional fashion products from being misappropriated either by the big fashion houses or by other communities who have no right to make use of such GIs. One of the objectives of granting GI is to protect and promote an indigenous community's traditions and cultural heritage. When a fashion designer misappropriates the culture and traditions, it can lead to the exploitation and commercialisation of cultural and traditional symbols, depriving the indigenous community of benefiting from them. Many fashion brands, like Gucci, Dior, and Sabyasachi Mukherjee, have received backlash from the indigenous community for commodifying their culture and traditions without their consent. The eccentric trend of cultural appropriation by the fashion industry has exploited indigenous communities' cultural identities and cultural property. Cultural appropriation is usually redressed using passive means like apologising to the respective community or conveniently withdrawing such design etc.²⁹² This chapter explores the relationship between Indian Craftsmanship and GIs with the fashion industry. Further, analyses the extent of protection granted to the GIs that are related to the fashion industry. Lastly, the research considers the case 'Darjeeling Tea' to analyse how GIs in the fashion industry could be better protected.

²⁹² Larry Reimer, *Macedonia: Cultural Right or Cultural Appropriation*, 53 U. TORONTO FAC. L. REV. 359 (1995).

7.2 The relationship between Indian Craftsmanship, GIs, and the Fashion Industry

Indian culture, traditions, handicrafts, and artistic craftsmanship is immensely influential to the fashion industry. Rahul Mishra is one of the three Indian fashion designers to be invited to Paris haute couture. Most of his collections are embroidered by hand and embellished with traditional forms of handicraft. He widely uses hand-woven fabrics and intricate hand-made embroideries in his collections. Dharmavaram Pattu sarees of Andhra Pradesh, Pashmina of Kashmir, and Muga Silk of Assam are fabric-related GIs and Kasuti Embroidery of Karnataka, Bagh prints of Madhya Pradesh, Machilipatnam Kalamkari, and Sangneri hand-block printing are few GIs granted to Indian craftsmanship. Fashion designers very often draw inspiration from Indian handicrafts and artisanship. Thus, a clear distinction should be drawn between cultural appreciation and cultural appropriation.

Indian culture and ethnicity play a significant role in tuning the fashion industry and its trends from time to time. ‘Ethnic Flair’ is the fashion version where the native culture and ethnicity predominantly influence fashion. Fashion designers fused the native traditional and cultural stylistic elements to create designs with an indigenous aura. Ethic flair can result from cultural appreciation or cultural appropriation; cultural appreciation is where the fashion designer works, accredits and compensates the indigenous community, whereas cultural appropriation is stealing the native traditions and culture without giving them due credit and compensation. Cultural inspiration can take the form of either cultural appreciation or cultural appropriation. Cultural appropriation begins when the fashion designer removes the ethnic significant element from the traditions and culture and uses it to create fashion designs.²⁹³ Cultural appreciation is ubiquitous in the fashion industry, especially between the Orient (West) and Occident (east), but cultural appropriation butchers the traditions and culture of a native

²⁹³ Sally Engle Merry, *Law, Culture, and Cultural Appropriation*, 10 YALE J.L. & HUMAN. 575 (1998).

community. Cultural appreciation should be celebrated in the fashion industry, whereas cultural appropriation should be curtailed.

Fashion designers across the world are being called out vociferously by the indigenous communities for cultural appropriation. The exponential increase of cultural appropriation cases in the fashion industry has threatened the indigenous communities of losing the significance of their native traditions and culture. Reputed fashion designers and fashion brands are oblivious to cultural misappropriation. As early as 1994, Chanel used a verse of the Quran on an evening dress which the Islam community considered as an insult to their religion; in 2013, Isabel Marant of the UK was alleged of culturally appropriating traditional Mexican culture that belonged to the Purepecha community; Marc Jacobs in 2017 had his models walk on the runway with faux dreadlocks hairdo which triggered the black women community. Black women were fired from and discriminated against in jobs for wearing dreadlocks, and it's only natural that they got offended by Marc Jacobs when he wanted to create a trend for dreadlocks.²⁹⁴ Balenciaga, a reputed luxury brand, created saggy pants with boxer shorts that peep out on the pants. Historians suggest that black prisoners wore such pants as they had no access to belts in the prisons. The style was used to identify and criminalise the black community, and many U.S. countries prohibited and penalised those who wore them in public until 2019. "What had been prohibited until recently was trying to become a trend?" Susan Scaffidi stated that borrowing from different cultures becomes even more problematic when a brand uses the traditions and culture of a native community devoid of its history.²⁹⁵ Cultural appropriation can have worse repercussions on the indigenous community.

²⁹⁴ Monica Florina Bota-Moisin, *Protection of Elements of Traditional-Identity Inspiration in Product Design. IA (Romanian Blouse) - Object of Protection under Intellectual Property Cultural Rights*, 2016 ROM. J. INTELL. PROP. L. 125 (2016).

²⁹⁵ N'dea Yancy Bragg, *Fashion designer Balenciaga accused of cultural appropriation over \$1,190 sweatpants*, USA Today, Sept. 13, 2021 3:50 pm ET, <https://www.usatoday.com/story/life/fashion/2021/09/13/balenciaga-racist-sweatpants-cultural-appropriation-accusations/8320213002/>

Drawing the thin line between cultural misappropriation and cultural inspiration is challenging and complicated. Fashion reflects a culture and takes its inspiration from the culture. Fashion and culture go hand in hand, Often, fashion reflects a particular culture, and culture becomes fashion. Since culture and fashion are interconnected, it's difficult to say when it's cultural misappropriation and when it would constitute cultural inspiration. Fashion should be allowed to borrow from culture but prevented from misappropriating or misrepresenting the culture. Not only is fashion benefitted by culture, but culture also benefits from fashion. Otherwise, territory-restricted culture can become borderless or move beyond territory if it becomes a fashion trend. Cultural appropriation and inspiration are beneficial to both culture and fashion. One of the many ways to promote cultural inspiration and prevent cultural appropriation is by granting GIs. Respecting and protecting communities' cultural heritage and intellectual property of communities while avoiding cultural appropriation requires thoughtful consideration, proper acknowledgement, and ethical engagement with local artisans and indigenous communities.²⁹⁶ Fashion brands should strive to promote cultural diversity, mutual respect, and fair practices in their design and production processes to avoid ethical concerns related to GIs and cultural appropriation.

7.3 Misappropriation of GIs by Fashion Designers

There are many instances where a fashion designer has misappropriated the GIs in India. Ritu Beri and Ritika Mittal have been accused of misappropriating Chakhesang textiles in their fashion shows and designs. Sabyasachi Mukherjee has been accused of misappropriating Sanganeri block print GI in his Wanderlust collection. In 2018, Christian Dior was accused of cultural appropriation of the 'Dabu print' that belonged to Rajasthan. This act of Christian Dior cannot be considered GI misappropriation because 'Dabu Print' is not yet a registered GI. In February 2022, Udyam Protsahan Sanstha applied for a GI tag for 'Dabu print', which is still pending before the Registrar of Geographical Indications.

²⁹⁶ John Rowell, *The politics of cultural appropriation*, 29 J. VALUE INQUIRY 137, 140 (1995).

Ritu Beri and Tribal Cooperative Marketing Development Federation of India Ltd launched a fashion show in Surajkund International Crafts Mela, ‘Naturally North-East: The Naga Narrative’ on February 7, 2020, in which Chakhesang shawls were made. Chakhesang shawls are of two types; Rira, a shawl specifically meant for men and Rura, specifically for women. However, in the show, women wore the Rira; a shawl meant for men, and the shawls were also used as a carpet on the ramp. This act was considered offensive and distortion of the cultural identity of the shawls by the Chakhesang Women Welfare Society (CWWS). The CWSS approached the Court of District Judge, Phek, Nagaland and filed a civil suit on September 7, 2020. The CWSS stated that Chakhesang shawls were granted GI protection in 2016. Using a registered GI without due approval and consent from the registered proprietor would amount to GI infringement under section 22 of the GI Goods Act 1999. The CWSS further claimed that the act of Ritu Beri was a mockery of the tribal culture and hurt the deep-rooted sentiments of the tribal community. Hypothetically considering that Ritu Beri had taken consent from the registered proprietor, using men’s shawls for women might still be considered infringement under the GI Goods Act 1999.²⁹⁷

Ritika Mittal was also accused of misappropriating Chakhesang shawls for her ‘Mora Collection’ with valid GI protection. She was also accused of her statement on social media, which stated that her project created the spelling for the word Thebvo. In reality, ‘Thebvo’ has been harvested, processed and hand-spun by weavers since ancient times.²⁹⁸ She was also asked not to use the word ‘Khuzhami’ in her credits as she had not worked with these villages for her project. Furthermore, she refused to give due credit to Lasumi and Zapami villages where she worked for her project. This case looks complicated as it involves GI infringement and traditional cultural expression misappropriation. ‘Chakhesang’ has been misappropriated, thus leading to GI infringement. Using ‘Thebvo’ and ‘Khuzhami’ to market her collections misappropriated traditional

²⁹⁷ *GI tag infringement: CWWS files civil suit against designer; TRIFED*, The Morung Express, Sept. 22, 2020

<https://morungexpress.com/gi-tag-infringement-cwss-files-civil-suit-against-designer-trifed>.

²⁹⁸ Samhita Barooah, *Branding Change*, Fibre2fashion, Dec 2018

<https://www.fibre2fashion.com/industry-article/8233/branding-change>

cultural expressions.²⁹⁹ However, though exceptionally rich in culture and traditions, India has no legislation to protect traditional cultural expressions (TCE).

The designers should not be allowed to copy or misappropriate TCEs that belong to an indigenous community. With special reference to India, in 2011, Lisa Blue wore a swimsuit on which Goddess Lakshmi was printed, which caused agitation among Hindus in India³⁰⁰ Gucci in the 2018-2019 runway, appropriated the Turban, the cultural heritage of the Sikh community.³⁰¹ In 2021, Sabyasachi Mukherjee created an advertisement for Royal Bengal Mangalsutra that stirred controversy on the social media as the advertisement portrays semi-naked women in an intimate position wearing Mangal Sutra, a piece of traditional jewellery worn by married Indian women.³⁰² This is merely an overview of the extent of cultural misappropriation in the Indian fashion industry. However, traditional cultural expressions are not covered under the Geographical Indications of Goods Act 1999. It is outside the scope of this research to study TCEs. Further research is required to determine and analyse if TCEs deserve protection from misappropriation in India.

7.4 The extent of protection granted to the fashion-related GIs

GI tags are granted to protect the quality of the goods attributed to a particular geographical area. Producing GI-tagged goods and selling them with the GI tag

²⁹⁹ *Ibid.*

³⁰⁰ Lindsay Goldwert, *Swimsuit designer Lisa Blue outrages Hindus by depicting goddess Lakshmi on skimpy bathing suits*, NY Daily, May. 09, 2011, 12.31 pm <https://www.nydailynews.com/life-style/fashion/swimsuit-designer-lisa-blue-outrages-hindus-depicting-goddess-lakshmi-skimpy-bathing-suits-article-1.141181>

³⁰¹ Allyson Chiu, *Not a cute fashion accessory': Gucci's \$800 'Indy Full Turban' draws backlash*, *The Washington Post*, May. 16, 2019, <https://www.washingtonpost.com/nation/2019/05/16/nordstroms-indy-full-turban-gucci-draws-sikh-protests/>

³⁰² *Sabyasachi removes ad campaign for luxury mangalsutra after social media backlash*, *The Indian Express*, October 28, 2021, <https://indianexpress.com/article/lifestyle/fashion/sabyasachi-mangalsutra-ad-campaign-netizens-reaction-7594975/>

without licence amounts to GI infringement. However, merely producing and selling GI-tagged goods without GI tags does not constitute infringement. Many manufacturers of the region or those who do not even belong to that region have started manufacturing GI-tagged goods and selling them with the GI tags without a licence. Pashmina Shawl, Kancheepuram silk, and Benaras silk are GI-tagged textile products that are being sold without a licence but with the GI tag printed on them. It becomes very difficult for the registered proprietor to identify the infringers. The problem is not only with Indian infringers but also the big fashion houses and renowned fashion designers who have misappropriated GI tags without a licence.

GI tags are the reflection of the culture and heritage of our country. Culture is an indispensable part of GI-tagged products. Having a GI tag enables the promotion of the product not only in India but also across the world.³⁰³ Using GIs should not be prohibited but adequately protected against misuse. On the one hand, GI tags are granted to promote our country's culture, traditions and heritage. On the other hand, they should be adequately protected to avoid misrepresentation and misappropriation. Recently, the misappropriation of GI tags has gained momentum in India. Famous and well-known fashion designers like Sabyasachi Mukherjee, Ritu Beri, and Ritika Mittal are accused of misappropriating GI tags. Fashion designers can use the GI tags provided they obtain licences from registered proprietors. Still, in recent times, fashion designers have been using the GI-tagged goods in their fashion shows and designs but have yet to obtain a licence. Not obtaining licences from the registered proprietors has two negative consequences: firstly, due credit is not conferred upon the GI proprietor and secondly, such GI-tagged goods gain their public visibility but lose revenues.

The GI Act 1999 punishes any person misappropriating or misrepresenting a GI tag under sections 39, 40, 41 and 42. Section 39 penalises any person who

³⁰³ Chinnaraja Naidu, *The traditional calling card*, https://www.indiaperspectives.gov.in/en_US/the-traditional-calling-card/ (Last Accessed 15.03.2023).

falsifies a GI or falsely applies any GI to the good, a false indication of a country on goods or tampers or alters the GI shall be punished with imprisonment of not less than six months, which may extend up to three years and with a fine which shall not be less than fifty thousand rupees and may extend up to two lakhs rupees. However, after citing valid reasons, the court may punish a person for less than six months and levy fines of less than fifty thousand rupees. Section 40 punishes a person who sells or hires to sell or exposes for sale or has in possession of goods to which a false GI tag or indication of a country is applied shall be punished with imprisonment of not less than six months, which may extend up to three years and with a fine which shall not be less than fifty thousand rupees and may extend up to two lakhs rupees. However, after citing valid reasons, the court may punish a person for less than six months and levy fines of less than fifty thousand rupees. Section 41 deals with subsequent offences committed under sections 39 and 40. Subsequent offenders are punished with imprisonment of not less than one year, which may extend up to three years, and with a fine which shall not be less than one lakh rupees and may extend up to two lakhs rupees. However, after citing valid reasons, the court may punish a person for less than one year and levy fines of less than one lakh rupees. Section 42 penalises a person for falsely representing a geographical indication as registered or applying a GI tag on goods that are not registered is punishable with imprisonment, which may extend up to three years, or a fine or both. Dispute these penalising provisions under the GI Act 1999, the big fashion houses misappropriate the GI tag without adequately crediting and compensating the indigenous community. Manufacturers willing to produce GI goods should obtain a licence from the registered proprietors and become authorised users.³⁰⁴

GI can be used to communicate the culture of India to the world, provided that they are adequately protected. India has taken various measures to promote GI tags along with protecting them under the GI Act 1999. Protection cannot be ensured only by registering a GI under the Act but post-registration measures are

³⁰⁴ Delphine Marie-Vivien, *Protection of Geographical Indications in ASEAN Countries: Convergences and Challenges to Awakening Sleeping Geographical Indications*, 23 J. WORLD INTELL. PROP. 328 (2020).

to be taken to protect them further. Smriti Irani, the then Union Textile Minister in 2017, spoke about post-GI initiatives. She announced that a GI help desk would soon be launched, but it has not yet seen daylight. She firmly believed that the GI help desk could bridge the gap between the government and the artisans. GI help-desk was to be launched in line with the government's philosophy 'Sabka Saath Sabka Vikaas'.³⁰⁵ GI help-desk would help the indigenous community to protect their traditional knowledge in a better way. Awareness about GI could be spread through such help desks. However, until now the GI help desk is not implemented.

The GI Act 1999 has unambiguous, comprehensive definition clauses, reasonable conditions for registration, an effective registration process, a list of acts that constitute infringement, and a penalty for the violation. However, India has overlooked post-registration measures in promoting and protecting GI. In India, once the GI is granted, it is the discretion of the proprietor to monitor the quality of the GI-tagged goods. Lacking a dedicated agency to supervise post-registration mechanisms in India has allowed free-riders to take advantage of GI products. To understand the efficacy of post-registration measures, this research analyses the protection sought by the Tea Board of India to protect and promote 'Darjeeling Tea' and furthermore evaluates if such measures could be adopted to protect and promote fashion-related GI products.

7.5 A promising case of protecting Darjeeling Tea through GI tag

The Tea Board of India (TBI) is a statutory body constituted under section 4 of the Tea Act 1953 and functions under the aegis of the Ministry of Commerce. Before the enactment of the GI Act 1999, the TBI registered a certification mark (Darjeeling word and logo) under the Trademarks Act 1999. In 2004 the TBI registered Darjeeling Tea (word and logo) as GI. Darjeeling tea has also been registered as an 'artistic work' under the Copyright Act 1957. The GI Act 1999

³⁰⁵ *GI tag beneficial for weavers, artisans & consumers: Irani*, Fibre2fashion, May. 08, 2017 <https://in.fashionnetwork.com/news/Gi-tag-beneficial-for-weavers-artisans-consumers-irani,824330.html#fashionweek-paris-akris>

exclusively excludes the trademarks from being registered as GIs, but the GIs can still claim registration as a certification mark under the Trademarks Act 1999. It is unquestionably true that the Tea Board of India registered ‘Darjeeling Tea’ as a certification mark under the Trademarks Act 1999, as GIs registration was not available in India. Nevertheless, that fact should not shadow the extent of IP protection Darjeeling Tea receives both under the Trademarks Act 1999 and the GI Act 1999. The relevance of Darjeeling tea with respect to this research is that procuring multiple intellectual property rights or forming an IP thicket to protect a GI seems successful. This part of the chapter analyses the extent of protection the TBI has sought to protect Darjeeling Tea. Apart from having an active IP thicket, they also have registered Darjeeling Tea in other countries as a trademark to ensure it is protected internationally. Table 4 below enlists the multiple intellectual property rights obtained by the Tea Board of India for ‘Darjeeling Tea’ under multiple intellectual property laws.³⁰⁶

Table 4 - The list of intellectual property protection procured by the Tea Board of India for Darjeeling Tea.

Type of IP	Application number	Organisation	Validity
Copyright for ‘Darjeeling Logo’ as artistic work	A-67292/2004	Tea Board of India	Valid
Certification mark for the word ‘Darjeeling Tea’	831599	Tea Board of India	Valid till 10/12/2025 - further protection is subject to renewal.
Certification mark for the Logo ‘Darjeeling	532240	Tea Board of India	Valid till 09/10/2027 - further protection is

³⁰⁶ TEA BOARD, Country Regulations, <https://www.teaboard.gov.in/TEABOARDCSM/NzI=> (Last Accessed 15.03.2023).

(Device of Women)			subject to renewal.
DARJEELING word as a geographical indication	1	Tea Board of India	Valid till 26/10/2023 - further protection is subject to renewal.
DARJEELING logo as a geographical indication	2	Tea Board of India	Valid till 26/10/2023 - further protection is subject to renewal.

IP thicket is a term derived from the concept of a patent thicket. On the one hand, the patent thicket is to procure multiple patents and obtain patent rights over technology to derive overarching commercial benefits. On the other hand, an IP thicket is a strategically devised plan where multiple IPs are obtained to protect the same creation. Patent thickets stifle invention and innovation and could be considered anti-competitive. However, as long as it is formed to protect the creation more effectively from being infringed, IP thicket has no anti-competitiveness involved. This research will not look into the impact of competition law on the IP thicket but rather considers it as a viable solution to protect GIs in India. Having a certification mark not only ensures the customers of the quality but also enables the proprietor of the certification mark to file a case against any infringement. Thus having an IP thicket, like the Tea Board of India for Darjeeling Tea, seems to be beneficial to protect other GIs.

Any intellectual property, be it copyright, trademark, or GI is territorial. Applications are to be filed in other countries to claim IP protection in the respective countries. The Tea Board of India has applied for certification and collective mark registration in many countries to protect Darjeeling Tea in the international beverages market. Thirty-nine countries have granted Darjeeling Tea a collective mark, four have granted certification marks, and three have granted trademark protection. The EU has granted PGI for the DARJEELING word, and Canada has granted the official mark. Table 5 represents the information about the

registrations that the Tea Board of India had to resort to protect ‘Darjeeling Tea’.³⁰⁷ Since there are glaring differences between countries in the registration process and protection granted to a GI, the Tea Board of India applied for multiple registrations.

Table 5 - Countries and the protection granted to Darjeeling Tea

Sl No	Country	Collective Mark	Certification Mark	Trademark	Other types of TM
1	Australia	N/A	For the word and logo - DARJEELING	N/A	N/A
2	Benelux Registration – Belgium, Netherlands, Luxembourg	For DARJEELING Logo	N/A	N/A	N/A
3	Canada	N/A	N/A	N/A	Official mark
4	EU member countries	Community Collective Mark for DARJEELING word	N/A	N/A	PGI for DARJEELING word under Regulation 510/06
5	Egypt	N/A	N/A	DARJEELING Logo	N/A
6	International Registration –Germany, Austria, Spain,	DARJEELING logo	N/A	N/A	N/A

³⁰⁷ Tania Singla, *Post-Registration Quality Control Measures for Geographical Indications in India: The Way Forward*, 7 INDIAN J. INTELL. PROP. L. 103 (2014-2015).

	France, Portugal, Italy, Switzerland and former Yugoslavia.				
7	Lebanon	For the word and logo - DARJEELI NG	N/A	N/A	N/A
8	Russia	N/A	N/A	DARJE ELING word and Logo	N/A
9	Japan	N/A	N/A	DARJE ELING Logo	N/A
10	Taiwan	N/A	For the word and logo - DARJEELING	N/A	N/A
11	USA	N/A	For the word and logo - DARJEELING	N/A	N/A
12	UK	N/A	For the word and logo - DARJEELING	N/A	N/A

7.5.1 International Level Protection for Darjeeling Tea

In France, the Tea Board of India filed a few cases to protect ‘Darjeeling Tea’ from being misrepresented. In one instance, the TBI addressed Comptoir Des Parfums to withdraw his trademark application for Darjeeling perfumes.

Accordingly, the applicant amended his application to the effect that his trademark would cover ‘all those goods being made of Darjeeling tea or recalling the scent of Darjeeling tea’. The Trademark Office of France rejected his application for the reason of the mark being descriptive.³⁰⁸ This case was a victory for the TBI. However, they lost another case against a lingerie company that sold their products under the name ‘Darjeeling’. The TBI submitted an objection to the registration of the word ‘Darjeeling’ by Delta Lingerie. The Office for Harmonisation in the Internal Market (OHIM) dismissed the opposition on the grounds that the marks were registered for different classes altogether. Consequently, there was no deceptive similarity between the marks.³⁰⁹ When TBI appealed the case before the General Court, it ruled that considering the marks, their intended purpose and the channels used for distribution, the products in question were neither complementary nor competitive in nature. As a result, there arises no deceptive similarity between the marks in the minds of the consumers. Thus, the case was rightly dismissed by the General Court. The trademark law in France is unique in that it protects two similar or identical marks as long as they are not registered under the same class of goods. When TBI appealed the case before CJEU, it upheld the order of the General Court; thus, TBI suffered a huge blow. Yet in another case against Mr Dusong, who had registered a trademark ‘Darjeeling’ with a teapot on top of the word mark and the trademark was intended to be used in the business of selling teapots. The Courts of Appeals of Paris held that drawing a teapot on the word mark ‘Darjeeling’ results in unjust enrichment and is a parasitic act at the expense of the other party.³¹⁰ In Germany, two cases were settled by the TBI over negotiations. A domain name, darjeeling.de, was taken down after many elaborate discussions between the parties.³¹¹ TeeKampagne was the first German Company to get the certification mark from the TBI for the Darjeeling tea, but they made the certification mark itself as their official business logo, which was contested by the TBI. After

³⁰⁸ S. C. Srivatsava, *Protecting the Geographical Indication for Darjeeling Tea*, WTO, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case16_e.htm (Last Accessed Jul. 04, 2023).

³⁰⁹ (2014/C 45/65).

³¹⁰ COURT OF APPEALS OF PARIS, 05/20050.

³¹¹ S. C. Srivatsava, *supra* note 306.

deliberations, Teekampagne stopped using the trademark and realised it was the worst mistake ever made.³¹² In the U.S., TBI filed a case against the Republic of Tea for using the word ‘Darjeeling Nouveau’ for teas. The Trademark Trial and Appeal Board ruled that Darjeeling Tea is inherently distinctive, as opposed to acquired distinctiveness. Using the word ‘Darjeeling Nouveau’ would infringe on the certification mark owned by the TBI. Taking into account the marks in relation to the goods, the distribution channels and the distributors, the goods are identical and deceptively similar, thus causing confusion to the consumers.³¹³ In Switzerland, BVLGARI withdrew the use of ‘Darjeeling Tea fragrance for men’ after legal notice and negotiations.³¹⁴ In Japan, TBI succeeded not because they established the validity of their certification mark but because of the non-use cancellation action.³¹⁵ Filing a number of cases in foreign jurisdictions required a hefty budget of around USD 200,000.³¹⁶ However, the infringement of ‘Darjeeling Tea’ in Germany and Switzerland was settled through negotiations alone. Having an exclusive authority for Darjeeling Tea protection and promotion has enabled effective IP management.

7.5.2 Employing technology for ‘Darjeeling Tea’ value supply chain management

TBI monitors Darjeeling Tea from production to distribution levels, including exports. TBI regularly conducts inspections of their licensees to ensure quality compliance. Selling “Darjeeling Tea’ is possible only upon obtaining a licence from the TBI. This licensing system guarantees that the seller has met the quality standards imposed by the TBI by stamping the certification mark. The Customs Authorities issued a notification on June 25, 2001, to mandate the exports to have

³¹² Günter Faltin, *Teekampagne “Citizen Entrepreneurship” for a Meaningful Life*, <https://www.entrepreneurship.de/wp-content/uploads/2019/06/Teekampagne.pdf> pp.3 (Last Accessed Jul. 04.2023).

³¹³ Tea Board of India v. The Republic of Tea, Inc., No. 91118587 (T.T.A.B. Aug. 23, 2006)

³¹⁴ S. C Srivatsava, *supra* note 272.

³¹⁵ *Id.*

³¹⁶ *Id.*

a certification mark as proof of origin.³¹⁷ To ensure compliance with quality standards, TBI has established internet-enabled data accumulating centres in Darjeeling and Kolkata. This system empowers the TBI with the daily data regarding the green leaves plucked, daily area-wise green leaves plucked, transfer of green leaves etc. There are, in total, 87 registered gardens, and all of them have been equipped with such technology for data entry.³¹⁸ To authenticate and scrutinise the data recorded, TBI appointed an independent agency to conduct auditing.

7.6 Adopting ‘Darjeeling Tea’s IP Thicket System to Fashion-related GIs

The success of having an IP thicket in protecting and promoting GIs has already been deliberated extensively. Indeed, having an exclusive authority, the TBI dedicated to promoting tea in India is the prime reason for effective IP implementation. GI application can be made by any association of persons, producers, organisation or authority established by or under the law. TBI, being an authority established under the law, applied for ‘Darjeeling Tea’ registration as GI. However, not all GIs are registered by statutory bodies or government bodies. Many cooperative societies and private trade associations have applied for GI registrations.

Many GIs related to the fashion industry have been filed by the Development Commissioner (Handicrafts) - Ministry of Textiles and the respective State’s Department of Textiles. Irrespective of a government body being a registered proprietor for fashion-related GIs, they are misappropriated continuously. The Ministry of Textiles and the State’s Department of Textiles should follow the TBI model and adequately protect the GIs. Development Commissioner (Handicrafts) and Development Commissioner (Handlooms) function under the aegis of the

³¹⁷ Tea Board India, <https://www.teaboard.gov.in/TEABOARDCSM/NzI=> (Last Accessed Jul. 04.2023).

³¹⁸ Tea Board India, <https://www.teaboard.gov.in/TEABOARDCSM/NQ==> (Last Accessed Jul. 04.2023).

Ministry of Textiles. The total budget allocated to the Ministry of Textiles stands at ₹4,389.34 crores for the financial year 2023 - 2024. The Ministry has various functions to perform, and GIs cannot be their only focus area, but GIs should not be ignored conveniently. With the amount of budget sanctioned by the Union Government, GIs could be better protected following the model of TBI by the Ministry of Textiles. Likewise, each State allocates a budget for their textile sector, which can be utilised by the respective Ministry to promote GIs.

Filing multiple registrations in various countries and instituting proceedings against alleged infringers require financial and technical assistance. The cost-benefit analysis also has to be considered before investing in any GIs. The research does not intend to suggest that all the fashion-related GIs deserve to be protected, and which GIs deserve more protection and which deserve less should be determined after taking into account the profits generated. It is outside the scope of this research to suggest which fashion-related GIs should be protected more than other GIs. The research limits itself to pointing out that not all fashion-related GIs are registered by cooperative societies or trade associations that lack the budget to protect and promote GIs. To prove this, the researcher randomly selected 19 textile-related GIs and 13 handicraft-related GIs. Accordingly, table 6 enlists fashion-related GIs and their registered proprietors. The government bodies have registered multiple fashion-related GIs, which are listed one next to the other. For instance, the Department of Handlooms and Textiles, Government of Tamil Nadu, is the registered proprietor of Kancheepuram Silk, Arani Silk, Salem Silk, Kandangi Sarees, Negamam Cotton Sarees and Kovai Kora Cotton Sarees.

Table 6 - Fashion-related GIs and its registered proprietor

Sl No	GI	Registered Proprietor - Government Body	Registered Proprietor - Co-operative society/ Private Association
1	Banaras Brocades	N/A	Banaras Bunkar Samiti

	and Sarees		
2	Dharmavaram Handloom Pattu Sarees and Paavadais	N/A	Dharmavaram Handloom Pattu Sarees Apex Society Limited
3	Ilkal Sarees, Molakalmuru Sarees	Commissioner for Textile Development & Director of Handlooms & Textiles Government of Karnataka	N/A
4	Santipur Saree	Patent Information Center, Kolkata	N/A
5	Mysore Silk	Karnataka Silk Industries Corporation Limited	N/A
6	Kancheepuram Silk, Arani Silk, Salem Silk, Kovai Kora Cotton Sarees, Kandangi Sarees, Negamam Cotton Sarees	Department of Handlooms and Textiles, Government of Tamil Nadu	N/A
7	Sambalpuri Bandha Saree & Fabrics	Directorate of Textiles & Handloom, Government of Orissa	N/A
8	Muga Silk of Assam	Patent Information Center, Assam	N/A
9	Chakhesang Shawls	N/A	Chakhesang Women Welfare Society
10	Chanderi Sarees	N/A	Chanderi Development Foundation
11	Pochampally Ikat	N/A	Pochampally Handloom Weavers Co-op Society Limited

12	Balaramapuram Sarees and Fine Cotton Fabrics, Kuthampully Sarees and Fine Cotton Fabrics	The Director, Directorate of Handlooms and Textiles Government of Kerala	N/A
13	Mau Saree	N/A	Bharat Industrial Co - operative Society Limited
14	Kasuti Embroidery	Karnataka State Handicrafts Development Corporation Limited	N/A
15	Srikalahasti Kalamkari	N/A	Kalamkari Artisans Revival and Upsurge for National Acclaim
16	Surat Zari Craft	N/A	The Surat Jari Manufacturers Association
17	Banaras Zardozi	N/A	Banaras Zardozi Craft Development Society
18	Machilipatnam Kalamkari	N/A	Vegetable Hand-block Kalamkari Printers Association
19	Thewa Art Work	N/A	Rajasthan Thawa Kala Sansthan
20	Sujini Embroidery Work of Bihar, Applique (Khatwa) Work of Bihar	Development Commissioner (Handicrafts) - Ministry of Textiles	N/A
21	Pipli Applique Work	N/A	Orissa State Cooperative Corporation Limited
22	Phulkari	Punjab Small Industries & Export Corporation Ltd	N/A

23	Kutch Embroidery	Development Commissioner (Handicrafts) - Ministry of Textiles	N/A
24	Lucknow Chikan Craft	Small Scale Industry, U.P. Government	N/A
25	Sanganeri Hand Block Printing	N/A	Calico Printers Cooperative Society Ltd
26	Lucknow Zardozi	N/A	Kalatmak Hastshilp Self Help Group Foundation

Out of 22 textile related GIs, 14 GIs have been registered by the respective State Government backed statutory bodies. Only 7 textile-related GIs are registered either by cooperative societies or private trade associations. Furthermore, out of 13 handicraft-related GIs, only five are registered by government bodies. The remaining 8 are registered either by cooperative societies or private trade associations. Comparing the textile-related GIs with the handicraft-related GIs, the government has procured the GI registration for more textile-related GIs. Department of Handlooms and Textiles, Government of Tamil Nadu, has the most textile-related GI registrations. The respective government bodies could follow the model of TBI and procure an IP thicket for those fashion-related GIs that generate revenue and are in demand across the globe. With adequate funding, even the cooperative societies and the private trade associations could follow in the footsteps of TBI and protect their respective GIs in a better manner. Additionally, employing technology in the area of GIs could help in their maximum utilisation and stop pirated GI products.

7.7 Blockchain Technology and GIs - A Possible Solution

A decentralised peer-to-peer database called the blockchain eliminates the intermediaries in transactions.³¹⁹ The blockchain is a network of interconnected

³¹⁹ Samuel N. Weinstein, *Blockchain Neutrality*, 55 GA. L. REV. 499 (2021).

blocks that preserves records of numerous discrete transactions. A new transaction must be verified before it can be added or removed to the chain of data on the blockchain.³²⁰ A tamper-evident and irreversible ledger, the blockchain offers confidentiality and trust. The blockchain is a cryptographic-proof-enabled technology. It additionally has the potential to create a whole supply chain platform for products with geographical indications, which can enhance the quality and safety of the GI-tagged products through cooperative management by various node organisations from its creation to the table of consumers.³²¹

Blockchain technology can potentially promote Geographical Indications in various ways, including establishing the provenance and authenticity of GI products, ensuring producer groups adhere to product specifications, and combating GI forgeries, using blockchain technologies as a distinctive platform for registering GIs, and concluding GI transactions through smart contracts. Blockchain technology can be helpful in documenting and monitoring GI producers' adherence to product specifications, which could support ongoing efforts to increase transparency in GI supply chains.³²² The provenance, authenticity, and quality attributes of blockchain technology make it fit to promote GIs. Blockchain technology can initially provide minimal benefit during registration, but it has significant potential to preserve and uphold GI rights.

GI proprietors could take advantage of blockchain technology to promise consumers the authenticity and quality of the goods. The registered users who are allowed to manufacture GI products would be allowed to record a series of transactions with information regarding its source, quality etc. Then the products are moved to the seller. After the seller is assured that there is no data tampering, he can add the consumer's details and dispatch the product enabling a QR code. Once the consumer receives the GI product, he can verify its origin and

³²⁰ Ubertazzi, B., *Sustainable Development and Intangible Cultural Heritage*. In: *Intangible Cultural Heritage*, Sustainable Development and Intellectual Property, 18 Munich Studies on Innovation and Competition, Springer (2022).

³²¹ Stephanie M Aronzon, *Blockchain and geographical indications: a natural fit?*, 15 (11). *JILPL*, 913, 919 (2020).

³²² *Id.*

authenticity by scanning the QR code. Any tampering of data in the blockchain would be a question of its authenticity and origin. Asymmetric technology employed in the blockchain renders it next to impossible to tamper the data, thus guaranteeing product quality from the manufacturer to the consumer.

Post-registration measures are so crucial that they change the value of the GI products altogether, especially fashion-related GIs like Kanjeevaram silk, Chanderi silk, Kasuti embroidery, Sanganeri block print etc. Though it is not viable to employ blockchain technology in all fashion-related GIs, the registered proprietors of renowned GIs could take advantage of it, he perceives the commercial value of their GI. The yearly turnover of the Kanjeevaram silk saree is valued at about 200 crores, with a negligible amount of exports valued at 3 crores.³²³ Mysore Silk saree revenue stood at around 153.59 crores during the last financial year.³²⁴ It is outside the scope of this research to identify fashion-related GIs that are economically and commercially profitable.

7.8 Multiple Applications for Registration of GI at the International Level

International agreements like the Patent Cooperation Treaty and the Madrid Agreement facilitate the registration of patents and trademarks receptively among its member nations without filing multiple applications. The international convention that gives such a privilege to GIs is Lisbon Agreement³²⁵ and Geneva Act. The Lisbon Agreement allows the international registration of Appellations of Origin (AOL), whereas the Geneva Act of Lisbon Agreement allows the

³²³ *Kanchipuram sarees Exports from India*,

<https://www.volza.com/p/kanchipuram-sarees/export/export-from-india/> (Last Accessed Jul. 04.2023).

³²⁴ 'South India saree market likely to touch ₹30,800 crore by FY25', The Hindu, Sept. 12, 2022 <https://www.thehindu.com/business/Industry/south-india-saree-market-likely-to-touch-30800-crore-by-fy25/article65883228.ece>

³²⁵ Summary of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958),

https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html (Last Accessed 15.03.2023).

international registration of GIs. The International Bureau of WIPO registers such AOs and GIs in Geneva upon the request of the competent authority of a Contracting State.³²⁶ The Lisbon Agreement is ratified by thirty nations, whereas the Geneva Act is ratified only by sixteen nations. The EU is a contracting party to both treaties; however, neither India nor the US has ratified the agreements.

7.8.1 Ratifying the Lisbon Agreement and Geneva Act - A Way Forward

There are several significant differences between how the countries offer protection to the GIs. Any Indian GI to claim protection in France has to have registered in India and France. Conversely, any GI of France can claim protection in India irrespective of its registration in France. This differentiation calls for a discussion on civil law and common law countries' protection of the GIs. In a civil law country, any GI shall be protected only if it has been registered in the home country and registered in that country. However, in common law countries, the GIs are protected irrespective of their home country registration. Another major distinction is that in a civil law country, there is no infringement of GI if it's applied to unrelated goods or goods that are not similar. This distinction has already been deliberated in the case of *TBI v. Dusong*. Moreover, there are many countries like Japan that intend to protect GIs as a collective mark and have no exclusive sui generis legislation to protect GIs. Furthermore, bias is indoctrinated in TRIPS with respect to agricultural goods against wines and spirits. The latter is granted an additional layer of protection compared to the former. All these reasons and differences call for an international system to protect GIs equally and adequately. The Lisbon Agreement and the Geneva Act are such international agreements that intend to protect GIs internationally.

7.8.2 Lisbon Agreement and the Geneva Act

³²⁶ *Summary of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration* (1958)

https://www.wipo.int/treaties/en/registration/lisbon/summary_lisbon.html (Last Accessed 15.03.2023).

India has not ratified either the Lisbon Agreement or the Geneva Act. Before determining whether India should ratify these international agreements or not, it is pertinent to discuss the critical provisions of these agreements. The first Article of the Lisbon Agreement mandates its member states to protect appellations of origin (AOO). This Agreement covers only AOO and not GIs. Articles 5(3) and (4) deal with the procedure for registering AOOs. The Agreement implemented a multilateral registry for AOO through a single application. One application to have AOO registered in all the member countries. Application has to be sent by the designated authority of the member country to the WIPO's International Bureau (IB). Upon consideration of the application, WIPO will notify the member countries in which protection is sought through the application. Once the registration is granted, it shall be protected against imitation and usurpation. To obtain AOO protection, it should have a tight connection with its place of origination, unlike GIs.

The Geneva Act extended protection to the GIs, unlike the Lisbon Agreement. It protected GIs in consonance with the TRIPS.³²⁷ Though TRIPS allows additional protection for wines and spirits, such additional protection is absent under the Geneva Act. Agricultural products and wines and spirits are treated at par. Geneva Act provides two-fold protection for GIs and AOOs against similar goods without following the quality or certification protocols of the registered proprietor originating from the geographical area to which the protection is granted and goods that are not similar, but the usage indicates a relationship with the GI or AOO and has repercussions on the reputation on the GI or AOO. India has several fashion-related GI-tagged products that are exported to various countries, like the Kanjeevaram saree, Mysore silk, Chanderi silk etc.

Indian GI-tagged goods are exported to various countries, and handicrafts and textiles are considered premium goods across the globe. International registration of GIs through the Lisbon Agreement and Geneva Act would help Indian GI-tagged goods easily obtain protection across member nations through a single

³²⁷ Daniel Gervais, *Irreconcilable Differences - The Geneva Act of the Lisbon Agreement and the Common Law*, 53 Hous. L. REV. 339 (2015).

application. India acceding to the Lisbon Agreement and Geneva Act would make it easier for the GI registered proprietors to claim protection among the contracting parties. Otherwise, like TBI, multiple registrations are to be sought. The TBI sought certification or collective marks across many countries as many developed countries still have not passed exclusive legislation to protect GIs.

7.9 Observations

There are many GIs that are granted in India that have a close relationship with our culture. GI infringement in the fashion industry usually results in cultural appropriation. One of the Indian fashion designers, Rahul Mishra, has understood Indian culture and heritage immensely. He is the only Indian who has represented Indian artistic craftsmanship in Paris Fashion Week. All his haute couture collections at the Paris Fashion Week have been the result of Indian artisans. His belief and confidence in Indian handicrafts have been so impeccable that his ‘Life of a Tree’ and ‘Butterfly People’ reflected it. Another designer who has immense respect for Indian artisans and Indian handicrafts is Anita Dongre. She says cultural appropriation is everywhere in the Indian fashion industry, and the indigenous people are not even credited, let alone compensated. Cultural appropriation, in her opinion, is when a fashion designer disrespects the art and calls it his own without acknowledging the cultural legacy it carries. In her words, cultural appropriation could be reduced when the intention of the designer is clarified, and due credit is given to every last person. However, it is not only about credit but also about compensation.

TBI has been committed to making ‘Darjeeling Tea’ one of the world’s premium teas. Enormous efforts have been taken by the TBI to protect Darjeeling Tea from being infringed. TBI has come a long way from claiming multiple IPR registrations at national and international levels to defending cases filed in various jurisdictions. Drawing inspiration and appraising the significance of Indian GI, the registered proprietors of the fashion-related GIs also should create an IP thicket. Many registered proprietors of fashion-related GIs are government bodies, and

they are regularly funded. This research intends not to suggest how much of the budget needs to be spent on GIs but rather to suggest that protecting fashion-related GIs from being infringed or appropriated should become a priority area. Fashion houses worldwide would be aware of the GI if protected across nations. Along with these measures, India acceding to Lisbon Agreement and Geneva Act would further strengthen the protection granted to the GIs worldwide.